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Directive Number 152

June 9, 2000

Statutorily Imposed Vicarious Parental Liability

TO: ALL PROPERTY AND CASUALTY INSURERS

The Louisiana Department of Insurance issued Directive Number 149 on November 30, 1999, because of concerns raised regarding the insertion of a "Special Limits of Liability" clause in the "Conditions" section of homeowner's policies. Property and Casualty companies were directed to submit a copy of their most recent policy, with all attachments, to the Department of Insurance for review. The Department received responses from 170 companies.

Of these responses, it was determined that about one-third of the companies use the clause, limiting the liability of the insurer from $3,000 to $10,000 as a consequence of the parents' vicarious liability resulting from acts of their minor children.

What was surprising to learn from this review was that company compliance personnel, agents, and even our own regulatory personnel were unaware that the limiting provision was in their homeowner's policy until it was specifically pointed out to them, because it is not apparent in the "Condition" section of the policy.

A public hearing was held on March 22, 2000 to receive comments from the industry on this issue. The Department received written and public comments from only four persons, who represent Insurance Services Office (ISO), American Insurance Association (AIA), National Association of Independent Insurers (NAII), and the Independent Insurance Agents of Louisiana (IIAL), respectively.

Industry concerns implied that prohibition against the use of the limitation would result in increased homeowners' insurance rates and would decrease insurers' flexibility and competitiveness in the marketplace with regard to choice in products and premiums. The fact that the three major writers of homeowner's insurance in Louisiana do not have this limitation in their policies implies otherwise. A consensus of the participants of the public hearing to the suggestion that a "Notice" or "Declaration" informing and receiving consent from the insured of this policy limitation, was that it would only create a new avenue for litigation, analogous to the previous submission of the multitude of claims resulting from the UM waiver form.

Other comments received placed the responsibility on the insurer and agent to know what is contained in the policy they are marketing for sale and on the consumer to understand what he/she is purchasing. Although the Department agrees that each party has a responsibility in the sale of a homeowners policy, the glaring reality is that this information is not being communicated to the consumer, especially in cases where the agent and insurer are unaware that the policy they are marketing for sale contains this limitation clause.

The Department is aware of the decision in *Baugh vs. Ray, et al, 751 So.2d 888, La. 1 Cir. 5/5/99)* in which the Court recognized that "insureds and insurers are free to contract and limit their liability through exclusions as long as the exclusions do not violate statutory mandates or public policy." The Department also notes the court's finding that "[T] he law does not mandate insurance coverage for vicarious liability arising from the acts of one's children, and there is no state law or public policy prohibiting a lower limit for vicarious parental liability."

The *Baugh* opinion rests solely on the facts and circumstances of this particular case, and is not conclusive to the issue before the Department. The *Baugh* Court was not armed with any of the facts relating to whether or not the insurer and agent conveyed this limitation to the insured and whether the insured was informed of this limitation when the policy was purchased. Knowledge of what is in the policy when it is sold to the consumer is what is at issue in this Directive.

When consumers purchase homeowner's insurance, their intent is to purchase a broad package policy to protect themselves from a broad range of risks that may arise out of homeownership and personal liability. A limitation for liability coverage related to children is not a reasonable expectation of the policyholder. No homeowner would knowingly purchase a homeowner's policy limiting coverage for their liability with respect to their children.

The Department takes issue with an insurer limiting coverage that a homeowner would expect to have, and then only when a claim has been made and then denied or limited will the homeowner/parent be informed that the coverage does not exist or is limited. If the insurers and their agents and the regulators are not aware of this limitation in the policy being marketed, then what is the likelihood that the consumer will know or understand what coverage is being purchased?

Because the Department of Insurance is charged with the duty of regulating the business of insurance in the public interest, the Department of Insurance views the use of any type of limitation clause in a homeowner's policy which results in limiting the liability coverage of an insurer for parents' vicarious liability for acts of their children is against the public interest.

Property and Casualty insurers whose policies contain a limitation of vicarious parental liability in their homeowner's policies, endorsements or exclusions are hereby directed to modify their contracts by submitting a revised policy form, or an endorsement, deleting the exclusion. The change required in the policy language by this Directive is applicable to all new and renewal policies written or issued on or after September 30, 2000. Either the revised policy form or the amendatory endorsement must be submitted for review and approval on or before August 15, 2000.

The refusal or failure to comply with this directive may result in further regulatory action by the Department of Insurance.

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