



STATE OF CONNECTICUT

INSURANCE DEPARTMENT

September 26, 2022

IMPORTANT NOTICE TO COMMERCIAL INSURERS AND PRODUCERS CONCERNING “DEFENSE WITHIN LIMITS” POLICY PROVISIONS

This Notice is intended to provide commercial insurers and producers with guidance concerning the Department’s position on (i) the allowable lines of insurance having “defense within limits” (“DWL”) provisions; and (ii) the type of consumer disclosure needed for DWL policies.

In general, DWL provisions provide that legal defense costs incurred by an insurer in defending the insured against a claim will be set off against the policy’s liability coverage limit and has traditionally been offered in connection with policies issued on a claims-made basis. This set off helps reduce premium costs to the insured. However, under a DWL policy, the cost of legal defense could in theory exceed the policy’s limit of liability, leaving nothing in the policy to reimburse the claimant for damages should they ultimately prevail on a liability claim (and the insured would be legally responsible for remaining damages not paid under the policy).

Given the insured’s potential exposure in the event defense costs erode the liability coverage limit, it is the Department’s position that DWL provisions may *only* be offered in the following commercial lines policies: Directors & Officers, Errors & Omission, Cyber liability and Employment Practices and Professional Liability (*See* Gen. Stat. § 38a-393 for the definition of “professional liability”). This Notice adds *Fiduciary and Cyber Liability* to the above lines that may contain DWL policy provisions. The Department believes that DWL policies should be allowed only for claims-made liability policies.

The Department believes that insurers need to provide safeguards to ensure that policyholders are adequately informed of how DWL policies operate. In that regard, the Department requests that insurers provide conspicuous disclosures in policy applications and policy declaration pages informing the insured of how DWL provisions operate to reduce the liability coverage limit. The Department also requests that carriers inform their insureds of any option to purchase additional defense cost coverage or “defense outside of limits” policies.

Please contact the Insurance Department’s Property & Casualty division at cid.pc@ct.gov with any questions concerning this Notice.