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ADVISORY LETTER NO. 07-05

November 1, 2007

**TO: ALL AUTHORIZED PROPERTY AND CASUALTY INSURERS
AND APPROVED UNAUTHORIZED PROPERTY AND
CASUALTY INSURERS REGULATED BY THE
LOUISIANA DEPARTMENT OF INSURANCE**

**RE: REQUEST THAT INSURERS USE THE LDOI HURRICANE
MEDIATION PROGRAM AS PREFERRED METHOD FOR
RESOLVING DISPUTES WITH INSURED FOR DAMAGES
CAUSED BY HURRICANE KATRINA OR HURRICANE RITA**

**STATUTE AND REGULATION REFERENCES:
LSA R.S. 22:2; 22:658; 22:1214; and Emergency Rule 22.**

It has come to my attention that authorized property and casualty insurers and approved unauthorized property and casualty insurers (hereinafter jointly referred to as "P&C insurers"), continue to benefit from the use of mediation as the preferred method to resolve claims for damages caused by Hurricane Katrina or Hurricane Rita. The Louisiana Department of Insurance (LDOI) had previously ordered all P&C insurers to utilize the LDOI sponsored Hurricane Mediation Program promulgated pursuant to Emergency Rule 22. Even though the two year prescriptive periods established pursuant to Acts 2006, Nos. 739 and 802 for Hurricane Katrina and Hurricane Rita have passed, insurers and insureds would continue to benefit from a prompt and cost effective method whereby the parties can engage in the claim resolution process relative to damages caused by Hurricane Katrina or Hurricane Rita. Advisory Letter No. 07-05 addresses how the continuation of the LDOI Hurricane Mediation Program will benefit both insureds and P&C insurers. First, I will describe how the LDOI Hurricane Mediation Program will be continued in order to facilitate the obligation of P&C insurers in the adjustment of claims for damages caused by Hurricane Katrina or Hurricane Rita. Second, I will describe the procedures whereby insureds and P&C insurers can continue to utilize the LDOI Hurricane Mediation Program under the administration of the American Arbitration Association (AAA) to mediate claims for damages caused by Hurricane Katrina or Hurricane Rita.

The LDOI has received numerous inquiries from both P&C insurers and insureds concerning the status of the LDOI Hurricane Mediation Program subsequent to the expiration of the two year prescriptive period. By the issuance of Advisory Letter No. 07-05, I hereby advise all parties of the continuation of the LDOI Hurricane Mediation Program under the supervision of the AAA, with some modifications. The AAA received a large number of mediation requests prior to the expiration of the two year prescriptive periods established by Acts 2006, Nos. 739 and 802 and has been able to schedule, notify, and conduct the mediation conferences for these mediations during September and October 2007.

The LDOI Hurricane Mediation Program has been an overwhelming success for both insureds and P&C insurers. From the date of initiation through the two year prescriptive period, the LDOI Hurricane Mediation Program received more than 12,000 requests for mediation and experienced an overall successful settlement rate of approximately 75 percent. This has been an overwhelming benefit to all parties. The LDOI applauds the efforts of the P&C insurers that have utilized the LDOI Hurricane Mediation Program to resolve the disputes with their insureds for hurricane related claims. Insureds receive prompt and fair settlement of their disputed claims that has enabled insureds to engage contractors to effectuate the necessary repairs to their homes and return to some degree of normalcy. P&C insurers have been able to close disputed claims that were the subject of pending litigation. This has allowed P&C insurers to both save money by spending less on attorney fees and litigation expenses as well as remove reserved liabilities from their books thereby enhancing solvency and increasing surplus. As Commissioner, I am aware of the need for P&C insurers to come to prompt and cost effective closure of pending claims due to the negative impact such claims can have on solvency and surplus concerns and due to the statutory obligation P&C insurers have to not violate LSA R.S. 22:1214.(14)(g).

Given this backdrop, there remains the issue of those insureds who preserved their legal rights by filing a timely lawsuit against their P&C insurer but have not yet filed a request for mediation with AAA. The LDOI Hurricane Mediation Program provides a clear and convincing mechanism whereby insureds and P&C insurers can obtain a prompt and cost effective resolution of a hurricane damage claim without having to continue litigation with its attendant costs. It is my opinion that insureds who demonstrate the desire to mediate rather than litigate should be allowed to utilize the LDOI Hurricane Mediation Program for the adjustment of their hurricane damage claim. Likewise, P&C insurers have an obligation to promptly and fairly adjust all claims and to conduct their business in such a fashion as to not violate LSA R.S. 22:1214.(14)(g). The remaining disputes involve instances where a timely suit was filed to preserve the claim, in most cases the insured is represented by an attorney and the P&C insurer is also represented by an attorney. The only missing link is that the insured did not file a request for mediation with AAA under the LDOI Hurricane Mediation Program within the two year prescriptive period.

It is for these contested claims where there is pending litigation in a court of law that the LDOI Hurricane Mediation Program should remain a viable option. Accordingly, P&C insurers and insureds who are involved in litigation over claims for damages caused by Hurricane Katrina or Hurricane Rita due to a lawsuit having been filed on or before the prescriptive dates established by Acts 2006, Nos. 739 and 802 remain eligible to voluntarily utilize the LDOI Hurricane Mediation Program as a means to resolve their disputes by following the procedures set forth below.

Future Procedure to Request Mediation:

At the recommendation of the AAA, going forward to initiate a mediation utilizing the LDOI Hurricane Mediation Program insureds should make a request directly to the LDOI by telephone to the Office of Property & Casualty, Consumer Affairs Division at (225) 342-1258 or (800) 259-5300, or electronically at the LDOI Web site at www.lidi.state.la.us. The LDOI will take the information from the insured, contact the insurer and AAA and coordinate on the voluntary setting of the dispute for mediation under the LDOI Hurricane Mediation Program. Once both parties voluntarily agree to utilize the LDOI Hurricane Mediation Program, they will be required to cooperate with the AAA on mutually convenient dates to conduct the mediation. The AAA will send a formal notice to all parties setting the date, time and place for the mediation. The AAA will continue to be responsible to engage the mediator and provide the space for the mediation.

Exchange of Documents Prior to Mediation:

Also at the recommendation of the AAA, the insured and the P&C insurer are strongly encouraged to exchange relevant documents prior to mediation. Ideally the parties should have completed discovery and should have in their possession all relevant documents needed for mediation. Thus, the exchange of documents in advance of the mediation conference makes practical sense. This should allow the mediation conference to proceed in an orderly manner and conclude within the pre-established two hour allotted time frame. Accordingly, the parties should exchange all relevant documents prior to the scheduled mediation. Additionally, to the extent practicable, all relevant documents should be provided to the AAA prior to mediation for advance review by the mediator. Finally, the parties may submit a position paper to the AAA outlining the nature of the disputed claim along with supporting documentation. This should provide the mediator with greater insight concerning the disputed claim that is the subject of the mediation and will provide the groundwork for a successful mediation conference.

The Cost of the Mediation:

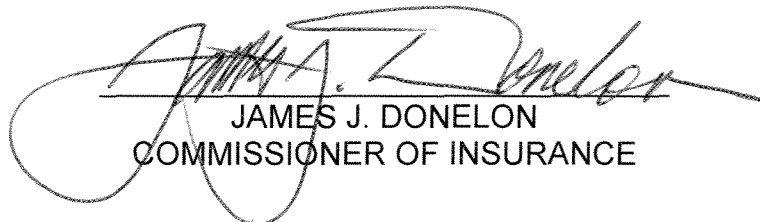
The cost of the initial LDOI Hurricane Mediation Program established under Emergency Rule 22 was \$350.00. With the support of the AAA, the extended LDOI Hurricane Mediation Program cost will remain at \$350.00. The insureds and P&C insurers are reminded that the \$350.00 fee is for two hours of mediation and this two hour mediation time period will be strictly enforced by the AAA. In view of the enormous benefit to P&C insurers, I request that the P&C insurers continue to be responsible for the full payment of the \$350.00 for the mediation conference with AAA under the LDOI Hurricane Mediation Program. Should the parties agree that additional time in excess of the two hours is required to fully resolve a disputed claim, such additional mediation fees shall be the subject of a private agreement between the mediator, the P&C insurer and the insured to be invoiced and paid outside of the LDOI Hurricane Mediation Program. Any other arrangements regarding mediation may be the subject of a private agreement between the insured and the P&C insurer.

The Time Frame for the Extended Mediation Program:

I urge the P&C insurers and the AAA to continue the extended LDOI Hurricane Mediation Program through December 31, 2007. At that time, I will review the number of mediation requests that have been made and the number of mediations that have been conducted and consult with the AAA. Based on this and any other credible information, I may again urge the continuation of the extended LDOI Hurricane Mediation Program. Any action I take to urge the extension of the LDOI Hurricane Mediation Program beyond December 31, 2007 will be communicated to affected insureds and P&C insurers.

Please direct any questions regarding Advisory Letter No. 07-05 and the extension of the LDOI Hurricane Mediation Program to Mr. Barry Ward, Chief Attorney, Louisiana Department of Insurance, via e-mail at bward@ldi.state.la.us, or telephone at (225) 219-4750, or facsimile at (225) 342-1632.

Baton Rouge, Louisiana, this 1st day of November, 2007.



JAMES J. DONELON
COMMISSIONER OF INSURANCE