FILED

MAR 22 2011

INSURANCE COMMISSIONER
OKLAHOMA

BEFORE THE INSURANCE COMMISSIONER OF THE STATE OF OKLAHOMA

IN RE: ALLOWING DEFENSE WITHIN LIMITS IN CERTAIN LIABILITY POLICIES	))))	Case No. 11-0351-PRJ

TO: ALL PROPERTY AND CASUALTY INSURERS LICENSED IN THE STATE OF OKLAHOMA

JURISDICTION

1. The Insurance Commissioner, John D. Doak, is charged with the duty of administering and enforcing the provisions of the Oklahoma Insurance Code, 36 O.S. §§ 101-7004. 36 O.S. § 307.

2. Pursuant to its statutory authority, the Oklahoma Insurance Department promulgated § 365:15-1-15 of the Oklahoma Administrative Code ("O.A.C."), which prohibits insurance policies or contracts made, issued, or delivered within this state from including defense expenses within the limit of liability. Specifically, § 365:15-1-15 provides:

> **Standard policy provision-defense expenses within the limit of liability**
>
> No insurance policy or contract shall be made, issued or delivered by any insurer or by any agent or representative thereof, that includes defense expenses within the limit of liability. The Insurance Commissioner may waive this requirement based upon factors such as noncompetitive market or type of insurance coverage. If the Insurance Commissioner waives this requirement, the Declarations page of the policy shall include a conspicuous notice indicating that the contract contains defense expenses within the limit of liability and advising the policyholder to read its provisions.

O.A.C. § 365:15-1-15.

FINDINGS OF FACT

1. Due to the nature of risks and/or persons covered by some types of insurance policies, the Insurance Commissioner finds that not allowing an insurer to include defense expenses within the limits of liability for the specific types of insurance policies addressed herein: (1) may be impractical for an insurer; (2) may cause a market availability problem for the persons or risks covered by such insurance policies, forcing consumers to obtain coverage from non-admitted insurers; and (3) can create a lack of competition in the insurance market for such person or risks to be covered, thereby increasing the rate of premiums for insurers.

2. However, despite the above findings, the Insurance Commissioner finds it necessary to maintain a procedure that does not compromise the insurance buying public in Oklahoma, yet allows insurers of certain types of persons and risks to include defense expenses within the limits of coverage.

3. The Insurance Commissioner finds that it is proper to waive the prohibitions contained in § 365:15-1-15 for the specific types of insurance policies addressed herein.

CONCLUSIONS OF LAW

1. Pursuant to § 365:15-1-15, no insurance policies or contracts shall be made, issued, or delivered within the State of Oklahoma that include defense expenses within the limit of liability. O.A.C. § 365:15-1-15.

2. Pursuant to § 365:15-1-15, the Insurance Commissioner may waive this requirement based upon factors such as noncompetitive market or type of insurance coverage. O.A.C. § 365:15-1-15.

3. "If the Insurance Commissioner waives this requirement, the Declarations page of the policy shall include a conspicuous notice indicating that the contract contains defense expenses within the limit of liability and advising the policyholder to read its provisions." O.A.C. § 365:15-1-15.

4. Every insurance policy, form, rider, or endorsement that will be issued, delivered, or used in Oklahoma shall be filed with and approved by the Insurance Commissioner. 36 O.S. § 3610.

5. The Insurance Commissioner reserves the right to rescind or modify this Order.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Insurance Commissioner hereby orders that defense expenses within the limits of liability be allowed in certain insurance policies satisfying the following criteria:

1. The insurance policy must be:

   a. A professional liability insurance policy;

   b. A directors and officers liability insurance policy;

   c. An errors and omissions liability insurance policy;

   d. A fidelity or surety bond;

   e. A pollution liability policy; or

   f. An employees' practices liability insurance policy.

As used herein, "professional liability insurance policy" only includes those types of insurance policies covering persons or risks that are traditionally and generally understood to require knowledge of an advanced type in a field of learning or science

customarily acquired by a prolonged course of study of specialized intellectual instruction, such as, lawyers, physicians, architects, engineers, and accountants.

2. The insurer shall provide on the Declarations page of the insurance policy a bolded conspicuous notice indicating that the contract contains defense expenses within the limit of liability and advising the policyholder to read its provisions.

3. "Defense expenses" reducing the limits of liability shall be limited to the payment of reasonable attorney's fees connected with the insurer's defense of a specific liability claim on behalf of an insured and any other litigation expenses that can be separately identified as arising from the defense of a specific liability claim. "Defense expense" shall not include salaries of the insurer's officers or employees, adjusting expenses, or other expenses incurred by the insurer in the ordinary course of it's business.

4. Every insurer making, issuing, or delivering an insurance policy or form pursuant to this Order shall file the policy or form with the Insurance Commissioner. The insurer shall not make, issue, or deliver such policy or form until it has been approved by the Insurance Commissioner.

5. No insurance policy or form submitted to the Insurance Commissioner pursuant to this Order shall conflict with this Order or any other applicable law, regulation, or order. Any policy or form conflicting with this Order or other applicable law, regulation, or order shall be disapproved.

6. Defense within limits will be allowed by endorsement for the coverages listed in Paragraph 1 of the Order herein. An endorsement for any coverage listed in Paragraph 1 of the Order herein that provides defense within limits may be attached to the liability portion of any commercial policy not listed in Paragraph 1 of the Order

herein, provided the endorsement must have its own limit (additional limit), which does not affect the limit of liability of the policy to which it is attached. The insurer shall provide an e ndorsement that contain s a bolded conspicuous notice indicating that it contains defense expenses within the limit of liability and advising the policyholder to read its provisions.

7. To use this Order, an insurer shall file with the Insurance Commissioner every rate and manual rule filing, and every modification of any other foregoing which it proposes to use. However, nothing in t his Order requires the filing of any rates or rules where such filing is specifically exempted by statute, regulation, or order.

8. Rate and Rule filings made as a result of this Order shall follow the requirement set forth in 36 O.S. § 981 et seq. and O.A.C. § 365:15-7-3.

9. Any filing pursuant to this Order must be accompanied by all supporting documentation and information. If the filing does not include all supporting documentation and information, the filing shall not be approved until all such documentation and information has been submitted and reviewed by the Insurance Commissioner.

10. The Insurance Commissioner shall review all filings as reasonably possible to determine whether the filing satisfies the requirements of this Order.

11. A filing and any supporting documentation or information shall be open to public inspection upon the date of filing. Confidential, proprietary, trade secrets, or other information required by law to be kept confidential shall not be open for public inspection.

12. This Order shall only apply to those forms, insurance policies, rule and rate filings, or any other filings submitted to the Insurance Commissioner after the date this Order is signed.

13. Order No. 09-455-PRJ is hereby withdrawn and is replaced by No. Order 11-0351-PRJ herein.

IT IS SO ORDERED.

WITNESS My Hand and Official Seal this 22 day of March, 2011.

JOHN D. DOAK
INSURANCE COMMISSIONER
STATE OF OKLAHOMA