

Directive No. 75

RISK RETENTION GROUPS

February 9, 1987

During 1986, the 97th Congress Amended the Risk Retention Act of 1981 which allows an Insurance Company who is licensed in one (1) state to write certain lines of Product Liability and General Liability in any state without a license in any of the states.

A Company licensed to write these lines of business in Louisiana is not authorized to write under the risk retention act without the specific approval and qualification by the Commissioner of Insurance. Foreign companies that wish to do business in this state with a Purchasing Group must first file with the Commissioner and comply with the federal law and with Louisiana guidelines. Purchasing Groups must also file their intent to do business in this state.

All policies will provide the following notice in "10-point type"

"NOTICE"

THIS POLICY IS ISSUED BY YOUR RISK RETENTION GROUP. YOUR RISK RETENTION GROUP MAY NOT BE SUBJECT TO ALL OF THE INSURANCE LAWS AND REGULATIONS OF YOUR STATE. STATE INSURANCE INSOLVENCY GUARANTY FUNDS ARE NOT AVAILABLE FOR YOUR RISK RETENTION GROUP.

All Risk Retention Groups or Companies must register with and designate the State Insurance Commissioner as its Agent solely for the purpose of receiving service of legal documents or process.

The Commissioner of Insurance hereby promulgates the following guidelines to comply with the federal act:

Definitions:

(1) "completed operations liability" means liability arising out of the installation, maintenance, or repair of any product at a site which is not owned or controlled by-

(A) any person who performs that work; or

(B) any person who hires an independent contractor to perform that work;

D-171

LOUISIANA INSURANCE REGULATIONS

but shall include liability for activities which are completed or abandoned before the date of the occurrence giving rise to the liability;

(2) "insurance" means primary insurance, excess insurance, reinsurance, surplus lines insurance, and any other arrangement for shifting and distributing risk which is determined to be insurance under applicable State or Federal law;

(3) "product liability" means liability for damages because of any personal injury, death, emotional harm, consequential economic damage, or property damage (including damages resulting from the loss of use of property) arising out of the manufacture, design, importation, distribution, packaging, labeling, lease, or sale of a product, but does not include the liability of any person for those damages if the product involved was in the possession of such a person when the incident giving rise to the claim occurred;

(4) "risk retention group" means any corporation or other limited liability association taxable as a corporation, or as an insurance company, formed under the laws of any State, Bermuda, or Cayman Island:

(A) whose primary activity consists of assuming and spreading all, or any portion, or the product liability or completed operations liability risk exposure of its group members;

(B) which is organized for the primary purpose of conducting the activity described under subparagraph (A);

(C) which is chartered or licensed as an insurance company and authorized to engage in the business of insurance under the laws of any State, or which is so chartered or licensed and authorized before January 1, 1985, under the laws of Bermuda or the Cayman Islands, except that any group so chartered or licensed and authorized under the laws of Bermuda or the Cayman Islands shall be considered to be a risk retention group only after it has certified to the insurance commissioner of at least one State that it satisfies the capitalization requirements of such State;

(D) which does not exclude any person from membership in the group solely to provide for members of such a group a competitive advantage over such a person; and

(E) which is composed of members each of whose principal activity

DIRECTIVE NO. 75

consists of the manufacture, design, importation, distribution, packaging, labeling, lease, or sale of a product or products;

(5) "purchasing group" means any group of persons which has as one of its purposes the purchase of a product liability or completed operations liability insurance group basis;

(6) "State" means any State of the United States or the District of Columbia.

Domestic Company Requirements:

(1) Companies must qualify as a Property and Casualty insurer and meet requirements to write under the Risk Retention Act.

(2) Companies already licensed as a Property and Casualty insurer must meet requirements to write risk retention and revise their Certificate of Authority.

(3) In order to obtain approval to write under the risk retention act the following must be submitted:

(a) A plan of operation or feasibility study which includes the coverages, deductible, coverage limits, rates and rating classification for each line of insurance.

(b) Compliance with all the laws and procedures of financial reporting required of licensed companies.

(c) File a notification of each risk contracted by submission of a copy of each contract and the Company's premiums to Surplus ratio before and after the policy was written.

(d) File with each state in which contracts are written, a notice that the Company is writing in that state under the Risk Retention Act. Comply with all requirements of each state.

Foreign Company requirements:

All Companies writing in this State under the Risk Retention Act should comply with the following:

(1) Provide notice to this State of the purchasing group being insured in this state along with the name of the State in which the Company is chartered and the line of business and coverage afforded.

(2) Comply with the unfair claim settlement practices law of the State.

D-173

LOUISIANA INSURANCE REGULATIONS

(3) Pay, on a nondiscriminatory basis, applicable premium and other taxes which are levied on admitted insurers and surplus lines insurers, brokers, or policyholders under the law of the State.

(4) Participate, on a nondiscriminatory basis, in any mechanism established or authorized under the law of the State for the equitable apportionment among insurers of product liability or completed operations liability insurance losses and expenses incurred on policies written through such mechanism.

(5) Submit to the appropriate authority reports and other information required of licensed insurers under the laws of a State relating solely to product liability or completed operations liability insurance losses and expenses.

(6) Register with and designate the State Insurance Commissioner as its agent solely for the purpose of receiving service of legal documents or process, and, upon request, furnish such commissioner a copy of any financial report submitted by the risk retention group to the Commissioner of the chartering or licensing jurisdiction.

(7) Submit to an examination by the State Insurance Commissioner in any State in which the group is doing business to determine the group's financial condition, if-

(a) the Commissioner has reason to believe the risk retention group is in a financially impaired condition; and

(b) the Commissioner of the jurisdiction in which the group is chartered has not begun or has refused to initiate an examination of the group;

(8) Comply with a lawful order issued in a delinquency proceeding commenced by the State Insurance Commissioner if the Commissioner of the jurisdiction in which the group is chartered has failed to initiate such a proceeding after notice of a finding of financial impairment under subparagraph (7).

Sherman A. Bernard
COMMISSIONER OF INSURANCE