

TECHNICAL ADVISORY

INDEPENDENT INSURANCE AGENTS OF LOUISIANA

TA 159

JUNE 26, 2000

SUBJECT: HOMEOWNERS – VICARIOUS PARENTAL LIABILITY

BACKGROUND: In the Louisiana Civil Code, Article 2318 holds parents legally liable for the acts of their minor children. The Insurance Services Office (ISO) mandatory Louisiana homeowners endorsement contains a \$10,000 limit on Section II payments for “statutorily imposed vicarious parental liability.” Numerous other company-specific homeowners forms contain similar vicarious parental liability limitations. Responding to a number of calls from members, IIAL asked the Louisiana Department of Insurance to review the matter and prohibit the use of such vicarious parental liability limitations. On June 10, during a presentation at the IIAL annual convention, Insurance Commissioner Jim Brown issued Directive Number 152 (copy attached), which declared such limitations “against the public interest,” and ordered the restrictive language removed from all homeowners policies in Louisiana, effective September 30, 2000.

MAIN POINTS: Given the absolute liability imposed on parents by Article 2318, the \$10,000 limit creates a potentially huge gap in the standard \$100,000 Section II coverage most insureds (and agents) believe they have under the homeowners policy. While “kids will be kids,” in today’s litigious environment, the most innocent accident by a minor child could result in a lawsuit against the parents, with the potential for a sizeable damage award. As an example, in the case of *Turner v. Bucher*, the Louisiana Supreme Court held the parents of a six-year-old boy liable for injuries to a 62-year-old pedestrian the child struck on his bicycle.

In researching the issue for presentation to the Department of Insurance, IIAL found some Louisiana insurers actually had limits less than those filed by ISO – one was only \$3,000 – and this was on a preferred homeowners program. In numerous discussions with agents, companies, and others, it became apparent that few people were aware of the limitation, and even fewer really understood its implications for insureds. Many thought the amount in the policy was actually *giving* coverage to the insured.

In addition, insureds with personal umbrellas would still face a considerable gap in most cases, as few (if any) personal umbrellas “drop down” to cover such limitations in underlying coverage.

NECESSARY ACTION: Circulate this Technical Advisory to all Personal Lines staff, and insurance company personnel.