ADVISORY LETTER 2021-04

TO: ALL AUTHORIZED PROPERTY AND CASUALTY INSURERS

FROM: JAMES J. DONELON, COMMISSIONER OF INSURANCE

RE: ACT 225 OF THE 2021 REGULAR SESSION OF THE LOUISIANA LEGISLATURE

DATE: JULY 30, 2021

Please be advised that the Louisiana Legislature enacted Act 225 of the 2021 Regular Session ("Act 225" or "Act") to add La. R.S. 22:1272 relative to defense costs contained within policies of property and casualty insurance. Act 225, among other things, prohibits the inclusion of legal defense costs in insurance contracts under certain circumstances, provides for waivers, and provides that the inclusion of legal defense costs shall not exhaust the entire amount of liability coverage. Since Act 225 has an effective date of August 1, 2021, Advisory Letter 2021-04 is issued to provide guidance pertaining to the implementation of La. R.S. 22:1272.

Act 225 established that liability limits contained in property and casualty insurance policies shall not be reduced by the expenses of defense in a lawsuit under the property and casualty insurance policy unless the Commissioner of Insurance executes a written waiver allowing the policy limits to be reduced by legal defense expenses.

Based upon consideration of the level of market competition, the nature and design of property and casualty products, the availability of insurance coverage in the aftermath of last year’s historic hurricane season, and the disruption to the marketplace that could be caused without a waiver allowing policy limits to be reduced by defense expenses, I find such waiver to be necessary and appropriate. I hereby issue a waiver\(^1\) for all other types of property and casualty insurance policies, except for all personal lines, medical malpractice, commercial vehicle, and commercial general liability,\(^2\) that are currently approved by the Louisiana Department of Insurance and issued or to be issued or renewed in this state. Such waiver is to remain in effect until July 30, 2022.

For purposes of this waiver only, regarding the application of La. R.S. 22:1272(C)(3), the inclusion of legal defense expenses within policy limits shall not be deemed to exhaust the entire amount of liability coverage if at least $1.00 of liability coverage remains available to the policyholder.

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\(^1\) La. R.S. 22:1272(B)(3).

\(^2\) Under La. R.S. 22:1272(B)(1), no waiver can be granted for these types of insurance coverage.
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If there are any questions or concerns regarding Advisory Letter 2021-04, please contact the Deputy Commissioner for the Office of Property and Casualty electronically at public@ldi.la.gov or by telephone at (225) 342-5203.

Baton Rouge, Louisiana, this 30th day of July 2021.

JAMES J. DONELON
COMMISSIONER OF INSURANCE