

## Applicability of Louisiana's Single Named Storm Deductible Rule – Authorized v. White List

The tumultuous 2020 Hurricane Season has resulted in a record-tying four named storms to strike the State of Louisiana. Hurricane Laura struck Southwest Louisiana on August 26, 2020 as a Category 4 with winds in excess of 120 mph and bringing with it a storm surge over 15ft in some areas. On Friday, Hurricane Delta struck the same areas of Southwest Louisiana only six weeks later. Given the unfortunate circumstances brought to Southwest Louisiana, many residents are having to make insurance claims as a result of both storms in order to rebuild their properties or simply recover from their policies what has been lost. However, many (if not nearly all) policies are subject to a "Named Storm deductible" whereby the insured is responsible for a specified percentage of incurred damages – generally between 2%-10% of the property value. Louisiana enacted La. R.S. § 22:1337 in 2009 to address such an occurrence and limit the assessment of such deductibles to once per calendar year. However, § 22:1337(B), which provides this limitation, is not applicable to all insurers:

For all homeowners' insurance policies or other policies insuring a one- or two-family owner occupied premises for fire and allied lines, **issued or renewed by authorized insurers<sup>1</sup>** on or after January 1, 2010, any separate deductible that applies in place of any other deductible to loss or damage resulting from a named storm or hurricane shall be applied on an annual basis to all named-storm or hurricane losses that are subject to the separate deductible during the calendar year. (emphasis added).

Accordingly, based on a plain reading of the statute, § 22:1337(B) is not applicable to unauthorized insurers. Therefore, the excluded insurers would apply the deductible as dictated by the policy.

The Louisiana Legislature enacted § 22:1337 in response to Hurricanes Katrina and Rita striking Louisiana in 2005. Fortunately, since that time, Louisiana residents have not had to rely on the statute as there has not been multiple named storm events for which residents needed to make claims. As such, there is no jurisprudence addressing the statute. However, the Louisiana Insurance Code defines the term "Authorized insurer" as "an insurer with a certificate of authority or license issued under provisions of this Code or otherwise qualified under R.S. 22:481 *et seq.*"<sup>2</sup> We

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<sup>1</sup> We note that the [Original Bill](#) made the deductible limitation applicable to all insurers. Subsequently, the [lone amendment](#) made by the House Committee on Insurance inserted the term "by authorized insurers" creating the limitation at issue.

<sup>2</sup> La. R.S. § 22:46.

note that §22:481, *et seq* is Louisiana’s Risk Retention Group Law. Accordingly, an “Authorized insurer” is one that is licensed as authorized by the Louisiana Department of Insurance (“LDOI”) or a Risk Retention Group that has been approved the LDOI. Conversely, the LDOI is also required to maintain a list of “Approved **Unauthorized** insurers.”<sup>3</sup> Such insurers are generally referred to as “Surplus Lines Carriers.” This LDOI maintained list entitled “Approved Unauthorized Insurer List - - Surplus Lines” or “[White List](#)” currently consists of 228 Unauthorized carriers.

Accordingly, given the language of § 22:1337 as further defined by the Louisiana Insurance Code, it appears that the 228 “Unauthorized” carriers identified on the [White List](#) may assess separate named storm deductibles per each loss. We note that the Louisiana Insurance Commissioner issued Advisory Letter No. 2018-01 in June 2018 addressing § 22:1337. The purpose of this article was to address when the special deductible could be assessed, i.e., at what point does it apply to a weather event. The Commissioner noted that 22:1337(A) defines a named storm as “a storm system that has been declared a named storm by the National Hurricane Center of the National Weather Service.” He then noted that all carriers are to utilize this definition to determine whether the separate deductible would be assessed and upon doing so provided “[a]ll property and casualty insurers, both admitted and surplus lines, are hereby advised to interpret and apply the separate named storm deductible or hurricane deductible provided for in their specific policies in the manner compliant with La. R.S. 22: 1337.” As such, it appears in making this broad statement, the Commissioner intended to refer to §22:1337(A) only, which defines the term Named Storm, and not § 22:1337(B), which provides the single deductible rule. Regardless, the Advisory Letter is just that - advisory - and does not affect the legislatively defined terms of the statute.

This issue will undoubtedly be addressed as Laura and Delta claims progress. Please do not hesitate to contact our office should you have any questions related to this article.

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<sup>3</sup> La. R.S. § 22:436