

Bulletin 18-01

To: All Insurance Companies Writing Liability Insurance in South Dakota
From: Larry Deiter, Director
Date: March 29, 2018
Re: Defense within Limits of Liability & Professional Liability Products

Since 1989, the South Dakota Division of Insurance (“Division”) has established guidance regarding liability policies written with defense within policy limits. This was last detailed in Bulletin 07-02, which is superseded and replaced by this Bulletin. The criteria for the Division’s policy position are as follows:

1. Defense Within Limits will only be approved by the Division in policies with a minimum limit of \$1 million per occurrence and only for the following types of policies:
 - a. Errors and Omissions Liability;
 - b. Directors & Officers Liability;
 - c. Professional Liability (not including Medical Malpractice Insurance);
 - d. Livestock/Agricultural Related Business (feedlots, elevators); and
 - e. Other very difficult, volatile lines of insurance as determined by the Director.
2. Defense Within Limits is permitted without the requirements above for the following specific types of policies:
 - a. Fidelity and/or Surety Bonds;
 - b. Agent’s Professional Liability;
 - c. Employment Practices Liability (except a \$1 million option must be offered);
 - d. Pollution Liability;
 - e. Architects & Engineers Professional Liability;
 - f. Lawyers Professional Liability; and
 - g. Other lines of insurance as determined by the Director (except a \$1 million option must be offered).
3. If a policy is approved by the Division, “Defense Within Limits” must appear on the declaration page in at least 12 point bold print.

The Division’s guidance regarding extended reporting period endorsements for claims-made policies is as follows:

1. Insureds must be offered a three-year extended reporting period. The company may offer one-year, two-year, five-year, or unlimited extended reporting periods, but the three-year extended reporting period must be available.
2. Insureds must be allowed sixty days to exercise the option to purchase an extended reporting period.
3. The maximum premium allowable for the three year extended reporting period endorsement is 200% of the most recent annual premium.