

COMMONWEALTH OF VIRGINIA



STEVEN T. FOSTER
COMMISSIONER OF INSURANCE

Box 1157
RICHMOND, VA 23209
TELEPHONE: (804) 786-3741
TDD/VOICE: (804) 225-3806

STATE CORPORATION COMMISSION BUREAU OF INSURANCE

August 14, 1992

ADMINISTRATIVE LETTER 1992-17

TO: All Domestic Insurers Subject to the Provisions of Article 4, Chapter 14 in Title 38.2 of the Code of Virginia

RE: Asset Protection Act, Virginia Code §§ 38.2-1446 & 38.2-1447

The 1992 General Assembly added a new article to Chapter 14 of Title 38.2 of the Virginia Code. The new article contains Virginia's "Asset Protection Act" (the Act). Its provisions became effective July 1, 1992. They require annual submissions by insurers as well as special reports and prior approval applications. Forms for making each of the required filings are attached to this administrative letter as Exhibits A, B and C.

Exhibit A is the Section 38.2-1446 Report form. It is to be filed annually, or more often if required by the Commission, to verify compliance with the statute. The report includes the sworn statements required by the statute and an exhibit form on which insurers are to list and describe admitted assets which have been pledged, hypothecated or encumbered. A sample listing is attached for illustrative purposes; however, it is not all inclusive.

The Bureau has determined that the first Section 38.2-1446 Reports shall be due November 15, 1992. This initial report shall be based on financial data as of September 30, 1992. Thereafter, in the absence of specific request or direction by the Commission, Section 38.2-1446 Report forms shall be prepared by each domestic insurer as of the end of each calendar year and filed on or before March 1 in conjunction with insurer's annual statement filing.

In addition to requiring annual filings, subsection B of § 38.2-1446 provides that any insurer which pledges, hypothecates or encumbers any of its assets shall within ten days thereafter

Administrative Letter 1992-17

August 14, 1992

Page 2, 1992

report in writing to the Commission the amount and identity of the assets so pledged, hypothecated or encumbered. Exhibit B is the Section 38.2-1446 Ten Day Report form that is to be used for reporting such transactions.

The attached Exhibit C pertains to subsection A of Section 38.2-1446. The form is to be used when seeking prior approval for an anticipated act of pledge, hypothecation or encumbrance. It is due any time an insurer suspects that, as a result of an anticipated transaction, the thresholds set forth in the Act for assets pledged, hypothecated or encumbered may be exceeded.

Questions concerning this Administrative Letter and all filings made pursuant to this Administrative Letter shall be directed to:

Edward J. Buyalos, Jr., Financial Analysis Supervisor
OR
Christopher A. Brockwell, Senior Financial Analyst
Financial Regulation Division, Bureau of Insurance
The State Corporation Commission
P. O. Box 1157
Richmond, VA 23209
(804) 786-3637

Sincerely yours,



Steven T. Foster
Commissioner of Insurance

STF/jdg

Attachments: Exhibits A, B, and C

COMMONWEALTH OF VIRGINIA
SECTION 38.2-1446 TEN-DAY REPORT

This report is filed this _____ day of _____, 199__ with the State Corporation Commission Bureau of Insurance for the Commonwealth of Virginia, ATTN: Financial Regulation Division, pursuant to subsection B of Section 38.2-1446 of Title 38.2 of the Code of Virginia, to report within ten days of the transaction date, any transaction by a domestic insurer resulting in the pledge, hypothecation or encumbrance of any of its admitted assets by

name of insurance company NAIC no.

Preparer's Name _____ Telephone No. (____) _____

ITEM 1. IDENTITY OF PARTIES TO TRANSACTION

Furnish the following information for each of the parties to the transaction:

- (a) Name.
- (b) Home office address.
- (c) Principal administrative address.
- (d) The organization structure, i.e. corporation, partnership, individual, trust, etc.
- (e) A description of the role of each party in the transaction; i.e., lender, debtor, guarantor etc.
- (f) Relationship, if any, between the insurer other parties, to the transaction, including any ownership, affiliated or debtor/creditor interest among any parties to the transaction and the insurer seeking approval.

ITEM 2. DESCRIPTION OF THE TRANSACTION

Furnish the following information for each transaction for which notice is being given.

- (a) The proposed effective date of the transaction.
- (b) The amount of the proposed pledge, hypothecation or encumbrance.
- (c) A statement of the nature of the transaction.

(d) A statement as to the effect of the transaction upon the insurer's capital and surplus.

ITEM 3. IDENTIFICATION OF ASSETS TO BE PLEDGED, HYPOTHECATED OR ENCUMBERED.

Furnish a brief description of the amount and source of funds, securities, property or other assets pledged, hypothecated or encumbered. Identify whether the transaction involves a deposit, sale, purchase, exchange, loan, extension of credit, guarantee, and/or investment. Indicate whether the insurer retains actual possession of the assets and whether the terms of any agreement require that title or possession be vested in or shared with someone other than the insurer. Describe any other agreements relating to the transaction such as contracts or agreements for services, reinsurance agreements and the like. If the transaction involves other than cash, furnish a description of its fair market value, together with an explanation of the basis for valuation.

If the transaction involves a loan, extension of credit or a guarantee, furnish a description of the maximum amount which the insurer could become obligated to make available under such loan, extension of credit or guarantee, the date on which the credit or guarantee will terminate, and any provisions for the accrual of or deferral of interest.

If the transaction involves an investment, guarantee or other arrangement, state the time period during which the investment guarantee or other arrangement, will remain in effect, together with any provisions for extensions or renewals of such investments, guarantees or arrangements.

ITEM 4. AFFIDAVIT

Insurer should complete for its own records (but need not file with the Commission) a Section 38.2-1446 Report form. Insurers not including a Section 38.2-1446 Report with this filing shall complete the following affidavit after determining appropriate wording for numbered paragraphs (iv), (v) and (vi).

AFFIDAVIT

State of _____,
City/County of _____,

I, _____, Chief Executive Officer and
name

_____ of _____,
additional title, if any name of insurance company

the insurer, being duly sworn, for him/herself deposes and says he/she is the Chief Executive Officer of the said insurer, and that as of the date of this filing,

(i) title to assets in an amount equal to the reserve liability and minimum capital and surplus of the insurer which are not pledged, hypothecated or otherwise encumbered is vested in said insurer;

(ii) the only assets of said insurer which are pledged, hypothecated or otherwise encumbered are as identified and reported herein and in the insurer's most recently filed Section 38.2-1446 Exhibit, and any in subsequently prepared Prior Approval Applications and Ten-Day Reports on file with the Commission, and no other assets of said insurer are pledged, hypothecated or otherwise encumbered;

(iii) the terms and limitations of all such transactions of pledge, hypothecation or encumbrance are as reported in the aforesaid documents, according to the best of his/her knowledge and belief;

(iv) the insurer maintains/does not maintain (strike whichever is not applicable) admitted assets in an amount equal to the sum total of its reserve liabilities and minimum capital and surplus;

(v) the total value of insurer's assets that are reportable under Virginia Code Section 38.2-1446 as pledged, hypothecated or encumbered assets exceeds/does not exceed (strike whichever's not applicable) the current amount of insurers surplus as to policyholders, however all transactions of hypothecation or encumbrance have been ratified or approved by the Commission;

(vi) the total value of insurer's assets that are reportable under Virginia Code Section 38.2-1446 as pledged, hypothecated or encumbered assets exceeds/does not exceed (strike whichever is not applicable) five percent of the insurer's current admitted assets; and

(vii) all excess reported herein, if any, represent transactions of hypothecation or encumbrance which have been approved or validated by the Commission.

signature of officer

date

Subscribed and sworn before me this _____ day of 199_____

notary public

ITEM. 5. SIGNATURE AND CERTIFICATIONS.

SIGNATURE

Pursuant to the requirements of Section 38.2-1446.A of Title 38 of the Code of Virginia, _____ insurer has caused this notice to be duly signed on its behalf in the City of _____ and State of _____ on the _____ day of _____, 19____.

(SEAL) _____ name of insurer

By _____ name title

Attest:

signature of officer

title

CERTIFICATION

The undersigned deposes and says that he/she has duly executed the attached notice dated _____, 19____, for and on behalf of _____; that he/she is the _____ name of applicant of such company and that he/she is authorized to _____ title of officer

execute and file such instrument. Deponent further says that he/she is familiar with such instrument and the contents thereof, and that the facts therein set forth are true to the best of his/her knowledge, information and belief.

signature

type or print name

COMMONWEALTH OF VIRGINIA
SECTION 38.2-1446 PRIOR APPROVAL APPLICATION

This application is filed this _____ day of _____, 199__ with the State Corporation Commission Bureau of Insurance for the Commonwealth of Virginia, ATTN: Financial Regulation Division pursuant to Section 38.2-1446 of the Title 38.2 of the Code of Virginia by:

name of insurance company

NAIC no.

Preparer's Name _____ Telephone No. (____) _____

ITEM 1. REASON FOR APPLICATION

a. This Section 38.2-1446 Prior Approval Application is being filed because (check one):

_____Insurer believes admitted assets in an amount in excess of the prescribed amounts of its surplus to policyholders reserve liabilities and surplus, admitted assets and/or may become reportable, pursuant to Virginia Code §38.2-1446, as assets pledged, hypothecated or encumbered, as the result of the proposed transaction described in this application.

or

_____Insurer believes the value of its admitted assets currently reportable, pursuant to Virginia Code §38.2-1446, as assets pledged, hypothecated or encumbered, and that such excess will be increased by the proposed transactions described herein.

b. If insurer has previously filed a Section 38.2-1446 Prior Approval Application, give date of most recently filed application:_____.

ITEM 2. IDENTITY OF PARTIES TO TRANSACTION

Furnish the following information for each of the parties to the proposed transaction:

- (a) Name.
- (b) Home office address.
- (c) Principal administrative address.

- (d) The organization structure; i.e, corporation, partnership, individual, trust, etc.
- (e) A description of the nature of parties' business operations.
- (f) Relationship, if any, between the insurer and other parties to the transaction, including any ownership, affiliated or debtor/creditor interest among any parties to the transaction and the insurer seeking approval.

ITEM 3. DESCRIPTION OF THE TRANSACTION

Furnish the following information for each transaction for which notice is being given.

- (a) The proposed effective date of the transaction.
- (b) The amount of the proposed pledge, hypothecation or encumbrance.
- (c) A statement of the nature of the transaction.
- (d) A statement as to the effect of the transaction upon the insurer's capital and surplus.

ITEM 4. IDENTIFICATION OF ASSETS TO BE PLEDGED, HYPOTHECATED OR ENCUMBERED.

Furnish a brief description of the amount and source of funds, securities, property or other assets to be pledged, hypothecated or encumbered. Identify whether the transaction involves a deposit, sale, purchase, exchange, loan, extension of credit, guarantee, and/or investment. Indicate whether the assets will remain in the actual possession of the insurer following conservation or whether possession or title will be transferred to another party or shared with someone other than the applicant. Describe any other agreements relating to the transaction such as contracts or agreements for services, reinsurance agreements and the like. If the transaction involves other than cash, furnish a description of its fair market value, together with an explanation of the basis for valuation.

If the transaction involves a loan, extension of credit or a guarantee, furnish a description of the maximum amount which the insurer could become obligated to make available under such loan, extension of credit or guarantee, the date on which the credit or guarantee will terminate, and any provisions for the accrual or deferral of interest.

If the transaction involves an investment, guarantee or other arrangement, state the time period during which the investment guarantee or other arrangement, will remain in effect, together with any provisions for extensions or renewals of such investments, guarantees or arrangements.

ITEM 5. SECTION 38.2-1446 REPORT.

Complete and attach a Section 38.2-1446 Report form.

ITEM 6. SIGNATURE AND CERTIFICATION.

SIGNATURE

Pursuant to the requirements of Section 38.2-1446.A of Title 38 of the Code of Virginia, Applicant has caused this notice to be duly signed on its behalf in the City of _____ and State of _____ on the _____ day of _____, 19____.

(SEAL) _____
name of applicant

By _____
name title

Attest:

signature of officer

title

CERTIFICATION

The undersigned deposes and says that (s)he has duly executed the attached notice dated _____, 19____, for and on behalf of _____; that (s)he is the name of applicant

_____ of such company and that (s)he is authorized to title of officer execute and file such instrument. Deponent further says that (s)he is familiar with such instrument and the contents thereof, and that the facts

therein set forth are true to the best of his/her knowledge, information and belief.

signature

type of print name