

**STATE OF MAINE  
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION  
BUREAU OF INSURANCE**

IN RE:

Everest Reinsurance Company  
NAIC Co. Code: 26921  
ME License No. PCF757

Docket No. INS-24-213

**CONSENT AGREEMENT  
AND ORDER**

Everest Reinsurance Company ("Everest" or "Company"), the Superintendent of the Maine Bureau of Insurance ("the Superintendent"), and the Office of the Maine Attorney General ("the Attorney General") hereby enter into this Consent Agreement pursuant to 10 M.R.S. § 8003(5)(B) to resolve, without resort to an adjudicatory proceeding, violations of the Maine Insurance Code. As set forth in more detail below, Everest violated the Code when it issued excess loss policies prior to updating its approved Maine forms and rates and failed to file accurate supplemental reports to its annual statement. The improperly issued policies also failed to comply with all requirements of Bureau of Insurance Rule Chapter 135 ("Bureau Rule Ch. 135").

**APPLICABLE LAW**

1. Under 24-A M.R.S. § 12-A, the Superintendent may assess civil penalties, issue a cease and desist order, or take any combination of these and other actions listed within this section against any person who violates any law enforced by the Superintendent; any rule lawfully adopted by the Superintendent; or any lawful order of the Superintendent.
2. Pursuant to 10 M.R.S. § 8003(5)(B), the Superintendent may resolve an investigation without further proceedings by entering into a consent agreement with a licensee and with the consent of the Attorney General.
3. Pursuant to 24-A M.R.S. § 423, each authorized insurer is required to file an annual statement on or before March 1<sup>st</sup> of each year, "...supplemented by additional information required by the superintendent."
4. Bulletin 286-A explains one of the areas of supplemental reporting is on a reporting form that distinguishes among the various lines of health insurance, which includes stop loss or employee benefit excess insurance. This information is reported on or before April 1<sup>st</sup> of each year using Maine's supplemental health insurance reporting form, also known as the 286-A reporting form.

5. Pursuant to 24-A M.R.S. § 2304-A, every insurer shall make its rate filings “not less than 30 days in advance of the stated effective date unless that 30-day requirement is waived by the superintendent.”
6. Pursuant to 24-A M.R.S. § 2316, “[n]o insurer shall make or issue a contract or policy, except in accordance with the filings which are in effect for the insurer as provided in this chapter...”
7. Pursuant to 24-A M.R.S. § 2412(1), “[a]n insurance policy or annuity contract form may not be delivered or issued for delivery in this State unless the form has been filed with and approved by the superintendent...”
8. Bureau Rule Ch. 135 sets forth standards for employee benefit excess insurance providing coverage for employers maintaining group health plans.
9. Rule 135 § 5(1)(B) states that “an employee benefit excess insurance policy may not have an annual aggregate attachment point for health benefits that is less than 120 percent of expected claims, determined net of any specific excess coverage that might be provided by the policy, and verified by the insurer using reasonable and accepted actuarial principles...”
10. Rule 135 § 5(4) requires insurers to provide a disclosure notice explaining the employer’s unlimited responsibility for claims that are above any annual limit or are excluded from reimbursement by the excess policy.
11. Rule 135 § 5(7) sets forth specific requirements for tail disclosure notices to employers, including requirements that an insurer’s notice be approved by the Superintendent and include a written acknowledgment from the employer.
12. Rule 135 § 6 requires the filing of an actuarial certification on or before April 1<sup>st</sup> by any insurer that has issued or renewed an employee benefit excess insurance policy subject to the rule at any time during the prior calendar year.
13. Rule 135 § 7 requires an insurer that has issued or renewed an employee benefit excess insurance policy in Maine at any time during a calendar year to file Maine’s Employee Benefit Excess Insurance Report by April 1<sup>st</sup> of the following year.

#### **STATEMENT OF FACTS**

14. During April 2024, the Bureau learned that Everest was writing employee benefit excess loss policies in the State of Maine.
15. Everest reported \$655,506 of excess loss premium on its 286-A reporting form for calendar year 2023.

16. Everest's 286-A report of 2023 excess loss premium triggered an additional requirement to file the Employee Benefit Excess Insurance report for calendar year 2023.
17. When that report was not received by April 1, 2024, an overdue notice was sent to Everest and circulated within the Bureau.
18. Bureau staff then reviewed its records and determined the following:
  - A. Everest had not filed rates or forms related to excess loss products since 2006.
  - B. Everest had also reported \$509,294 of excess loss premium on its 286-A reporting form for calendar year 2022.
  - C. Everest had not filed an Employee Benefit Excess Insurance reporting form for calendar year 2022.
19. On April 5, 2024, the Bureau contacted Everest regarding its overdue Employee Benefit Excess Insurance reporting form and to confirm the extent of its Maine excess loss business given its outdated rate and form filings for this product.
20. Everest confirmed it had issued and renewed employee benefit excess loss policies for three (3) large groups in Maine since September 18, 2019, the date Bureau of Insurance Rule Chapter 135 took effect.
21. Everest agreed that it would not issue or renew any Employee Benefit Excess Loss policies in Maine until it updated its Maine filings.
22. The Bureau then requested copies of all iterations of the three (3) policies Everest had issued and renewed to review them for compliance with Rule 135.
23. Bureau staff determined the policies Everest provided, two (2) of which were issued in 2022, renewed in 2023, and one (1) of which was issued in 2021, renewed in 2022, failed to comply with numerous sections and subsections of Rule 135 and did not match the company's previously filed rates and forms.

#### *Rule 135 Compliance*

24. In one of the policies that issued in 2022, Everest used an aggregate attachment point that was less than 120 percent of expected claims as described in Rule 135 § 5(1)(B).
25. Everest failed to provide disclosures explaining the employer's unlimited responsibility for claims that are above any annual limit or are excluded from reimbursement by the excess policy as required by Rule 135 § 5(4).
26. Everest used a tail disclosure notice that did not include a written acknowledgment from the employer and was not approved by the Superintendent as required by Rule 135 § 5(7).

27. Everest failed to file actuarial certifications in the years following calendar years in which it had written excess loss premiums as required by Rule 135 § 5(6).
28. Everest failed to file Employee Benefit Excess Insurance reports, required by Rule 135 § 7, for calendar years 2021 and 2022.

#### *286-A Supplemental Health Insurance Reporting*

29. Everest also failed to report its stop loss premium to the Bureau for calendar year 2021.
30. Everest filed a 286-A reporting form for calendar year 2021 premium but listed \$0 for stop loss premium.
31. This supplement to Everest's annual statement is required by 24-A M.R.S. § 423(1).

#### *Outdated Rate and Form Filings*

32. The excess loss policies Everest provided to the Bureau show a form number of "EDEC 570 08 06" on the bottom left corner.
33. The Bureau last approved Everest excess loss policies on November 13, 2006. The form number for the approved filing, located in SERFF filing # EVST 125035374, is "EAH 00 504 11 06."
34. Everest's policies were issued on unapproved forms.
35. Everest rated its issued and renewed excess loss policies using the 2020 and 2022 versions of the Willis Towers Watson HealthMaps rating manual as well as a proprietary rating plan from a third-party actuarial service provider, Benecon.
36. This is not in accordance with Everest's approved rate filings from SERFF filing # USPH-6SSMRS223/00-00/00-00/00, which the Bureau approved on September 22, 2006.

#### **VIOLATIONS OF LAW**

37. As set forth in paragraphs 24 through 28, Everest's policies are not compliant with Rule 135 §§ 5, 6 and 7.
38. As set forth in paragraphs 29 through 31, Everest violated 24-A M.R.S. § 423(1) by failing to report stop loss premium for calendar year 2021 on its 286-A reporting form for that calendar year.
39. As set forth in paragraphs 32 through 34, Everest violated 24-A M.R.S. § 2412 by issuing policies on forms that did not match the filed forms approved by the Bureau on November 13, 2006.

40. As set forth in paragraphs 35 through 36, Everest violated 24-A M.R.S. § 2304-A by issuing and renewing policies in Maine without making an updated rate filing at least 30 days before the effective dates of those employee benefit excess loss policies in Maine.
41. As set forth in paragraphs 35 through 36, Everest violated 24-A M.R.S. § 2316 by issuing policies that were not in accordance with its filed rates, which were approved by the Bureau on September 22, 2006.

### COVENANTS

42. Everest agrees to the Statement of Facts and Violations of Law and agrees that it is subject to disciplinary action.
43. Everest accepts as disciplinary action the imposition of a civil penalty in the amount of thirty thousand dollars (\$30,000). No later than thirty (30) days after executing this Consent Agreement, Everest will remit to the Maine Bureau of Insurance a company check in the amount of thirty thousand dollars (\$30,000) payable to the Treasurer of the State of Maine.
44. This Consent Agreement is not subject to appeal. Everest waives any right it might have to appeal any matter that is a subject of this Consent Agreement.
45. This Consent Agreement constitutes an Order of the Superintendent. A violation of its terms is enforceable by the Superintendent pursuant to 24-A M.R.S. §§ 12-A and 211.
46. This Consent Agreement is also enforceable by an action in Maine Superior Court pursuant to 24-A M.R.S. § 214, 10 M.R.S. § 8003(5)(B), and 14 M.R.S. § 3138.
47. The effective date of this Consent Agreement is the date of the Superintendent's signature hereto.
48. This Consent Agreement may be modified only by a written agreement executed by all the parties hereto. Any decision to modify, continue or terminate any provision of this Consent Agreement rests in the discretion of the Superintendent and the Attorney General.
49. This Consent Agreement is a public record as that term is defined by 1 M.R.S. § 402(3). It is subject to the provisions of the Maine Freedom of Access Act, 1 M.R.S. §§ 401 through 410, and it will be available for public inspection and copying as provided for by 1 M.R.S. § 408-A.
50. This Consent Agreement is also an adverse action and will be reported to the Regulatory Information Retrieval System ("RIRS") database at the National Association of Insurance Commissioners ("NAIC").

51. Nothing in this Consent Agreement shall be construed to affect any right or interest of any person not a party hereto.
52. Terms of this Consent Agreement constitute the entire agreement between and among the parties.
53. If any provision of this Consent Agreement is for any reason determined to be invalid, the effectiveness and enforceability of all other provisions of the Consent Agreement shall not be affected by such determination.
54. By the duly-authorized signature of its representative on this Consent Agreement, Everest warrants that it has consulted with counsel before signing the Consent Agreement or has knowingly and voluntarily decided to proceed in this matter without consulting counsel, that it understands this Consent Agreement, and that it enters into the Consent Agreement voluntarily and without coercion of any kind from any person.
55. As consideration for Everest's execution of and compliance with the terms of this Consent Agreement, the Superintendent and the Attorney General agree to forego pursuing further disciplinary measures or other civil or administrative sanctions for the specific conduct described above in this Consent Agreement. However, should Everest fail to comply with any term or condition of this Consent Agreement, it may be subject to any available remedy under the law for such a failure or violation.

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**EVEREST REINSURANCE COMPANY**

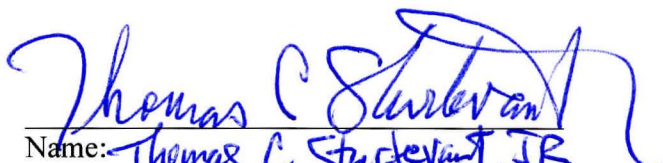
Dated: September 19, 2024



Name: Shawn V. Austin  
Title: SVP, Head of Accident & Health, North America

**FOR THE OFFICE OF THE ATTORNEY GENERAL**


Dated: Sept. 27, 2024



Name: Thomas C. Sturdevant, JR  
Assistant Attorney General

**THE SUPERINTENDENT OF THE MAINE BUREAU OF INSURANCE**

Dated: October 1, 2024



Robert L. Carey  
Superintendent