



LOUISIANA DEPARTMENT OF INSURANCE

JAMES J. DONELON
COMMISSIONER

ADVISORY LETTER 2023-01

TO: ALL AUTHORIZED PROPERTY AND CASUALTY INSURERS

FROM: JAMES J. DONELON, COMMISSIONER OF INSURANCE

RE: DEFENSE COSTS WITHIN THE LIMITS

DATE: JANUARY 3, 2023

The Louisiana Department of Insurance (LDI) hereby issues Advisory Letter 2023-01 to advise all authorized property and casualty insurers transacting the business of insurance in the state of Louisiana (authorized insurers) on how a liability insurance policy issued or issued for delivery in Louisiana shall address liability coverages that allow legitimate defense costs to consume any portion of the liability limits of the underlying policy.

The law with respect to defense costs within the limits of a policy of liability insurance is set forth in La. R.S. 22:1272. Generally, any portion of the liability limits of a policy shall not be reduced by the defense costs in a suit under the policy. However, the law permits defense costs within the limits, not to include overhead, unallocated loss adjustment expenses, or other unallocated expenses incurred by the insurer in the ordinary course of business, when the prohibition is waived by the Commissioner of Insurance (Commissioner), as set forth below:

Pursuant to La. R.S. 22:1272(B)(1), the Commissioner shall not waive the prohibition on defense costs consuming any part of the liability limits for any of the following types of insurance coverage:

1. All personal lines liability coverages; and
2. Medical malpractice liability coverages.

Pursuant to La. R.S. 22:1272(B)(2), the Commissioner shall waive the prohibition on defense costs consuming any part of the liability limits for any of the following types of insurance coverage:

1. Professional liability other than medical malpractice liability coverages;
2. Directors' and officers' liability coverages;
3. Errors and omissions liability coverages;
4. Pollution liability coverages;
5. Employment practices liability coverages;
6. Cyber risk liability coverages;

7. Information security and privacy liability coverages;
8. Patent defense or other intellectual property infringement liability coverages; and
9. Commercial liability coverages sold in combination.

Pursuant to La. R.S. 22:1272(B)(3), the Commissioner may, at his discretion, waive the prohibition on defense costs consuming any part of the liability limits, upon consideration of the following:

1. The customs of the industry; and
2. The interests of the particular insured.

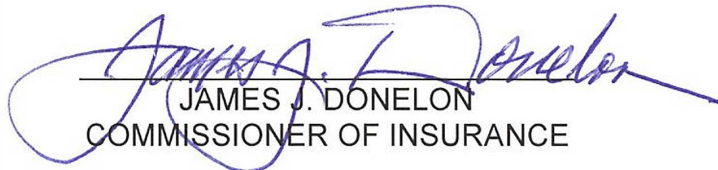
Accordingly, any liability insurance coverage that falls under La. R.S. 22:1272(B)(3) may be the subject of a written request for a waiver filed with the Commissioner by the respective insurer. The criteria that the Commissioner will utilize to grant or deny any request for a waiver is set forth in La. R.S. 22:1272(B)(3) and will be based on the customs of the industry and the interests of the particular insured. All authorized insurers offering coverage products that are exempt from review and approval by the Commissioner pursuant to LDI Regulation 72, "Commercial Lines Insurance Policy Form Deregulation," are exempt from the written request for waiver filing requirement herein.

Any property and casualty insurer wishing to file a request for a waiver under La. R.S. 22:1272(B)(3) should submit the request as part of a rate/rule and form filing electronically through SERFF or by mail to the LDI, Office of Property and Casualty, Attention: Deputy Commissioner, P.O. Box 94214, Baton Rouge, LA 70804.

If there are any questions or concerns regarding Advisory Letter 2023-01, please contact the Deputy Commissioner for the Office of Property and Casualty at (225) 342-5203 or electronically at public@ldi.la.gov.

Please be governed accordingly.

Baton Rouge, Louisiana, this 3rd day of January, 2023.


JAMES J. DONELON
COMMISSIONER OF INSURANCE