

STATE OF NEBRASKA

DEPARTMENT OF INSURANCE

L. Tim Wagner

Director

November 19, 2001

CB-102



Mike Johanns
Governor

BULLETIN

SUBJECT: DEFENSE WITHIN LIMITS CLAUSES

In response to evolution in the commercial lines insurance marketplace, the Department has changed its long-standing position relating to "defense within limits" wording for general liability policies. Historically, the Department approved use of such clauses only for specific lines of insurance such as professional liability, directors and officers, and other lines in which defense costs were assumed to encompass a major portion of loss expenses. Certain restrictions discussed below are in place for approval of such clauses.

In general, a "defense within limits" provision includes an insurer's cost to defend its insured against liability when determining the maximum amount payable by virtue of stated policy limits.

The Nebraska Property and Casualty Rate and Form Act, specifically *Neb.Rev.Stat.* §44-7502 and *Neb.Rev.Stat.* §44-7513 (9)(c), requires the department to ensure insurance contracts "reasonably provide the general coverage for policies of that type". The Department has therefore established the following approval guidelines for "defense within limits" provisions within commercial general liability policies:

- The policy provides minimum liability coverage of three million dollars per occurrence.
- The form must include provisions that require the insurer to extend the coverage limits of the form to the limit required by law for insurance policies issued to comply with statutorily required liability insurance.
- The insured must sign a disclosure form as part of the application process. The disclosure must advise that unlike most liability insurance policies in which payment of defense costs does not reduce the policy limits, this policy contains a "defense within the limits" provision. The provision includes the insurer's costs for providing legal defense against a claim along with any claim settlement amount within the stated policy limits.
- The disclosure must also include an explanation relating to the insurer's duty to defend. It must advise that once the policy limit is reached, the insurer's responsibility to pay any further amounts for defense costs or for any damages that may be awarded ends, except that the insurer will pay damages for statutorily required liability insurance to the limit required by law.

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In spite of the three-million-dollar minimum limits, the Department urges insurers and insurance producers to exercise diligence in placing policies with such provisions so that applicants' coverage needs and objectives are well met.

Questions relating to this informational bulletin may be directed to the Administrator of the Property and Casualty Division of the Nebraska Department of Insurance.



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