

FROM: Director, Worldwide Markets EXTN: 6677
DATE: 9 September 2005 REF: Y3625
SUBJECT: **Hurricane Katrina: regulatory provisions in Louisiana and Mississippi**
SUBJECT AREA(S): Managing agents and Lloyd's brokers transacting insurance in Louisiana and Mississippi

This bulletin follows Market Bulletin Y3623 "Hurricane Katrina: Proposed Emergency Rules in Louisiana", issued 8 September, 2005
ATTACHMENTS: Proposed Louisiana Emergency Rule 15

ACTION POINTS: **Managing agents and Lloyd's brokers to make appropriate arrangements to ensure compliance with the regulations referred to.**
DEADLINE(S): **Any comments on Proposed Louisiana Emergency Rule 15 to be provided to Lloyd's by 12 noon on Monday 12 September, 2005**

Purpose of bulletin

To update the market on regulatory developments in Louisiana and Mississippi following Hurricane Katrina and to provide a complete copy of Louisiana Emergency Rule 15.

Background

Insurance departments in the US states affected by Hurricane Katrina have issued a number of bulletins and other communications, some of which request or direct insurers doing business in the states concerned to carry out or refrain from carrying out specified activities. Those communications relevant to managing agents and Lloyd's brokers doing business in the states concerned are referred to in this bulletin.

Further regulations are likely to be issued in due course. Lloyd's Worldwide Markets and Lloyd's America in New York are monitoring regulatory developments in affected US states and regular reports will be provided to the market on all important developments.

Louisiana Emergency Rule 15

An incomplete copy of Emergency Rule 15, as circulated at the Louisiana regulatory summit on Wednesday 7 September, was attached to Market Bulletin Y3623. It was incomplete because a full copy was not available from the Louisiana Department of Insurance ("the Louisiana Department") either for the meeting, or at the time Bulletin Y3623 was circulated.

The Louisiana Department has now made a full copy of this Emergency Rule available on its website at: http://www.lidi.state.la.us/whats_new/Emer_Rule_15_Draft.pdf. A copy is also attached to this bulletin.

The full copy includes the previously missing page 2. As noted in Bulletin Y3623, this page provides further definition of the scope of the Rule. However, this is worded widely, so that the Rule will apply to “any and all types of insurance”, and not just to property and casualty insurance (see the second paragraph on page 2). In particular, reinsurance and “all surplus lines insurance” are specifically mentioned as among the types of insurance to which the Rule applies.

The third paragraph on page 2 reads:

“Emergency Rule 15 is applicable to seven (7) of the thirty-one (31) parishes eligible for the Individual Assistance Program administered by the Federal Emergency Management Agency (FEMA) pursuant to FEMA’s disaster declaration issued on August 29, 2005. **Specifically, the seven (7) parishes subject to Emergency Rule 15 are Jefferson, Orleans, Plaquemines, St. Bernard, St. Tammany, Tangipahoa, and Washington.**”

This confirms the geographical scope set out in Bulletin Y3623. A list of the zip codes concerned is set out on this document, on the Louisiana website:

http://www.lidi.state.la.us/whats_new/ParishZipList.pdf

Other Louisiana regulatory provisions

The Louisiana Department has issued an “Adjuster Notice”, a copy of which is available on their website at the following address: http://www.lidi.state.la.us/whats_new/AdjusterInfo.pdf

In summary, the Adjuster Notice says that:

- All public adjusters operating in Louisiana are to register with the Louisiana Department.
- Contracts between insured persons and public adjusters and insurance companies and affiliated adjusters are subject to specified prohibitions. These include provisions that insurers cannot pay affiliated adjusters any fee or compensation in excess of a regular fixed salary or stipend and cannot contract to pay an adjuster a percentage of costs saved to the insurer.
- The Louisiana Department is requesting all insurers to provide, in writing, the names and social security numbers of adjusters who will be actively engaged in the settlement of losses and damages resulting from Katrina. As there are some issues regarding the provision of social security numbers, we understand that the Louisiana Department will accept any form of personal number that will enable an individual to be identified, such as payroll numbers. This is a request and not a formal instruction and no deadline is set for its completion. The LMA is looking at ways in which responses from managing agents can be co-ordinated.

In addition, a copy of Emergency Rule 17 circulated at the Louisiana regulatory summit was attached to Bulletin Y3623. A copy is now available on the Louisiana Department website at: http://www.lidi.state.la.us/whats_new/Emer_Rule_17_Draft.pdf

As noted in Bulletin Y3623, this applies to health insurance. The Louisiana Insurance Code defines “health insurance coverage” as:

“...benefits consisting of medical care, provided directly, through insurance or reimbursement, or otherwise and including items and services paid for as medical care, under any hospital or medical service policy or certificate, hospital or medical service plan contract, preferred provider organisation, or health maintenance organisation contract offered by a health insurance insurer.” (s. 250.1(2)(a)).

Managing agents may wish to consider whether their syndicates could have written any contracts, including reinsurances, which could be affected by Emergency Rule 17.

Mississippi regulatory provisions

The Mississippi Insurance Department has issued two communications that may be relevant to managing agents and Lloyd’s brokers doing business in Mississippi:

1. Notice headed “*Insurers directed to grant grace periods in hurricane-impacted areas*”, issued 1 September 2005. This may be accessed at this web address: <http://www.doi.state.ms.us/pressrel/pressrel9105.pdf>

This records a call from the Insurance Commissioner, George Dale, to all insurers doing business in Mississippi, to grant a 60-day grace period for collection of insurance policy premiums owed by residents of the state impacted by Hurricane Katrina.

It is described as a “voluntary directive”, but is likely to be replaced by something more formal in the near future.

2. Bulletin No. 2005 – 6, issued 7 September, 2005. This may be accessed at this web address: <http://www.doi.state.ms.us/bulletins/20056bull.pdf> . It is signed by George Dale, Mississippi Commissioner of Insurance and contains two key provisions:

➤ The second paragraph states that, although US homeowners’ policies generally contain a water damage exclusion “...an adjuster cannot summarily determine the cause of damage without inspecting the damaged property. Consequently I am instructing companies to be aware of these issues and to fully inspect any damaged property before a coverage decision is made.”

➤ The third paragraph points out that in some situations it will be a fact issue whether the loss was caused by wind or water. It goes on to say:

“In these situations, the insurance company must be able to clearly demonstrate the cause of the loss. I expect and believe that where there is any doubt, that doubt will be resolved in favour of finding coverage on behalf of the insured. In instances where the insurance company believes the damage was caused by water, I expect the insurance company to be able to prove to this office and the insured that the damage was caused by water and not by wind.”

Further information

If you have any queries about this market bulletin, please contact Lloyd's Worldwide Market Services:

Lloyd's Worldwide Market Services
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This market bulletin has been sent to active underwriters and the compliance officers of managing agents and Lloyd's brokers.

Julian James
Director,
Worldwide Markets

TITLE 37
INSURANCE
PART XI CHAPTER 27: EMERGENCY RULE 15
or
DIRECTIVE 185
Version 8 – 6 September 2005 at 1430 - WEB

**SUSPENSION OF CERTAIN STATUTES AND REGULATIONS
REGARDING CANCELLATIONS, NON-RENEWALS,
REINSTATEMENTS, PREMIUM PAYMENTS, CLAIM FILINGS
AND RELATED PROVISIONS REGARDING
ANY AND ALL INSURANCE MATTERS AFFECTING INSURED IN
LOUISIANA CAUSED BY HURRICANE KATRINA**

TO: All Insurers, HMOs, Premium Finance Companies, Surplus Lines and other entities doing business in Louisiana and/or regulated by the Commissioner of Insurance and the Louisiana Department of Insurance

Emergency Rule 15 is issued pursuant to the plenary authority of the Commissioner of Insurance for the State of Louisiana, including, but not limited to, the following: Proclamation No. 48 KBB 2005 issued on August 26, 2005 by Governor Kathleen Babineaux Blanco declaring a State of Emergency; Executive Order No. __ KBB 2005 issued September __, 2005 by Governor Kathleen Babineaux Blanco transferring authority over any and all insurance matters to Commissioner of Insurance J. Robert Wooley; LSA R.S. 29:724; LSA R.S. 29:766; LSA R.S. 22:2; LSA R.S. 22:3; LSA R.S. 22:1214.(7), (12) and (14); LSA R.S. 49:950 et seq.

On August 26, 2005, Governor Kathleen Babineaux Blanco declared the existence of a State of Emergency within the state of Louisiana caused by Hurricane Katrina. This State of Emergency extends from Friday, August 26, 2005 through Sunday, September 25, 2005.

Thousands of Louisiana citizens have suffered damages due to Hurricane Katrina. In some places, it could be months before electricity is restored. The homes of many citizens were destroyed precluding habitation and the delivery of mail. This disruption has affected the ability of these citizens to pay their insurance premiums, access their insurance policies, and communicate with insurance agents and their respective insurance companies for insurance related matters. Hurricane Katrina has created a mass disruption to the normalcy previously enjoyed by Louisianans and produced an immediate threat to the public health, safety, and welfare of Louisiana citizens.

The Commissioner and the Louisiana Department of Insurance will be hindered in the proper performance of the duties and responsibilities regarding this State of Emergency without the authority to suspend certain statutes in the Louisiana Insurance Code and the rules and regulations that implement the Louisiana Insurance Code including, but not limited to, cancellation, nonrenewal, reinstatement, premium payment and claim filings with regard to any and all types of insurance subject to the Louisiana Insurance Code.

In light of this, I hereby issue Emergency Rule 15 to all insurers, HMOs, premium finance companies, surplus lines insurers and other entities doing business in Louisiana and/or regulated by the Commissioner of Insurance and the Louisiana Department of Insurance regarding any and all types of insurance, including, but not limited to, flood insurance, homeowners insurance, life insurance, health and accident insurance, limited benefit insurance, vehicle insurance, liability insurance, workers' compensation insurance, burglary and forgery insurance, glass insurance, fidelity and surety insurance, title insurance, fire and extended coverage insurance, steam boiler and sprinkler leakage insurance, crop and livestock insurance, marine and transportation insurance, credit life, health and accident insurance, credit property and casualty insurance, annuity insurance, HMOs, property and casualty insurance, all surplus lines insurance, reciprocal insurance, reinsurance, and all insurance premium finance companies licensed in Louisiana.

Emergency Rule 15 is applicable to seven (7) of the thirty-one (31) parishes eligible for the Individual Assistance Program administered by the Federal Emergency Management Agency (FEMA) pursuant to FEMA's disaster declaration issued on August 29, 2005. **Specifically, the seven (7) parishes subject to Emergency Rule 15 are Jefferson, Orleans, Plaquemines, St. Bernard, St. Tammany, Tangipahoa, and Washington.**

In the ordinary course of business, insurers, HMOs, premium finance companies, surplus lines insurers and other entities send notices to insureds, many of which are required by statute, giving the insured certain limited periods of time within which to pay premiums or otherwise respond. Hurricane Katrina has produced a disruption in the notification process because of the inability of insureds to receive mail due to mandatory evacuations and/or the destruction of their homes. Thus, many of Hurricane Katrina's victims are currently unable to timely act or respond to such notices and need additional time within which to act or respond. Some insurers, HMOs, premium finance companies, surplus lines insurers and other entities may cancel, nonrenew or not reinstate such insurance policies. Additionally, some insureds with policies in force on August 26, 2005, who wish to make timely payment are also prevented from making such payment because of the aforementioned circumstances. This could result in an insured being without coverage and/or potentially uninsured. Emergency Rule 15 provides emergency relief to the insureds of Louisiana affected by Hurricane Katrina so that they will be insured and their coverage will continue under those policies that were in effect on or after August 26, 2005.

Accordingly, during this State of Emergency, the following rules shall apply:

- A. As to any insurance policy provision, notice, correspondence or law which imposes a time limit upon an insured, who is a victim of Hurricane Katrina, to perform any act or transmit information or funds with respect to said insurance, which act was to have been performed on or after 12:01 AM on August 26, 2005, the time limit shall be suspended during the term of the present State of Emergency, and any subsequent State of Emergency declared thereafter with regard to Hurricane Katrina.
- B. Any notice of cancellation, notice of nonrenewal, nonreinstatement or any other notice related to any type of insurance in force and effect at 12:01 a.m. on August 26, 2005 shall be null and void and have no force or effect. Furthermore, any such notice shall be reissued *de novo* to the insured in accordance with existing statutory requirements, but not until the present State of Emergency, or any subsequent State of Emergency, has been lifted by Governor Kathleen Babineaux Blanco.
- C. No policy shall be cancelled or nonrenewed solely because of a claim resulting from Hurricane Katrina.
- D. The renewal of any and all group life, health or disability insurance policies shall be deferred until January 1, 2006, and any rate increase that may be applicable to any and all group life, health or disability insurance policies shall be deferred until January 1, 2006. All group life, health or disability insurance policies in effect at 12:01 a.m. on August 26, 2005 shall continue in full force and effect until January 1, 2006 at the previously established premium.
- E. Any insurer, HMO, premium finance company, surplus lines insurer and other entity who receives a claim from an insured owing a premium may offset the premium due to the insurer, HMO, premium finance company, surplus lines insurer or other entity from any claim payment made under the policy.
- F. Nothing in Emergency Rule 15 shall be construed to exempt or excuse an insured from liability for the premiums otherwise due for actual insurance coverage provided.
- G. If the contract of insurance was financed by a premium finance company, the following provisions apply:
 - (1) The Premium Finance Company will issue a 10 day notice of intent to cancel and a cancellation notice in accordance with the terms of the premium finance agreement signed by the insured. In addition, the premium finance company shall be responsible to obtain proof of receipt of each such notice by the insured, which may be accomplished through mailing by certified mail, return receipt requested, or through any other

legally admissible method in a court of law. In addition, each such notice shall prominently contain the following statement:

“If you have been displaced through the loss of your (specify home, automobile, etc) or damage to your (specify home, automobile, etc) which has caused you to reside elsewhere on a temporary basis, or if you have temporarily become unemployed due to the destruction caused by Hurricane Katrina, please contact this office as soon as possible.

Victims of Hurricane Katrina will receive an automatic extension of time to bring their accounts up to date and no late charges will be applied to any late payments received which were due on their accounts during the term of the present State of Emergency, and any subsequent State of Emergency declared thereafter, with regard to Hurricane Katrina. The current State of Emergency extends from **Friday, August 26, 2005** through **Sunday, September 25, 2005**.

Therefore, if you are a victim of Hurricane Katrina, please contact us as soon as possible at (insert toll free telephone number) so that we may advise you of the status of your account. If you decide that you no longer need or desire to keep the coverage provided by the insurance policy financed by your contract with us, please contact us as soon as possible at (insert toll free telephone number) so that we may instruct you on how to effect cancellation with your insurer.”

(2) Upon receipt of a written request for cancellation by an insured, the premium finance company shall process the cancellation request in accordance with current law, and in accordance with the notice provisions consistent with Emergency Rule 15.

(3) The insurer shall hold all refunds until notified by the insured of the insured’s new mailing address, and proceed as follows:

- a. If the insurer receives notice of a claim on the cancelled policy with regard to a Hurricane Katrina event, the coverage that would have been available had the policy not been cancelled shall be extended for that claim.
- b. If the premium finance company receives payment from the insured or the insured’s agent on behalf of the insured to bring the account up-to-date, the premium finance company shall send a request for reinstatement to the insurer. Upon receipt of the request for reinstatement, the insurer shall immediately reinstate the policy with no lapse in coverage.
- c. No late charges shall be assessed against any insured who qualifies for protection under Emergency Rule 15.

- d. If the insurer does not receive a claim of loss on a policy for which it has received a notice of cancellation under subparagraph 1 above, or a request for reinstatement from the premium finance company pursuant to subparagraph 2 above, the insurer shall issue the return premium checks to the premium finance company based on the date the insured requested cancellation.

(d) Any insurer who finances its own premiums shall be subject to all provisions of subparagraph 6 of Emergency Rule 15, by reference, as if set forth herein *in extenso*.

- H. A cancellation or nonrenewal may occur prior to September 26, 2005, or the expiration of any subsequent State of Emergency declared with regard to Hurricane Katrina, at the written request or written concurrence of the policyholder.
- I. Emergency Rule 15 shall not relieve a policyholder who has a claim caused by Hurricane Katrina from compliance with the policyholder's obligation to provide information and cooperate in the claim adjustment process relative to the claim. No interest, penalty or other charge shall accrue or be assessed as the result of the suspensions required herein. Interest owed pursuant to premium financing plans with premium finance companies or insurers or their affiliates may be assessed.
- J. Any insurer receiving a claim from an insured owing a premium may offset the premium due to the insurer or the premium finance company from any claim payment made under the policy.
- K. Notwithstanding any other provision contained herein, the Commissioner may exempt any insurer from compliance with Emergency Rule 15 if the Commissioner determines that compliance with Emergency Rule 15 may be reasonably expected to result in said insurer being subject to financial regulatory action levels by the Commissioner.
- L. The provisions of Emergency Rule 15 shall be liberally construed to effectuate the intent and purposes expressed herein and to afford maximum consumer protection for the insureds of Louisiana.
- M. Emergency Rule 15 shall be deemed to be a prohibitory law. Accordingly, any insurer, HMO, premium finance company, surplus lines insurer or other entity doing business in Louisiana and/or regulated by the Commissioner of Insurance and the Louisiana Department of Insurance who violates any provision of Emergency Rule 15 shall be subject to prosecution under any applicable provisions of the Louisiana Insurance Code, including the provisions of the LSA R.S. 22:1211, et seq., and

specifically including, but not limited to, LSA R.S. 22:1214(7), (12) and (14). Additionally, the penalty provisions set forth in LSA R.S. 22:1217 shall be applicable. These provisions include civil penalties of \$1,000.00 for each separate act, or \$25,000.00 for each separate act if the violator knew or reasonably should have known he was in violation of Emergency Rule 15, as well as a cease and desist order and the imposition of other civil penalties and suspension or revocation of the license. Additionally, LSA R.S. 22:1220, which, among other things, imposes the obligation of good faith and fair dealing shall be deemed to be a prohibitory law. This law sets forth civil penalties and exemplary damages which shall be enforceable for any violation of Emergency Rule 15. Finally, any violator shall be subject to any and all other applicable civil and criminal sanctions for violations of Emergency Rule 15.

Emergency Rule 15 shall become effective at 12:01 a.m. on August 26, 2005 and shall continue in full force and effect for the duration of the present State of Emergency proclaimed by Governor Kathleen Babineaux Blanco, or any subsequent State of Emergency proclamation made thereafter.

Baton Rouge, Louisiana, this _____ day of September, 2005.

J. Robert Wooley
Commissioner of Insurance