LOUISIANA INSURANCE
RATING COMMISSION

P.O. Box 94157
Baton Rouge, Louisiana 70804-9157
(504) 342-5202
Fax (504) 342-6057

James H. "Jim" Brown
Commissioner of Insurance
Chairman

MEMBERS:
DAVID E. CHOZEN
ROBERT CLAYTON
MICHAEL FRANKS
SETH KEENER, JR.
ELIZABETH McKEE
STEVEN RUIZ

Bulletin LIRC 98-03

DATE: **August 7, 1998**

TO: **ALL PROPERTY AND CASUALTY INSURANCE COMPANIES**

RE: **ISSUES RELATIVE TO ACT 1476, "NO PAY, NO PLAY"**

The Louisiana Supreme Court upheld the constitutionality of Act 1476, the Omnibus Premium Reduction Act of the 1997 Regular Session of the Louisiana Legislature, (hereinafter "Act"). Under the Act a number of reforms become effective September 6, 1998, including Section 4's "no pay, no play" provisions. Once Section 4 is in effect, an uninsured owner or operator will be barred from collecting the first $10,000 of a claim for bodily injury or the first $10,000 of a claim for property damage arising out of a motor vehicle accident.

This Bulletin is not a directive, regulation, or rule. This Bulletin is being issued by the Louisiana Insurance Rating Commission (hereinafter "LIRC") to provide assistance to insurers. It addresses important issues regarding the Act, which have been raised by various parties. Issues are prefaced by a brief description followed by Louisiana Insurance Rating Commission (hereinafter "LIRC") and Department of Insurance (hereinafter "DOI") staff recommendations.

Confirmation of Insured Status for Claimant

All companies writing commercial and private passenger motor vehicle liability insurance in Louisiana should establish procedures to confirm the insurance status of their insured when involved in an accident. The claimant's status will determine how a claim will be handled.

To facilitate compliance with the Act and timely handling of claims, the LIRC recommends that insurers implement procedures to expeditiously confirm or deny the insured status of a claimant. The confirmation or denial of insurance should be in writing and include a verifying signature from the insurance company. A signature by an agent or third party administrator is not acceptable.

Attached is a sample form that may be used to determine a claimant's insured status. This form includes a verifying signature from the insurer named by the claimant. Except for the verifying signature, the alleged tortfeasor's insurer should complete all information and fax or mail the form to the claimant's insurer. (Note that neither the LIRC nor DOI is prescribing the sample form. An insurer can use any form, or no form at all, if it feels this will facilitate confirmation the claimant has insurance.)

Handling of Claims –Limits Issue

The obligation owed by the insurer to pay damages is an obligation owed to its insured. The insurer, via contract, has agreed to pay on behalf of its insured all damages for which its insured becomes legally obligated up to the limits of liability stated in the policy.

Under Act 1476, an uninsured owner or operator will be barred from collecting the first $10,000 of a claim for bodily injury or the first $10,000 of a claim for property damage arising out of a motor vehicle accident. If an uninsured motorist's damages total more than $10,000 (for either bodily injury or property damage), the uninsured claimant is responsible for the first $10,000 of damages. The remaining damages are the insured's responsibility. The insurer has agreed to pay on behalf of its insured all damages for which the insured becomes legally obligated up to the limits of liability stated in the policy.

Example: A, an insured driver, hits B, an uninsured owner, and B sustains damages for $15,000. By law, B is barred from recovering the first $10,000. However, A is still legally liable to B for the remaining $5,000 in damages. A's insurer is contractually obligated to pay on behalf of A the $5,000 in damages owed to B.

The same analysis applies to a claim for property damage.

Handling of Claims – Forfeiture and Family Members

The Act's forfeiture provisions do not apply to family members other than the registered owner of the uninsured motor vehicle. LRS 32§866.A states that forfeiture applies to...

> "... an owner or operator ... who fails to own or maintain compulsory motor vehicle liability security."

Only the registered owner is required to maintain insurance on the motor vehicle. Therefore, only the registered owner can fail to own or maintain compulsory motor vehicle liability insurance which is the predicate for imposing the forfeiture provision.

It is not clear if the Act's forfeiture provisions apply to the spouse of the registered owner of an uninsured motor vehicle. The ambiguity is whether both spouses are considered "owner or operator" when only one spouse is listed as the registered owner but both operate the motor vehicle. For the purposes of this Act, it appears that "owner" refers to the registered owner. A "registered owner" is defined by Civil Code Article 2351 which gives exclusive control and responsibility over movables (i.e., motor vehicles) to the named owner on the registration papers. Under LRS 32§861, the obligation to obtain insurance is on the registered owner only. However, the courts will need to determine if each spouse has an equal responsibility to insure household motor vehicles that both have access to or operate. Depending on how the court rules, both spouses may be subject to the Act's forfeiture provisions.

Handling of Claims –Bad Faith Exposure

An insurer risks bad faith exposure if it chooses to close a claim because the insured purchased only a 10/20/10 policy limit.

Under Act 1476, an uninsured owner or operator will be barred from collecting the first $10,000 of a claim for bodily injury or the first $10,000 of a claim for property damage arising out of a motor vehicle accident. If an uninsured motorist's damages total more than $10,000 (for either bodily injury or property damage), the uninsured claimant is responsible for the first $10,000 of damages. The remaining damages are the insured's responsibility. The insurer, via contract, has agreed to pay on behalf of its insured all damages for which its insured becomes legally obligated up to the limits of liability stated in the policy. Closing a claim because the insured only has a 10/20/10 policy limit may, in certain cases, be premature and place into question the insurer's fiduciary responsibility to the insured.

Handling of Claims – Validity of Release Agreement Issue

The forfeiture provision of the law is not intended to penalize the insured. If an insured has exposure for damages which exceed the amount forfeited by the uninsured, then a release for any amount below $10,000 would not effect the insured's obligation for amounts in excess of $10,000 or the insurer's obligation to pay such sums on its insured's behalf. A release agreement must adequately protect the insured. Therefore, adequate time should be allowed for residual injuries to manifest before seeking a release.

Handling of Claims – Plaintiff Consideration in a Release Agreement Issue

There is no valid consideration given to the uninsured for an agreement releasing the insured for the first $10,000 in damages because that amount is forfeited by operation of law. The uninsured is not giving or receiving anything of value in exchange for executing the release agreement. Such an agreement would merely be an acknowledgement of the effect of the law.

Out-of-State Operator – Motor Vehicle Owner

Nonresident motor vehicle owners are not required to register their motor vehicles in Louisiana (LRS 47§511 and §512; LRS 32§1441). There is no law that precludes uninsured motor vehicles from being operated in Louisiana if the state where the motor vehicle is housed does not require insurance. Therefore, a nonresident motor vehicle owner may not be subject to LRS 32§861.

Louisiana does require that a nonresident's motor vehicle be lawfully registered in the owner's home state to operate the motor vehicle in Louisiana. If the home state requires insurance and the motor vehicle is uninsured then it is not properly registered and does not meet the prerequisites for operating in Louisiana. Therefore, if the tort victim's motor vehicle is registered in a state which has compulsory motor vehicle liability insurance laws and if the owner has failed to maintain compulsory liability insurance then the owner is improperly operating the motor vehicle in Louisiana and may be subject to the forfeiture provisions of the law.

This issue will ultimately be decided by the courts based on a choice of law analysis that is beyond the scope of this Bulletin.

Out-of-State Operator – Non-Owner

The Act does not affect an operator of a motor vehicle who is not the owner of the motor vehicle. While the deemer provision in LRS 22§866.D states that the operator consents to be subject to this section, the forfeiture provision, LRS 22§866.A, only applies to persons who fail to maintain compulsory liability insurance. Therefore, the non-owner operating an uninsured motor vehicle is not subject to the forfeiture provisions of the Act.

An exception may be if the non-owner is the spouse of the registered owner of the uninsured motor vehicle. Refer to the **Handling of Claims – Forfeiture and Family Members** discussion above.

Uninsured Owner Who Is a Guest Passenger

When the owner of an uninsured motor vehicle is a guest passenger in that vehicle, the uninsured owner-passenger will be barred from recovery against a liable third party. LRS 32§866.E provides an exception for guest passengers in an uninsured motor vehicle but the exception…

> "… does not apply to a passenger who is also the owner of the uninsured motor vehicle involved in the accident."

The exception for the owner-passenger applies even if an operator who has insurance is driving the motor vehicle.

Economic-Only Uninsured/Underinsured Motorist Bodily Injury Coverage - Defined

There are two types of Uninsured/Underinsured Motorist Bodily Injury Coverage (hereinafter "UMBI"). These are traditional UMBI or Economic-Only UMBI. Both coverages are subject to policy terms and conditions, including, but not limited to, coverage limits.

Traditional UMBI will pay for your noneconomic loss (also known as general damages) and economic loss (also known as special damages).

Economic-Only UMBI will only pay for economic loss only.

Noneconomic losses are payments for the overall effect an accident has on the injured person's life...

> "Noneconomic loss means any loss other than economic loss and includes but is not limited to pain, suffering, inconvenience, mental anguish, and other noneconomic damages otherwise recoverable under the laws of this state." (Act 1476)

Examples of noneconomic losses include giving up a hobby or working in pain because of an injury.

Economic losses are payments to reimburse an injured person for documented dollar loss due to an accident. Examples of special damages are medical bills, funeral expenses, wages lost from missing work including use of sick leave, bills for necessary replacement services, or reimbursement to an employer to reinstate sick leave.

Economic-Only UMBI – Filing Requirements

Offering Economic-Only UMBI to insureds is optional on the part of the insurer.

When establishing a rate for Economic-Only UMBI, the rate must be a minimum 20% below the traditional UMBI rate (Act 1476). In Bulletin LIRC 98-01, the LIRC requires actuarial justification for this new coverage's rate in all such filings.

The LIRC recognizes it may be difficult for an insurer to provide Economic-Only UMBI rate justification. LIRC staff researched Economic-Only UMBI and determined that a rate reduction within a 40% to 55% range can be actuarially justified. Therefore, the LIRC has taken the position that if the proposed Economic-Only UMBI rate is at least 40% below the comparable, traditional UMBI rate, actuarial justification does not need to be submitted with the filing materials.

However, proposed Economic-Only UMBI rates which are not a minimum 40% below traditional UMBI rates will still require that actuarial justification be submitted with the filing materials before the LIRC will approve such rates.

Note, also, that if an insurer offers Economic-Only UMBI, the insurer must also make a form filing with the DOI.

Uninsured/Underinsured Motorist Bodily Injury Coverage Form – Additional Instructions

The Uninsured/Underinsured Motorist Bodily Injury Coverage Form (hereinafter "UM Form") is promulgated as required by law and is to be used with all motor vehicle liability insurance policies delivered or issued for delivery in Louisiana. The following instructions are in addition to those provided in LIRC Bulletin 98-01.

- Each company is required to use the UM Form for new and renewal business effective on or after September 6, 1998. If the UM Form is not obtained or improperly completed, it will be presumed that the policyholder purchased UMBI at the same limit as bodily injury coverage. In this event, it is the responsibility of the insurer to notify the policyholder and that an appropriate premium be charged.

- For identification, the company name must be placed at the lower left-hand corner of the UM Form. If a company currently uses a group name on forms, then the group name may be used instead of the individual company name.

- The policy number should be shown at the lower right-hand corner of the UM Form. In the case where a policy number is not available, the space for the policy number may be left blank or a binder number may be inserted.

- The DOI realizes there will be slight variations in the format of the UM Form as printer capabilities vary from company to company. Slight variations, such as variations in shading, will not place companies out of compliance.

- An "old UM selection/rejection form" is any form other than the UM Form prescribed by the Commissioner of Insurance and distributed with Bulletin LIRC 98-01. An old UM selection/rejection form executed before the effective date of the Act (September 6, 1998), is valid until the next policy renewal date. At the policy renewal date (and on or after September 6, 1998), the old UM selection/rejection form will no longer be valid.

  On or after September 6, 1998, all UM selection/rejections must be executed on the UM Form. This includes UM selection/rejection for new and renewal policies, and modifications to in-force policies.

  A policyholder may, at any time, request that the policy UM selection/rejection choice be modified. If this request is executed on or after September 6, 1998, it must be executed on the UM Form. If the request is executed before September 6, 1998, this request may be executed on either the UM Form or the old UM selection/rejection form.

  For the purposes of the Act, a form is "executed" on the date the policy or the policy endorsement takes effect. For example, with a new or renewal policy, a UM Form completed before September 6, 1998, is not "executed" until the date the policy takes effect, i.e., the beginning of the policy period.

- A policy effective date is not explicitly stated on the UM Form because this form is conclusively presumed to become a part of the contact. The date shown on the insurance contract is sufficient for identifying the UM Form effective date.

- The UM Form does not have to be physically attached to the policy to conclusively become part of the policy.

- If the UM Form is not executed or improperly executed, the policy is presumed to have UMBI with limits the same as the bodily injury coverage limits. In order to select other limits, Economic-Only UMBI, or reject coverage altogether, a properly completed UM Form must be executed.

- To be properly executed, the UM Form must be signed by the policyholder and on file with the insurance company or the insurance company's legal representative, i.e., agent of record.

- If an insurer offers Economic-Only UMBI, the insurer must also make a form filing.

Notice Given the Louisiana Department of Motor Vehicles

Act 1476 revised the minimum number of days allowed an insurance company to notify the Louisiana Department of Motor Vehicles regarding the effective date, withdrawal, cancellation, or lapse of a motor vehicle policy. The minimum number of days was revised from 45 days to 15 days. Questions regarding notification procedure should be directed to the Department of Motor Vehicles at 504-925-7285 or 504-925-3731.

This Bulletin is issued under the authority of R.S.22§1402, §1404, §1407, §1415, §1447, and Act §1476.

If you have questions regarding this Bulletin, you can reach LIRC's general counsel, C. Noel Wertz, at (504) 342-5202.

Chris Faser, III
Deputy Commissioner – LIRC

THIS FORM SHOULD BE TYPED ON INSURANCE COMPANY LETTERHEAD

DETERMINATION OF CLAIMANT'S INSURED STATUS

To: _____
Company Named As Insurer By Claimant

From: _____

Date: _____

Instructions: The claimant listed below was allegedly injured by our insured. Based on the information listed below, confirm whether your company insured the policyholder on the day and at the time of the accident. This information is needed so that we can determine if LRS 32§866.A is applicable to this claim. If possible, please respond within five (5) working days.

POLICYHOLDER INFORMATION	
Policyholder's Name:	
Policyholder's Policy Number:	
Policyholder's Agent	

ACCIDENT INFORMATION	
Date of Accident:	
Time of Accident:	
Driver of Claimant's Vehicle:	

CLAIMANT INFORMATION	
Claimant's Name:	
Relationship to Policyholder	

CLAIMANT'S VEHICLE INFORMATION				
Owner of Vehicle:				
Vehicle Information:	**VIN**	**Make**	**Model**	**Model Year**

To the best of our knowledge, based upon information and belief, the above named policyholder **had liability insurance** with this company at the date and time of the accident stated above.

_____ Name and Title _____ Date

To the best of our knowledge, based upon information and belief, the above policyholder **did not have liability insurance** with this company at the date and time of the accident stated above.

_____ Name and Title _____ Date