

BEFORE THE INSURANCE COMMISSIONER OF THE  
STATE OF OKLAHOMA

**FILED**  
JUN 13 2007  
INSURANCE COMMISSIONER  
OKLAHOMA

IN RE: WAIVER OF DEFENSE )  
EXPENSES WITHIN THE LIMIT OF )  
LIABILITY )  
)  
)  
)

Case No.: 06-1835-PRJ

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

JURISDICTION

1. Kim Holland is the Insurance Commissioner of the State of Oklahoma and as such is charged with the duty of administering and enforcing all provisions of the Oklahoma Insurance Code, 36 O.S. §§ 101-7004.

2. Pursuant to 365:15-1-15 of the Oklahoma Administrative Code ("OAC"), 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. However, the Insurance Commissioner may waive this requirement based upon factors such as a noncompetitive market or type of insurance coverage.

FINDINGS OF FACT

1. The Insurance Commissioner finds that it is proper to waive the prohibition against defense expenses within the limit of liability in certain circumstances for a particular type of insurance coverage.

2. The Insurance Commissioner finds it necessary to maintain a procedure that does not compromise the insurance buying public in Oklahoma, yet allows insurers to use the waiver of defense expenses within the limit of liability.

## CONCLUSIONS OF LAW

1. Pursuant to OAC 365:15-1-15, 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.
2. Pursuant to OAC 365:15-1-15, the Commissioner may waive this requirement.
3. The Commissioner's waiver of the prohibition requires the Declarations page of the policy to include a conspicuous notice indicating that the contract contains defense expenses within the limit of liability, advising the policyholder to read the policy provisions.
4. The Commissioner reserves the right to rescind this Order.

## ORDER

The Commissioner allows defense expenses within the limits of liability in the following circumstances:

### Section 1: Scope of Order

1. This Order shall apply to commercial general liability policies, written on both a primary and excess basis.
2. The policy must contain a retention of risk in the amount of One Million Dollars (\$1,000,000.00).
3. Coverage is limited to industries, services or activities that may be susceptible to class action litigation.
4. The policy may only be marketed and sold to commercial insureds that employ a full-time accredited risk manager.

5. The conspicuous notice required on the Declarations page must be printed in a different font than the remainder of the policy. The font size for the notice must be at least fourteen point.

### Section 2: Policy Form Filings

- A. Every insurer shall file with the Commissioner every policy form, endorsement, and other contract language, and every modification of any of the foregoing that it proposes to use.
- B. Form filings made as a result of this Order shall follow the requirements of 36 O.S. §3610 and OAC 365:15-1-3 or Commissioner's Order No. 04-1714-PRJ.
- C. When a filing is not accompanied by the information upon which the insurer supports the filing, the Commissioner will require the insurer to furnish the information upon which it supports the filing.
- D. The Commissioner shall review filings as soon as reasonably possible after they have been made, in order to determine whether the filing meets the requirements of this Order.
- E. A filing and any supporting information shall be open to public inspection upon receipt of the filing.

### Section 3: Policy Rate and Manual Rule Filings

- A. To use this Order, every insurer shall file with the Commissioner every rate and manual rule filing, and every modification of any of the foregoing which it proposes to use. This must be done even if the program is for a commercial lines special risk, as described by 36 O.S. § 997.

- B. Rate and rule filings made as a result of this Order, shall follow the requirements of 36 O.S. § 981 et seq. and OAC 365:15-1-3.
- C. When a filing is not accompanied by the information upon which the insurer supports the filing, the Commissioner will require the insurer to furnish the information upon which it supports the filing.
- D. The Commissioner shall review filings as soon as reasonably possible in order to determine whether the filing meets the requirements of this Order.
- E. A filing and any supporting information shall be open to public inspection upon the effective date of the filing.<sup>1</sup>

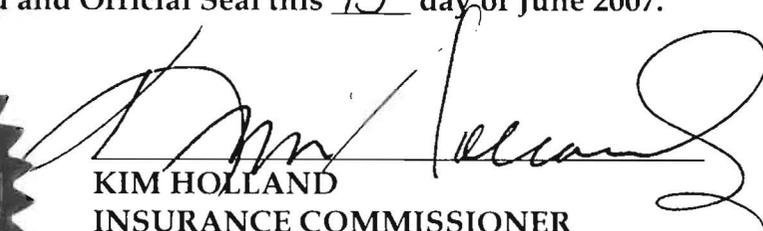
Section 4: Annual Reporting

To protect Oklahoma's insurance buying public and to evaluate the number of insurers who write policies as a result of the Order, the Oklahoma Insurance Department will monitor the use of this Order. For this reason, insurers must report statistics on an annual basis to the Department's Property and Casualty Division. Insurers must use the attached Excel spreadsheet for statistical reporting.

**IT IS SO ORDERED.**

WITNESS My Hand and Official Seal this 13<sup>th</sup> day of June 2007.



  
KIM HOLLAND  
INSURANCE COMMISSIONER  
STATE OF OKLAHOMA

<sup>1</sup> Confidential, proprietary or trade secret information as detailed by Title 36, Section 987(F) may remain confidential at the filer's discretion.