

TECHNICAL ADVISORY

TA 176

January 10, 2001

SUBJECT: Prescription Period Limitation on Hail Claims, January 23, 2000 - 2001 Part 2

BACKGROUND: IIAL Technical Advisory TA 169, issued December 14, 2000, discussed the possible one-year prescription period commonly found in many property insurance policies. IIAL has received numerous questions about the applicability of a prescription period and how claims might be handled.

Louisiana has two general prescription periods defined by statute. A one-year prescription period applies to tort liability actions. A general ten-year prescription period applies to contracts, **unless the contract has specific prescription language**. A number of agents have correctly pointed out that the one-year tort liability prescription period would not apply to hail claims, and that an insurance contract might be subject to the general ten-year prescription period for contracts. **However, there are specific provisions in the Insurance Code which allow a one-year prescription period on certain types of insurance policies.**

MAIN POINTS: Louisiana Revised Statute R.S. 22:629 prohibits insurance contracts from limiting the right of policyholders to take legal action against an insurance company to a period of less than one year. Conversely, there is no prohibition to an insurance company limiting legal action of policyholders to a period of one year or more. Such "Suits Against Us" provisions are frequently found in insurance policies.

R.S. 22:629. Limiting actions: jurisdiction

- A. *No insurance contract delivered or issued for delivery in this state and covering subjects located, resident, or to be performed in this state or any group health and accident policy insuring a resident of this state, regardless of where made or delivered shall contain any condition, stipulation, or agreement:*
-(3) *Limiting right of action against the insurer to a period of less than twelve months next after the inception of the loss when the claim arises under any insurance classified and defined in R.S. 22:6(10), (11), (12), and (13), or to a period of less than one year from the time when the cause of action accrues in connection with all other insurances unless otherwise specifically provided in this Code.*

- B. Any such condition, stipulation, or agreement in violation of this Section shall be void, but such voiding shall not affect the validity of the other provisions of the contract.*

Louisiana Revised Statute R.S. 22:691 establishes the "standard fire insurance policy of the State of Louisiana" which serves as the defacto minimum standard for property insurance policies in Louisiana. Section F. spells out the actual language of the "standard fire insurance policy of the State of Louisiana" in its entirety. At the bottom of the second page of the standard fire policy is the following clause:

R.S. 22:691.F(2)

*Suit -- No suit or action on this policy for the recovery of any claim shall be sustainable in any court of law or equity unless all the requirements of this policy shall have been complied with, **and unless commenced within twelve months next after the inception of the loss.***

Many property insurance policies contain a provision which limits the legal action of the policyholder against the insurance company to a period of twelve months in recognition of and in compliance with these statutes. The provision may not apply in some policy forms, but the policyholder and agent should be aware of the possible limitation, and act to protect the interest of the policyholder in cases where the one-year prescription period may create a problem.

IIAL has discussed this issue at length with the Louisiana Department of Insurance (LDI), the Property Insurance Association of Louisiana (PIAL), and the FAIR and Coastal Plans. While there is no one correct universal answer for all claims situations, several general principles have become evident. These may assist agents and policyholders in handling claims.

First, the lapse of the one-year prescription period does not void coverage under the policy. Many routine claims can and will be settled after prescription has run. The claim is still covered under the policy -- a problem only develops if a policyholder finds it necessary to take legal action to enforce the terms of the insurance contract. If the insured waits until after the one-year period, the insurance company **may** be able to have such legal action dismissed on summary judgment because the claim has prescribed.

Second, the one-year prescription period is not absolute. Courts may interrupt the prescription period, depending upon the circumstances of the specific claim. In the case of this hail storm, many policyholders did not become aware that a loss had occurred until many months after the hail storm. In addition, if they have properly reported the claim to the insurance company, and the claim is in process, the insured may have been "lulled" into believing that no legal action was necessary. These types of extenuating circumstances **may** lead a

court to interrupt prescription and allow legal action after the one-year prescription period.

Policyholders can protect their legal rights from prescription. The policyholder can obtain a written waiver of prescription from the insurance company which will protect the right to pursue legal action if the claim cannot be reasonably settled within the one-year prescription period. LDI has scheduled a meeting with insurance companies next week to discuss the prescription issue. LDI is encouraging insurance companies to settle claims in good faith and to provide written waivers of prescription when appropriate. LDI also advises policyholders that they should seek legal counsel if they are unable to secure a written waiver of prescription. Such legal counsel may advise the policyholder to file suit before the one-year prescription date which will stop prescription.

IIAL calls on all insurance companies to waive prescription on all legitimate claims arising from the New Orleans hail catastrophe. Otherwise, policyholders will be forced to file suit against their own insurance company to preserve their legal rights. Only the lawyers win under that scenario, and insurance companies will certainly lose. IIAL's board member on the FAIR and Coastal Plan Boards has also strongly recommended that the Plans waive prescription on all legitimate claims.

It is important to keep this potential problem in prospective. Most first-party property insurance claims are settled without legal action. Most insurance companies will pay their claims under the terms of the insurance contract. The one-year prescription only becomes an issue if there is a dispute on the claim which results in litigation.

**NECESSARY
ACTION:**

Distribute this Technical Advisory to appropriate staff members who may be involved in claims settlements. Contact insurance carriers to determine the claims settlement language in their policies, claims procedures of the company, and their position on any applicable prescription period. Review claim files to determine if there are outstanding claims which will not reach final settlement by the potential one-year prescription date. Work with policyholders and insurance carriers to protect policyholder interests.