

# **Louisiana Property and Casualty Insurance Commission**

**Annual Report 2013 – 2014**



**Louisiana Department of Insurance  
James J. Donelon, Commissioner**

Louisiana Department of Insurance

This public document is published at a total cost of \$1,299.47. 35 copies of this public document were published in this first printing at a cost of \$32.38. The total cost of all printings of this document including reprints is \$1,299.47. This document was published by the Louisiana Department of Insurance, P.O. Box 94214, Baton Rouge, LA 70804-9214 to report actions, studies and recommendations of the Louisiana Property and Casualty Insurance Commission regarding laws and issues affecting property and casualty insurance in accordance with R. S. 22:2171. This material was printed in accordance with standards for printing by State Agencies established in R.S. 43:31.

# Table of Contents

<b>Introduction: State of the Market</b>	<b>2</b>
I. Brief Legislative History and Purpose	3
II. Membership	3
III. Meetings and Presentations	5
IV. Legislative Recommendations for the 2014 Regular Session	8
V. Recommended Study Issues	10
VI. Final Note	11
VII. Appendix A: Meeting Agendas	12
VIII. Appendix B: Minority Reports Submitted by Earl Taylor, District Attorney, 27 <sup>th</sup> Judicial District Louisiana District Attorneys Association Representative on the LPCIC	14

## **Introduction: State of the Market**

Louisiana is on the verge of one of the largest workforce booms in recent history. Industrial construction, renewed energy exploration, and the emergence of the software sector drive this increased demand, which will greatly impact the insurance market.

The state has benefited from a quiet hurricane season recorded as one of the mildest in 50-odd years. The New Orleans area levee system was recently accredited by FEMA and will provide residents of the area protection against a 100-year storm. The improved storm surge protection could eventually lead to reduced flood insurance rates through NFIP remapping. Continued coastal restoration is still an important key for sustainability and regrowth.

High homeowners and automobile insurance rates present challenges to both current citizens and those contemplating a move to Louisiana. According to 2011 NAIC data, the average homeowners' insurance premium is \$1,672, which is \$694 higher than the countrywide average. Florida is number one, followed by Louisiana, and Texas is number three. The continued depopulation of Citizens, the state's insurer of last resort, is a sign of an improving market. Another indication is that Citizens based its most recent rate filing on a total of 71 private insurers that offer the same coverage. The combined average premium for personal auto insurance is \$1,282, placing Louisiana second highest following New Jersey. The countrywide average is \$912. Obeying traffic laws and improving driving behavior is a key factor in reducing claims and lowering rates. Louisiana has the highest number of bodily injury claims than any other state in the country and more than double the national average. There is also an abnormally high volume of lawsuits filed by drivers and passengers in the state.

The workers' compensation market remains competitive. The continued success of the medical treatment guidelines has improved and hastened treatment that injured workers receive, while saving employers millions of dollars in court costs and legal fees. Claims experience and premium volume have improved. After three years of slight increases in loss cost filings, an overall statewide 5.1 percent decrease has been approved for rate filings for 2014.

Common sense reform will help ensure that consumers have a vibrant, competitive marketplace as they shop for insurance coverage. The Commission will continue its role in advancing the process.



# **Louisiana Property and Casualty Insurance Commission**

## **Annual Report 2013-2014**

**Louisiana Department of Insurance  
James J. Donelon, Commissioner**

### **I. Brief Legislative History and Purpose**

In 1997, the Louisiana Legislature created the Council on Automobile Insurance Rates and Enforcement (CAIRE) to undertake a comprehensive study and provide oversight and recommendations aimed at enforcement of those laws and programs that affect automobile insurance rates. CAIRE researched and studied many ideas that have been beneficial in the area of lowering automobile insurance rates.

Due to CAIRE's thorough studies of law enforcement and automobile insurance issues in the state, the Louisiana Legislature expanded CAIRE's realm of study in 2001 to include not only automobile insurance but also homeowners insurance and workers' compensation insurance, thus forming the Louisiana Property and Casualty Insurance Commission (Act 187 of the 2001 Regular Session). The Louisiana Property and Casualty Insurance Commission (LPCIC, or Commission), which consists of three ad-hoc committees (Automobile, Homeowners and Workers' Compensation) has been given the task of reviewing and examining the availability and affordability of property and casualty insurance in the state of Louisiana.

### **II. Membership**

During the 2003 Regular Legislative Session, Act 590 amended and changed the makeup of the LPCIC. The Act also designated the ad-hoc committee memberships.

The amended Commission membership consisted of a 22-member panel. A representative of law enforcement or his designee is now selected jointly by the superintendent of the Louisiana State Police, the secretary of the Department of Public Safety and Corrections, the president of the Louisiana Association of Chiefs of Police and the president of the Louisiana Sheriffs' Association. Representatives of two national trade organizations and one state organization were added to the membership.

During the 2007 Regular Session, Act 459 abolished the Louisiana Insurance Rating Commission effective January 1, 2008, therefore eliminating their representative from the LPCIC. Act 459 provided an additional appointee for the Commissioner of Insurance. Revised Statute 22:15 is now renumbered as R.S. 22:2171 by Acts 2008, No. 415, §1, effective January 1, 2009.

Effective August 1, 2012, Act 317 of the 2012 Regular Session provided the addition of representatives to the Commission membership. The new members are the Deputy Commissioner of Consumer Advocacy-Louisiana Department of Insurance (LDI) and a representative of the Louisiana Surplus Lines Association. The Commission now consists of 23 members.

The Commission is composed of members of the Legislature, designees from the Office of the Governor, Insurance Commissioner, Attorney General, assistant secretary representing the Office of Motor Vehicles, Louisiana Workforce Commission, Louisiana Highway Safety Commission, Louisiana District Attorneys Association, along with representatives of the Independent Insurance Agents/Brokers of Louisiana, Professional Insurance Agents of Louisiana, Property Insurance Association of Louisiana, Louisiana Workers' Compensation Corporation, Property Casualty Insurers Association of America, Louisiana Association of Fire and Casualty Companies, and consumers.

#### **Louisiana Property and Casualty Insurance Commission Members as of December 2013:**

**Jeff Albright, Vice Chairman**  
Independent Insurance Agents & Brokers of Louisiana

**Lee Ann Alexander**  
PCI Representative

**Paul Buffone**  
LWCC Representative

**The Honorable Gregory Champagne**  
Law Enforcement Representative

**Louis G. Fey, Jr.**  
Professional Insurance Agents of Louisiana

**Christopher S. Haik**  
Consumer Representative, President of the Senate

**Lance "Wes" Hataway**  
Office of Workers' Comp-Louisiana Workforce Commission

**The Honorable Ronnie Johns**  
Senate Committee on Insurance

**LTC John LeBlanc**  
Louisiana Highway Safety Commission

**The Honorable Dan Morrish**  
Senate Committee on Insurance Chair

**The Honorable Kirk Talbot**  
House Committee on Insurance

**The Honorable James J. Donelon**  
Commissioner of Insurance

**Raymond Aleman, Jr.**  
Commissioner's Appointee

**J.E. Brignac, Jr.**  
LAFAC, Inc. Representative

**Stephen F. Campbell**  
LDPS, Commissioner-Office of Motor Vehicles

**The Honorable Gregory Cromer**  
House Committee on Insurance Chair

**Michael Guy**  
Attorney General's Representative

**Theodore "Ted" M. Haik, Jr., Chairman**  
Consumer Representative, Speaker of the House

**Ron Henderson**  
Deputy Commissioner of Consumer Advocacy

**B. Scott Landry**  
Louisiana Surplus Lines Association Representative

**Robert Moorman**  
Property Insurance Association of Louisiana

**Frank A. Opelka**  
Governor's Designee

**The Honorable Earl Taylor**  
Louisiana District Attorneys Association

**Staff:** Terrell B. Moss, Director  
David Evans, Insurance Specialist4/Research Analyst

### III. Meetings and Presentations

The Louisiana Property and Casualty Insurance Commission held four public meetings during this reporting period to receive information in order to discuss issues and trends that are affecting the property and casualty insurance market in the state.

Testimony was received from the commissioner of insurance, representatives of state agencies and associations, state prosecutors, law enforcement, insurance industry executives and regional representatives, and business leaders. Comments were also received from the public in attendance.

The auto ad hoc committee met to address DWI issues during this reporting period.

Agendas from this meeting period are exhibited in Appendix A of this report.

**August 20, 2013 Meeting:** A compilation of legislation enacted during the 2013 Regular Session was distributed to the membership for review. The Commission continues to recognize the impact of new legislation and its effect on the property and casualty market.

Commissioner Donelon addressed the group on the National Flood Insurance Program and the pending consequences to homeowners in Louisiana and other coastal states. He reported on his attendance at the Government Accountability Office roundtable meeting in Washington, D. C., dealing with the privatizing of flood insurance. Different viewpoints were discussed which included worldwide approaches to the problem. A difference of opinion seems to exist between primary insurers and reinsurers. Primary insurers appear to be reluctant to change the current model while reinsurers would welcome the business if a federal cap was in place similar to TRIA. The commissioner concluded his report with the actions being taken at the state's local and congressional levels.

The newly installed CEO of Louisiana Citizens Property Insurance Corporation (Citizens), Mr. David Thomas, briefed the Commission on his activities to familiarize himself with the operation and his assessment of the company. His top priorities were preparation for the hurricane season and depopulation. He determined that Citizens was ready for the next catastrophic hurricane and believed he could improve the depopulation effort. He updated the members on the transition from service providers to in-house underwriting and claims handling, as well as his plans to improve communication with insurance producers.

Presentations from Mr. Wes Hataway, Director of the Office of Workers' Compensation Administration (OWCA) with the Louisiana Workforce Commission and Mr. Paul Buffone, Senior Vice President/Chief Claims and Information Officer with Louisiana Workers' Compensation Corporation (LWCC), provided the Commission with an industry overview from their perspectives.

OWCA – the emphasis was on the success of the following initiatives:

- The medical treatment guidelines implemented in July 2011 have accomplished the intended result of reducing the time required to resolve treatment disputes between the treating physician and the employer, thereby getting the necessary care to the injured worker sooner.
- With fewer treatment disputes, the workers' compensation court caseload was reduced resulting in more timely resolutions.
- Leveraged dedicated funds to secure federal grants for expanded vocational rehabilitation.
- Established Workplace Safety Task Force to identify and reduce dangerous workforce practices.
- Established Youth Safety Program to provide educational outreach to trade and high schools.
- Explained how Act 337 of the 2013 Session has the potential to channel workers' compensation disputes into a more expedited process.

LWCC – acknowledged the success of the medical treatment guidelines, utilization review rules and continuing decline in the frequency of workers' compensation claims. The emphasis was on issues that make Louisiana a high claim cost state:

- Louisiana is one of the few remaining wage loss states rather than a schedule state.
- It takes longer to resolve temporary and permanent partial disability claims in a wage loss state and it takes longer in Louisiana than any other state.
- A dispute over retroactive application of the medical treatment guidelines will have to be determined by the courts.
- High pharmacy utilization and costs.

Mr. Curt Eysink, Executive Director of the Louisiana Workforce Commission, provided a presentation intended to alert the Commission to the demands that will be made on all facets of the insurance industry by the impending \$60 billion worth of industrial construction in the state.

A presentation was given by Mr. Scott Landry, the LPCIC representative of the Surplus Lines Association, to the other members that included:

- The characteristics and participation of the surplus lines industry in the insurance market of the state.
- An explanation of how Act 203 of the 2013 Session will bring Louisiana into compliance with the qualifications imposed by federal legislation (Dodd-Frank).
- The act also eliminates our state requirement for a producer to attempt to place personal lines insurance in the admitted market before placement in the surplus lines market.

**October 24, 2013 Meeting:** Various DWI issues were brought before the Auto Ad Hoc Committee for discussion and informational purposes.

Mr. Joel Chaisson, II, District Attorney of the 29<sup>th</sup> Judicial District and his Assistant District Attorney, Mr. Bill Starr, expressed concern about DWI offenders who plead an Article 894, and then receive an unrestricted driver's license before completing probation. They have an example of such a situation that resulted in a multiple-fatality crash in their jurisdiction. It was determined that this situation was the unintended consequence due to a 2009 change in the law regarding the reporting requirements of an Article 894. The prosecutors encouraged the committee to support changes that would prevent similar situations in the future.

Lt. George Breedy, a drug recognition expert (DRE) and law enforcement officer from the St. Charles Parish Sheriff's Office reinforced the concerns of the prosecutors and the need to increase arrests for drug impaired driving. He noted that approximately fifty percent of DWI arrests are also under the influence of drugs. This growing trend reinforces the need for training more experts in the field of drug recognition and enforcement.

Mr. Kenneth Trull, Deputy Director of the Louisiana Highway Safety Commission (LHSC), reported on the electronic DWI arrest report system. This will replace the cumbersome paper system with a more accurate and timely computerized one for case reporting, improving efficiency for the arresting officers as well as the prosecutors. The pilot program will be conducted in Calcasieu, East Baton Rouge, and Lafourche parishes. He reiterated the importance of having drug recognition experts in the fight against impaired driving. The LHSC has pledged funding for two DRE classes per year until the state has an adequate number of these enforcement experts.

**December 5, 2013 Meeting:** Auto insurance issues continue to remain in the forefront of the LPCIC focus. Four major insurers responded to the request of the Commission to discuss the issues that continue to plague the private passenger auto insurance market in the state.

The company representatives attending were Mr. Noel Young, Regional Counsel with Allstate; Mr. Martin Rarick, Product Manager-Louisiana with Progressive; Mr. Bo Gilbert, Assistant Vice President-Midwest Region, Government and Industry Relations with USAA; and Mr. Martin Cantu, Claims Section Manager with State Farm. The following is a compilation of the principal issues presented by one or more of the representatives:

- Jury Trial Threshold
- Collateral Source Rule
- Direct Action Statute
- Prior Approval of Rates
- Uninsured Motorists
- Mandatory Impoundment
- Insurance Verification Program
- Court's Discretion to Restrict Evidence
- Litigation Funding
- E-Commerce
- Pure Comparative Negligence
- Judicial Interest

- General Damages/Minor Soft-Tissue Injury
- Public Education

A brief update on telematics (usage based insurance) was presented to the Commission by the Progressive representative. Louisiana drivers who have chosen to have their driving behavior monitored have received an average discount of \$272 or about ten percent. Good driving behavior could be awarded up to a thirty percent discount under this program.

Mr. J. E. Brignac, Jr., Founding Director of Imperial Fire and Casualty Insurance Company, also representing LAFAC, Inc. on the Commission, expressed concern that a recent Louisiana Supreme Court ruling extended uninsured motorist coverage to guest passengers that were intended to be excluded by his company's policy language. He urged that action be taken to restore uninsured motorist coverage to the exclusive benefit of the first party policyholder.

**January 23, 2014 Meeting:** The LPCIC met to discuss and vote on legislative recommendations presented to the membership. Several of the members submitted ideas based upon their expertise in the automotive insurance field and other ideas were formulated from testimony received during commission meetings.

After thorough deliberation, the actions taken by the Commission are listed below as recommendations and are followed by a list of recommended study issues.

**The Louisiana Property and Casualty Insurance Commission submit these recommendations for consideration and strongly endorse legislative action in support of these concepts.**

#### **IV. Legislative Recommendations for the 2014 Regular Session**

##### **1. Re-examine driver's license reinstatement based on Article 894 pleading.**

A 2009 change (Acts 2009 No. 366) in the reporting requirements law (La. R.S. 32:853) had the unintended consequences of restoring an unrestricted driver's license to DWI offenders pleading Article 894, prior to completing their probation. The present procedure should be amended to restore driving privileges by action of the court.

##### **2. Lower the jury trial threshold from \$50,000 to \$10,000.**

Louisiana is one of only 14 states with a civil jury trial threshold and, at \$50,000, has the highest threshold. Maryland comes in second at \$15,000. Lawsuits below this amount are heard by a judge instead of a jury. From the insurance companies' perspective this restricted access to jury trials results in fewer out-of-court settlements, more lawsuits, and higher and more frequent awards to the plaintiff. Lower loss trend projections for insurers should in effect reduce premiums for consumers.

**3. Bar “pain and suffering” for uninsured motorists.**

Louisiana has a strong “no pay, no play” law that bars an uninsured motorist from recovering the first \$15,000 in bodily injury. Barring the uninsured from collecting for “pain and suffering” as California has done would further discourage the practice of being uninsured. Recovery for the uninsured would be limited to the actual damages of medical and lost wages above \$15,000.

**4. Prohibit or regulate litigation funding by third party vendors/lenders.**

Litigation funding takes place when a third party vendor/lending company advances funds to a plaintiff in return for receiving a portion of any settlement. The consumer/plaintiff is not obligated to repay any amount if the lawsuit is lost; however, if an award is received it may be subject to high interest rates and fees that may not have been properly disclosed. The insurance industry is concerned that litigation funding discourages reasonable settlements and increases litigation. The question is whether it needs defined regulation as either a loan or as an investment, or should be prohibited entirely. NCOIL is actively examining this issue also. This recommendation does not intend to interfere with any attorney/client relationship permitted under current law.

**5. Restrict accrual of pre-judgment judicial interest except when required by contract.**

Louisiana allows for both pre-judgment and post-judgment judicial interest. Pre-judgment interest laws are intended to encourage the defendant to settle and to compensate the injured plaintiff for loss use of the settlement during the legal process. While Louisiana does have a “floating” rather than a fixed rate, some states prohibit the accrual of pre-judgment interest on personal injury claims before a judgment amount has been rendered. However, industry feels it punishes them as the defendant for delays they may not have caused and prolongs the settlement process. In the event an insurer fails to settle a claim promptly, once liability and damages have become reasonably clear, there are other remedies, at law, available to the injured plaintiff besides pre-judgment interest.

**6. Repeal the direct action statute except in cases where the defendant cannot be served.**

Louisiana is one of two states with a direct action statute. This law allows an injured person to sue the insurance company of the person or entity who caused their injury directly, in addition to the at-fault person. Industry contends that by the company being directly named as a defendant in a lawsuit, a jury is more likely to find fault and award larger verdicts than if the at-fault individual alone was being judged. The repeal of this statute may result in less auto accident-related lawsuits and reduced claims costs.

**7. Amend Louisiana’s UM statute to clarify that UM/UIM claims are to be settled just like BI claims.**

Louisiana law distinguishes a first party claim from a third party claim. Uninsured motorist coverage is a first party coverage and as such, the undisputed amount of a settlement must be offered to the claimant. Under third party bodily injury claims, there is no obligation to offer any amount until an agreement is reached on a settlement value or a judgment has been entered. This partial payment practice in UM claims may lead to more lawsuits, drives

up the value of claims, and encourages pursuit of bad faith claims due to disputes over these “unqualified tenders.”

**8. Amend Louisiana’s statute to expand the prohibition on the use of hand held cell phones for all drivers.**

Currently the law prohibits novice and school bus drivers from using cell phones except in emergency situations. Studies show that cell phone use can distract a driver’s attention equal to that of an impaired driver. Twelve states (CA, CT, DE, HI, IL, MD, NJ, NY, OR, UT, and WA) and the District of Columbia have prohibited all drivers from using hand held cell phones. As of October 2013, all of these jurisdictions enforce the ban as a primary offense. California experienced an overall 22 percent decrease in traffic fatalities in the two years following its hand held cell phone ban in 2008. Deaths specifically attributed to cell phone use decreased 47 percent.

**9. Reinstate the UM statute as a “first party coverage.”**

A recent Louisiana Supreme Court decision extended uninsured motorist coverage to the guest passengers even though the owner’s policy excluded coverage to them under its UM provision. The policyholder contracts and pays for this limited pool of protection and should not be forced to have it diminished by third party guest passenger claimants. Any insurance company would still be free to expand their UM coverage to include guest passengers by contract with their policyholders.

**V. Recommended Study Issues**

- Modify the collateral source rule.
- Limit court’s discretion to restrict evidence.
- Fully implement electronic commerce by amending insurance laws that require delivery by first-class or certified mail or that require actual signatures.
- Educate public to improve claim behavior.
- Clarify UM rejection form rules.
- Appointed judges versus the current system of elected judges.
- Ban TV advertising by plaintiff attorneys aimed at auto accident victims.

The Louisiana Property and Casualty Insurance Commission will continue to study various property and casualty issues throughout the year. Striving for affordability and availability in a competitive market is a primary concern.

The Commission will continue to monitor state and federal legislation affecting property and casualty insurance.

The Commission will continue to attend the various meetings and conferences across the state that promote and advance all of these issues.

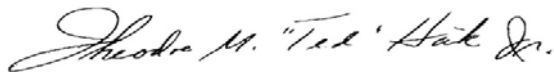


## VI. Final Note

**We trust this report will have some impact on the legislation in the 2014 Regular Legislative Session.**

**The members and staff of the Louisiana Property and Casualty Insurance Commission are charged with reviewing property and casualty issues and developing concepts that will promote a healthy, competitive insurance marketplace in Louisiana.**

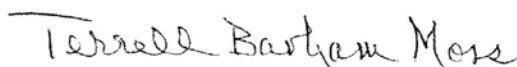
**The Louisiana Property and Casualty Insurance Commission is committed to working with the Department of Insurance, the Legislature, the insurance industry and all interested stakeholders to increase the affordability and availability of insurance in the state of Louisiana.**



**Theodore M. "Ted" Haik, Jr.  
Chairman**



**Jeff Albright  
Vice Chairman**



**Terrell Barham Moss  
Director**

This report is available on the Louisiana Department of Insurance website  
[www.ldi.la.gov](http://www.ldi.la.gov)

## **VII. Appendix A: Meeting Agendas**

### **August 20, 2013 – Full Commission Meeting:**

#### **Agenda**

- I. Call to Order**  
Ted Haik, Chairman
- II. Roll Call**
- III. Remarks on the National Flood Insurance Program and Recent Events**  
Jim Donelon - Commissioner of Insurance
- IV. LA Citizens Property Insurance Corporation Update**  
David Thomas - CEO
- V. Workers' Compensation Overview**  
Wes Hataway – Director, Office of Workers' Compensation, LA Workforce Commission  
Paul Buffone – Sr. Vice President/Chief Claims & Information Officer, LWCC
- VI. Presentation: “Expected Economic Growth of the Construction Industry in Louisiana and its effect on Business and Insurance”**  
Curt Eysink – Executive Director, LA Workforce Commission
- VII. Surplus Lines Overview and Market Update**  
B. Scott Landry- Vice President, Lane & Associates, Inc.
- VIII. Public Comments**
- IX. Adjournment**

### **October 24, 2013 – Auto Ad Hoc Committee/LPCIC Meeting:**

#### **Agenda**

- I. Call to Order**  
J. E. Brignac, Jr. - Chairman
- II. Roll Call**
- III. Discussion on Various DWI Issues**  
Joel Chaisson, II – District Attorney, 29<sup>th</sup> Judicial District  
Bill Starr – Assistant District Attorney, 29<sup>th</sup> Judicial District  
Lt. George Breedy – St. Charles Parish Sheriff's Office
- IV. Report on Electronic DWI Arrest Report System**  
Kenneth Trull – Deputy Director, LA Highway Safety Commission
- V. Public Comments**
- VI. Adjournment**

### **December 5, 2013 – Full Commission Meeting:**

#### **Agenda**

- I. Call to Order**  
Ted Haik, Chairman
- II. Roll Call**
- III. Discussion on Auto Insurance Issues**  
Noel Young – Regional Counsel, Allstate

Martin Rarick – Product Manager-LA, Progressive  
Bo Gilbert – Asst. VP Midwest Region, Government & Industry Relations, USAA  
Martin Cantu – Claims Section Manager, State Farm

**IV. U M Issues relating to the LA Supreme Court Ruling/2012**

J. E. Brignac, Jr. – Founding Director, Imperial Fire & Casualty Insurance Co.

**V. Public Comments**

**VI. Adjournment**

**January 23, 2014 - Full Commission Meeting:**

**Final Agenda**

**I. Call to Order**

Ted Haik, Chairman

**II. Roll Call**

**III. Discussion and Voting on Recommendations by Membership**

Ted Haik, Facilitator

Lou Fey

J. E. Brignac, Jr.

**IV. Public Comments**

**V. Adjournment**

## VIII. Appendix B: Minority Reports

Submitted by Earl Taylor, District Attorney, 27<sup>th</sup> Judicial District  
Louisiana District Attorneys Association Representative on the LPCIC



**EARL TAYLOR, DISTRICT ATTORNEY**  
ST. LANDRY PARISH ★ 27TH JUDICIAL DISTRICT  
P. O. Drawer 1968 ★ Opelousas, LA 70571-1968  
337-948-3041 ★ Fax 337-942-4663  
www.the-good-guys.org



January 30, 2014

Mr. Theodore M. Haik  
Louisiana Property and Casualty Insurance Commission  
Louisiana Department of Insurance  
P.O. Box 94214  
Baton Rouge, Louisiana 70804

Dear Chairman Haik:

Thank you for allowing me to include this statement and supporting information regarding some of the recommendations for legislative action that were voted upon at the January 23, 2014, meeting of the Louisiana Property and Casualty Commission.

Specifically, I want to be certain that opposition to the enumerated issues below is noted and called to the attention of legislators. Our elected lawmakers must be informed about the adverse impact that such proposals could have upon their constituents, their communities, our courts and the state of Louisiana.

1. Repeal of Louisiana's Direct Action statute
2. Reduce the jury trial monetary threshold
3. Statute of Limitations for civil law personal injury petitions

I respectfully request that this letter and all attached supporting information in its entirety be included in the Commission's report to the Legislature. I welcome the opportunity to further discuss these issues.

Sincerely,

Earl Taylor  
District Attorney, St. Landry Parish

## Direct Action

### Louisiana's Direct Action Statute Protects Citizens, Eliminates Multiple Lawsuits

What does Louisiana's direct action statute have to do with the cost of automobile insurance rates? Nothing.

Wisconsin, like Louisiana, has an expansive direct action statute; yet, the average expenditure for automobile insurance in Wisconsin for 2013 was \$1,228, making it 41st in the nation in rates, as compared to Louisiana's average of \$2,699, or highest in the nation for the same year.<sup>1</sup> (Note that in 2009, the average annual auto insurance premium in Wisconsin was \$591 listed as 41st in a national ranking, as compared to Louisiana's average of \$1,099 listed as the third highest rates.)

The state of Maine has a "reach and apply" statute that makes the liability of every casualty insurer "absolute" whenever the loss of damage for which the insured is responsible occurs.<sup>2</sup> The average auto insurance expenditure in Maine for 2013 was \$934, ranking it as 51<sup>st</sup> in the nation.<sup>3</sup> (Note that in 2009, the average annual auto insurance premium in Maine was \$598 listed as 41<sup>st</sup> in the nation.)

Nineteen states in addition to Louisiana have some form of limited direct action, either by statute or by case law.<sup>4</sup>

The direct action statute allows Louisiana residents to directly file suit against the insurance company that will be responsible for damages caused by the insured defendant. The direct action statute does not apply only to automobile liability claims, but to any claim insured by a policy or contract of liability insurance.<sup>5</sup>

Louisiana's direct action statute does not allow an insurance company to be sued without suing the insured individuals. Amendments to the law in 1988 and 1992 protect an insurance company from being the only defendant, except in limited circumstances that are specifically stated in the law. Current law states that an insurance company may not be the sole defendant unless:

1. The insured is insolvent;
2. The insured cannot be served with the suit;
3. The suit is between parents and children or between spouses;
4. The insurer is an uninsured motorist carrier; or
5. The insured is deceased.

Louisiana's direct action statute eliminates filing several lawsuits for the same claim. If direct action is repealed, then the plaintiff will have to file one lawsuit against the person at fault and obtain a judgment, and then file another lawsuit against the insurance company that provided coverage.

Repealing direct action would increase the number of lawsuits. First, the suit against the defendant who caused the injury would be filed. Then, if the plaintiff prevails, a second suit in

the same case would need to be filed against the insurance company to recover payment for damages.

The insurance company has a legal duty to defend the insured and will, in fact, be selecting and paying the attorneys who litigate the first suit. Those same attorneys will be paid to defend the second suit, increasing litigation and court costs for both sides. Judicial efficiency suggests that the party who controls the defense of the initial suit and who will pay if the defendant is found liable should be in the lawsuit from the beginning.

Louisiana first enacted direct action legislation in 1918, almost 100 years ago. Since that time, a wealth of case law has developed to resolve questions about how and in what circumstances this law will be applied. The law functions well for all parties. A 2002 article in the *Tulane Maritime Law Journal* traces the development of Louisiana's direct action statute and the role of this statute in protecting the interests of Louisiana citizens in cases under general maritime law.<sup>6</sup>

The state's direct action law allows Louisiana residents to sue out-of-state or foreign defendants who would be difficult to serve with a lawsuit or impossible to serve when the defendant is bankrupt or insolvent.

Some who propose the repeal of direct action law argue that if jurors know an insurance company is involved in the lawsuit, they will be prejudiced against the insurer and inclined to award higher amounts of damages to plaintiffs. However, in Louisiana insurance companies already have the protection that the amount of coverage is not allowed to be disclosed in litigation.

<sup>1</sup> Insure.com, 2013

<sup>2</sup> 24-A M.R.S.A. Sect. 2903

<sup>3</sup> Insure.com, 2013

<sup>4</sup> AL, AR, CA, CO, GA, HI, IL, KS, KY, MA, MN, MO, NE, NJ, NM, NC, RI, TN, VT

<sup>5</sup> R.S. 22:1269(A)

<sup>6</sup> Jonathan C. Augustine, *Other States Should "Get with the Program" and Follow Louisiana's Lead: An Examination of Louisiana's Direct Action Statute and Its Application in the Marine Insurance Industry*, 27 Tul. Mar. L.J.109 (2002)



**Direct Action Statute: RS 22:1269**

Redesignated from R.S. 22:655 by Acts 2008, No. 415, §1, eff. Jan. 1, 2009.

§1269. Liability policy; insolvency or bankruptcy of insured and inability to effect service of citation or other process; direct action against insurer

A. No policy or contract of liability insurance shall be issued or delivered in this state, unless it contains provisions to the effect that the insolvency or bankruptcy of the insured shall not release the insurer from the payment of damages for injuries sustained or loss occasioned during the existence of the policy, and any judgment which may be rendered against the insured for which the insurer is liable which shall have become executory, shall be deemed prima facie evidence of the insolvency of the insured, and an action may thereafter be maintained within the terms and limits of the policy by the injured person, or his or her survivors, mentioned in Civil Code Art. 2315.1, or heirs against the insurer.

B.(1) The injured person or his or her survivors or heirs mentioned in Subsection A, at their option, shall have a right of direct action against the insurer within the terms and limits of the policy; and, such action may be brought against the insurer alone, or against both the insured and insurer jointly and in solido, in the parish in which the accident or injury occurred or in the parish in which an action could be brought against either the insured or the insurer under the general rules of venue prescribed by Code of Civil Procedure Art. 42 only. However, such action may be brought against the insurer alone only when:

- (a) The insured has been adjudged a bankrupt by a court of competent jurisdiction or when proceedings to adjudge an insured a bankrupt have been commenced before a court of competent jurisdiction;
- (b) The insured is insolvent;
- (c) Service of citation or other process cannot be made on the insured;
- (d) When the cause of action is for damages as a result of an offense or quasi-offense between children and their parents or between married persons;
- (e) When the insurer is an uninsured motorist carrier; or
- (f) The insured is deceased.

(2) This right of direct action shall exist whether or not the policy of insurance sued upon was written or delivered in the state of Louisiana and whether or not such policy contains a provision forbidding such direct action, provided the accident or injury occurred within the state of Louisiana. Nothing contained in this Section shall be construed to affect the provisions of the policy or contract if such provisions are not in violation of the laws of this state.

C. It is the intent of this Section that any action brought under the provisions of this Section shall be subject to all of the lawful conditions of the policy or contract and the defenses which could be urged by the insurer to a direct action brought by the insured, provided the terms and conditions of such policy or contract are not in violation of the laws of this state.

D. It is also the intent of this Section that all liability policies within their terms and limits are executed for the benefit of all injured persons and their survivors or heirs to whom the insured is liable; and, that it is the purpose of all liability policies to give protection and coverage to all insureds, whether they are named insured or additional insureds under the omnibus clause, for any legal liability said insured may have as or for a tort-feasor within the terms and limits of said policy.

Acts 1958, No. 125. Amended by Act 1962, No. 471, §1; Acts 1988, No. 934, §1, eff. Jan. 1, 1989; Acts 1989, No. 117, §2; Acts 1992, No. 584, §1; Redesignated from R.S. 22:655 by Acts 2008, No. 415, §1, eff. Jan. 1, 2009.

NOTE: Former R.S. 22:1269 redesignated as R.S. 22:443 by Acts 2008, No. 415, §1, eff. Jan. 1, 2009.

**DIRECT ACTION -- LEGISLATIVE PROPOSALS 2012**

HB 201 Seabaugh

Provides relative to direct actions by third parties against insurers  
(copy of the bill follows)

SB 441 Nevers

Provides relative to civil actions against insurers  
(copy of the bill follows)



Regular Session, 2012

HOUSE BILL NO. 201

BY REPRESENTATIVE SEABAUGH

INSURANCE/LIABILITY: Provides relative to direct actions by third parties against insurers

1 AN ACT

2 To amend and reenact R.S. 22:1269(B), relative to actions initiated against motor vehicle

3 liability insurers by third parties; to limit the circumstances in which a third party

4 may take direct action against an insurer; and to provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. R.S. 22:1269(B) is hereby amended and reenacted to read as follows:

7 §1269. Liability policy; insolvency or bankruptcy of insured and inability to effect

8 service of citation or other process; direct action against insurer

9 \* \* \*

10 B.(1) The injured person or his survivors or heirs mentioned in Subsection

11 A of this Section, ~~at their option,~~ shall have a right of direct action against the insurer

12 ~~within the terms and limits of the policy; and, such action may be brought against the~~

13 ~~insurer alone, or against both the insured and insurer jointly and in solido, in the~~

14 ~~parish in which the accident or injury occurred or in the parish in which an action~~

15 ~~could be brought against either the insured or the insurer under the general rules of~~

16 ~~venue prescribed by Code of Civil Procedure Art. 42 only; however, such action may~~

17 ~~be brought against the insurer alone~~ only when at least one of the following applies:

18 (a) The insured has been adjudged bankrupt by a court of competent

19 jurisdiction or when proceedings to adjudge an insured bankrupt have been

20 commenced before a court of competent jurisdiction.

- 1 (b) ~~The insured is insolvent.~~
- 2 (c) ~~Service of citation or other process cannot be made on the insured.~~
- 3 (d) When the cause of action is for damages as a result of an offense or quasi-
- 4 offense between children and their parents or between married persons.
- 5 (e) ~~When the insurer is an uninsured motorist carrier.~~
- 6 (f)(c) The insured is deceased.
- 7 (2) This right of direct action shall exist whether or not the policy of
- 8 insurance sued upon was written or delivered in the state of Louisiana and whether
- 9 or not such policy contains a provision forbidding such direct action, provided the
- 10 accident or injury occurred within the state of Louisiana: may be brought against the
- 11 insurer alone in the parish in which the accident or injury occurred or in the parish
- 12 in which an action could be brought against either the insured or the insurer under
- 13 the general rules of venue prescribed by Code of Civil Procedure Article 42 only.
- 14 Nothing contained in this Section shall be construed to affect the provisions of the
- 15 policy or contract if such provisions are not in violation of the laws of this state.
- 16 (3) When the circumstances enumerated in Paragraph (1) of this Subsection
- 17 do not apply, neither the injured person nor the survivors or heirs mentioned in
- 18 Subsection A of this Section shall have a right of direct action against the insurer.
- 19 The injured person or his survivor or heirs shall bring an action against the insured,
- 20 wherein a court of competent jurisdiction may render a finding of liability and
- 21 damages against the insured. Nothing contained in this Section shall be construed to
- 22 affect the insured's right to enforce the provisions of the policy or contract against
- 23 the insurer.
- 24 \* \* \*

## DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Seabaugh

HB No. 201

**Abstract:** Limits an injured third party's right of direct action against an insurer to certain exceptions; in the absence of these exceptions, the injured third party must take legal action against the insured party.

Present law provides that a policy or contract of liability insurance must provide that the insolvency or bankruptcy of the insured will not release the insurer from its duty to pay damages.

Proposed law retains present law.

Present law provides that an injured third party has the right to take direct legal action against the insurer if that right is provided for within the terms and limits of the policy. The third party has the right to sue both the insurer and the insured jointly and in solido, or he may sue only the insurer alone if at least one of the following circumstances apply:

- (1) The insured has been adjudged bankrupt or bankruptcy proceedings have commenced in a court of competent jurisdiction.
- (2) The insured is insolvent.
- (3) Service of citation or other process cannot be made on the insured.
- (4) The cause of action is for damages as a result of an offense or quasi-offense between children and their parents or between married persons.
- (5) The insurer is an uninsured motorist carrier.
- (6) The insured is deceased.

Proposed law retains the portion of present law that allows for any additional terms in a policy which do not violate state law to remain unaffected; otherwise, limits the circumstances in which a third party may take direct action against an insurer only to the following three circumstances:

- (1) The insured has been adjudged bankrupt or bankruptcy proceedings have commenced in a court of competent jurisdiction.
- (2) The cause of action is for damages as a result of an offense or quasi-offense between children and their parents or between married persons.
- (3) The insured is deceased.

Proposed law provides that if the circumstances do not meet one of the exceptions provided for in present law, the third party does not have a right of direct action against the insured. The third party must sue the insured to obtain a judgment of liability and damages.

Proposed law clarifies that the insured's right to enforce the terms of the policy against the insurer remains unaffected.

(Amends R.S. 22:1269(B))

Regular Session, 2012

SENATE BILL NO. 441

BY SENATOR NEVERS

LIABILITY. Provides relative to civil actions against insurers. (8/1/12)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17

AN ACT

To amend and reenact R.S. 22:1269(B)(1)(introductory paragraph), relative to insurance and liability; to provide relative to civil actions against insurers; to provide for rights of injured persons or their survivors; to provide for certain terms, conditions and procedures; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 22:1269(B)(1)(introductory paragraph) is hereby amended and re-enacted to read as follows:

§1269. Liability policy; insolvency or bankruptcy of insured and inability to effect service of citation or other process; direct action against insurer

\* \* \*

B.(1) The injured person or his survivors or heirs mentioned in Subsection A of this Section, ~~at their option,~~ shall have a right of direct action against the insurer within the terms and limits of the policy; and such action may be brought against the insurer alone, or against both the insured and insurer jointly and in solido, in the parish in which the accident or injury occurred or in the parish in which an action could be brought against either the insured or the insurer under the general rules of

1           venue prescribed by Code of Civil Procedure Art. 42 only; however, such action may  
2           be brought against the insurer alone when at least one of the following applies:

3                                   \*       \*       \*

---

The original instrument and the following digest, which constitutes no part  
of the legislative instrument, were prepared by Julie J. Baxter.

---

DIGEST

Nevers (SB 441)

Present law provides that an injured person or his survivors or heirs shall at their option have a right of direct action against the insurer for payment of damages for injuries sustained or loss occasioned during the existence of the policy.

Proposed law removes reference to the option of the injured party or his survivors.

Effective August 1, 2012.

(Amends R.S. 22:1269(B)(1)(intro para))



## Civil Jury Trial Monetary Threshold

Currently in Louisiana, the monetary limits of a claim must be at least \$50,000 in order for the case to be assigned to a jury trial.\*

Reducing the jury trial monetary threshold would adversely affect the court system in these ways:

- take time and resources from criminal jury resources;
- add to a backlog of a cases already on court dockets;
- put more cases on dockets that otherwise could be handled by a judge;
- increase court-related costs to local governments;
- jurors would have to be called more often to serve; and
- create more filing and document preparation by clerks of court and their staff.

The threshold for smaller cases, \$50,000 in state court and \$75,000 in federal court, represents a level at which courts can effectively manage cases in a manner that is both efficient for the system and fair to the litigants. Over the years, both the state and the federal government have raised their thresholds, considering the effect that inflation has had upon the value of a claim.

\*The \$50,000 monetary threshold is in effect, with certain exceptions enacted in 2013.

HB 589 Abramson – Act 391, effective August 1, 2013; Amends C.C.P. Art. 1732

1. Specifies that the pleading, depositions, answers to interrogatories and admissions and affidavits that the court considers in ruling on a motion for summary judgment be admitted for the purposes of the motion for summary judgment.
2. Clarifies present law by stating that summary judgment on a particular issue may be rendered in favor of one or more parties even if the granting of the summary judgment does not dispose of the case as to that party or parties.
3. Provides that evidence cited in and attached to the motion for summary judgment or memorandum filed by an adverse party is deemed admitted for the purposes of the summary judgment unless it has been excluded in response to an objection.
4. Provides that a party may retain the right to trial by jury even if the petitioner has stipulated that the cause of action does not exceed \$50,000 when that party is entitled to trial by jury pursuant to present law and has complied with the procedural requirement for asserting that right if the stipulation has occurred less than 60 days prior to trial. Further provides that a defendant shall not be entitled to a trial by jury when a petitioner stipulates that his cause of action is less than \$50,000 as a result of a compromise or dismissal of one or more claims or parties which occurs less than 60 days prior to trial.
5. Allows an action to be terminated even when a partial judgment or partial summary judgment does not adjudicate all claims or the rights of all parties.

**The current threshold was increased from \$20,000 to \$50,000 in 1993.**

**When the Code of Civil Procedure was adopted in 1960, C.C.P. art. 1733(1) (1963) denied a jury trial, based on a monetary threshold, in "[a] suit demanding less than one thousand dollars exclusive of interest and costs."**

**Acts 1983, No. 534, the monetary threshold was increased to \$5,000.**

Louisiana State Law Institute, stated in Revision Comment (b)[excerpt]: This increase [in the monetary threshold] is appropriate in the light of the increasing cost of jury trials and is in keeping with the expanded jurisdiction of city courts and parish courts in which there is no right to a jury trial.

**Acts 1984, No. 301, increased to \$10,000**

**Acts 1987, No. 766, increased to \$20,000**

**Acts 1993, No. 661, increased to the current level of \$50,000.**

Lawsuits that claim damages of lower monetary amounts still give petitioners the right to have their claim heard in court by a judge. During the past several years, there have been repeated attempts, to lower the monetary threshold for a jury trial.



## Monetary Threshold for Civil Jury Trials

Over the past years, the Louisiana District Judges Association has opposed the lowering of monetary thresholds for civil jury trials. There are a number of reasons for our position on this issue.

First and foremost among reasons why reducing the threshold is not a sound proposal for Louisiana, it is a matter of docket management. A typical civil non-jury trial can be conducted in a day or less. A typical civil jury trial takes a minimum of two days and often more.

There are also convincing economic reasons why reducing the monetary threshold would not be beneficial to the state nor its taxpayer citizens. Present law requires posting of a cash or other bond of more than \$3,000.00 for a jury trial. The actual costs for summoning and impaneling a civil jury usually exceed this amount. Trial preparation for a jury trial is much more extensive, which results in increased litigation costs. Furthermore, many courthouses simply do not have the physical ability to host a vastly increased number of jury trials. An increased number of jury trials would further delay the completion of cases.

In addition, we as judges are on the “front line” of the jury dynamic. It is difficult enough to assemble the number of jury venires we presently utilize. To lower the jury trial monetary threshold and thereby increase the number of jury trials results in a time imposition on a greater number of citizens. Few citizens are very happy to be summoned to begin with, and would in all likelihood be even less delighted to be called to sit for a case of lesser value that otherwise easily could be accommodated as a bench trial.

Furthermore, most jurors are not compensated for their time away from work. Their absence from their jobs results in lost time and production to their employers. It seems to me that this effect of more jury trials is actually an economic disincentive for employers in Louisiana.

Proponents of reducing the monetary threshold for civil jury trials contend that such a move would attract more insurance carriers to Louisiana. I believe that this is purely conjectural and I know of no studies that support such a contention.

Judge Robert H. Morrison, III  
Louisiana District Court, 21<sup>st</sup> Judicial District  
March 2009 (updated January 2014)

We are writing to express our opposition to House Bill 343 (Ligi), House Bill 437 (Abramson) and House Bill 461 (Abramson). We also wish to express our support for House Bill 417 (James) and Senate Bill 349 (Murray).

House Bill 343 provides for access to jury trials for tort suits wherein the cause of action exceeds \$5,000. House Bill 437 authorizes the retention of a civil jury trial in certain cases even if the amount in dispute does not exceed \$50,000. House Bill 461 provides that, notwithstanding the \$50,000 limitation on jury trials, a jury trial shall be available in an action originally filed in district court if the suit could have otherwise been brought in a court of limited jurisdiction.

House Bill 417 and Senate Bill 349 provide for jury trial in cases wherein the amount in controversy is in excess of \$75,000.

Under the current law, a jury trial is available only if the amount in controversy exceeds \$50,000. This parallels the rule in the federal system.

We oppose lowering the monetary limitation for jury trials in civil cases for several reasons.

1. The lowering of monetary limitation is contrary to long established legislative policy. Since 1960, when the Code of Civil Procedure was adopted, the monetary limitation on civil jury trials has increased from \$1,000, to \$5,000, to \$10,000, to \$20,000 and finally, in 1993, to \$50,000.
2. Courts of limited jurisdiction, such as parish and municipal courts serve the vital function of relieving the burden of district courts by adjudicating smaller cases. Since 1983, the jurisdiction limits on these courts has steadily increased, allowing them to hear more cases and reduce the dockets of the district courts. In 2003 alone, there were six (6) bills enacted which increased the jurisdiction amount of City Courts up to as much as \$35,000. **Jury trial is not available in these courts of limited jurisdiction.** Therefore, the number of cases which could be adjudicated in these courts would drastically decline.
3. **Jury trials are expensive.** A bond must be posted. The effect of allowing jury trials in small claims is to deny access to the justice system for many people who already struggle to pay court costs, even in courts of limited jurisdiction.
4. **Reducing the monetary limitation will result in longer court dockets, clogging the civil courts with cases that could be otherwise handled by a judge, creating a backlog for cases already on court dockets.**
5. **Lowering the threshold would result in more work for court personnel.** The costs of filing are covered in part by litigants' filing fees, but state and parish governments bear the cost of salaries and overhead for the judicial system. The only way to avoid further delaying and clogging of court dockets if jury trials for smaller claims are allowed is to add more courtroom space and additional judges and court personnel.

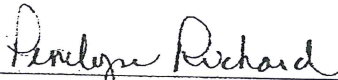
6. All cases will take longer to go to trial. In all but the largest parishes, civil and criminal dockets are head by the same judge. Increasing the number of jury trials means more delays in setting not only civil, but criminal trials as well.

7. Citizens will be called more often to jury duty. Here in Cameron Parish, we often have great difficulty impaneling a jury 10 times a year. The amount paid to jurors in no way compensates a working person who loses time from work or who must pay a sitter to care for children or elderly family members while serving on a jury. This is an unfair sacrifice to request from our citizens.

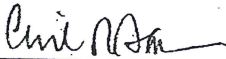
The proponents of these bills to lower the monetary threshold are dissatisfied with the results they have obtained from our elected judges and wish to deny the average citizen and accident victim the right to have their claim heard fairly and promptly. Increasing the jury threshold allows courts to manage cases in a manner that is efficient for the system and fair to litigants. Through the years, both the state and the federal governments have raised their thresholds in consideration of the effect that inflation has had upon the value of a claim.

We hope that you will give our position your serious consideration. This is an important issue to all Louisiana citizens.

Sincerely yours,



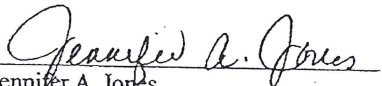
Judge Penelope Q. Richard  
38<sup>th</sup> Judicial District Court  
Cameron Parish, Louisiana



Hon. Cecil R. Sanner, District Attorney  
38<sup>th</sup> Judicial District  
Cameron Parish, Louisiana



Hon. Carl E. Broussard, Clerk of Court  
38<sup>th</sup> Judicial District  
Cameron Parish, Louisiana



Jennifer A. Jones  
First Assistant District Attorney



News Media Articles (bold emphasis added)

## **“Insurance Issues Intersect with Court Reforms”**

October 28, 2013; By Kelly Connelly *LaPolitics.com*

To lower auto rates, **Senate Insurance Chairman Blade Morrish, R-Jennings, said he has heard many suggestions of late for lowering the claims threshold in a jury trial.** In Louisiana, Morrish said, when two parties go to court over the damages in a car accident, the injury has to be at least \$50,000 in order for a jury to hear the case. That’s the highest threshold in the nation, followed by Maryland at \$15,000. If the damages are under that amount, a judge will make his own ruling.

**According to Jonica Coates, the director of civil justice reform at the Louisiana Association of Business and Industry, there’s no guarantee such a proposal would lower rates.** She thinks it would benefit small business owners more to be tried by a jury of their peers. “Because being tried by a jury of your peers is as American as moms and apple pie,” she said.

<http://lapolitics.com/2013/10/insurance-issues-intersect-with-court-reforms/>

---

## **House committee rejects lowering threshold for jury trials in lawsuits**

April 2, 2012; By Bill Barrow, *The Times-Picayune*

**Handing the business lobby a rare defeat, a Louisiana House committee Monday declined to lower the threshold in certain civil cases that would allow litigants to request a jury trial. ...**

**Rep. Tony Ligi, R-Metairie, proposed lowering the cap to \$15,000 in tort cases, chiefly personal injury cases. He originally filed House Bill 343 with a \$5,000 threshold, but was unable to win over his colleagues on the Civil Law and Procedure Committee, which jettisoned the idea by a 7-5 margin.**

**But several legislators, many of them lawyers, disputed Ligi's contention that a change in tort law will lower insurance rates.**

Several lawmakers countered that corporate defenders, rather than individual plaintiffs, would be the most likely to want a jury. Some cited the cost of a jury trial as a barrier for plaintiffs in smaller cases.

**Judge Robert Morrison of the 21st Judicial District warned that Ligi's bill could overwhelm the court system.**

**Rep. John Bel Edwards, D-Amite, questioned why, if the issue is a matter of choice, Ligi confined his bill only to tort cases, rather than all civil cases.**

[http://www.nola.com/politics/index.ssf/2012/04/house\\_committee\\_rejects\\_loweri.html](http://www.nola.com/politics/index.ssf/2012/04/house_committee_rejects_loweri.html)

CIVIL JURY TRIAL THRESHOLD – LEGISLATIVE PROPOSALS  
REGULAR SESSION 2012

HB 343 Ligi

Would have provided for access to jury trial for tort suits where the cause of action amounts to greater than \$5,000. (Amended to \$15,000) (copy of bill follows)

HB 598 – Act 391 Abramson and Sen. LaFleur

Provides certain exceptions to the \$50,000 jury trial monetary threshold in civil matters.  
Effective August 1, 2013 (copy of the bill follows)

HB 417 James

Would have provided for access to jury trials for tort suits where the cause of action amounts to greater than \$75,000.

HB 437 Abramson

Would have provided that if a defendant is entitled to trial by jury at the time of filing suit and had otherwise complied with the procedural requirements for asserting that right, that defendant may retain the right to a trial by jury even if the plaintiff later stipulated or otherwise admitted that the amount of the cause of action does not exceed \$50,000 exclusive of interest and costs.

HB 461 Abramson

Would have provided that if an action originally brought in district court is precluded from a jury trial based solely on the limitation provided by Subparagraph (1) of Article 1732, and such suit is subject to the concurrent jurisdiction of a city, parish or justice of the peace court, then the suit shall be triable by jury in district court if so requested by a defendant.

HCR 81 Huval

Requests the Louisiana State Law Institute to study jury trial procedures in order to create expedited or summary jury trial process and to make specific recommendations for legislation.

Regular Session, 2012

HOUSE BILL NO. 343

BY REPRESENTATIVE LIGI AND SENATOR APPEL

CIVIL/JURY TRIALS: Provides with respect to the availability of jury trials in certain civil matters

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19

AN ACT

To amend and reenact Code of Civil Procedure Article 1732, relative to limitation on jury trials; to provide relative to the amount in controversy required for a jury trial; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Code of Civil Procedure 1732 is hereby amended and reenacted to read as follows:

Art. 1732. Limitation upon jury trials

A trial by jury shall not be available in:

(1) A suit brought pursuant to the provisions of Chapter 3 of Title V of Book III of the Civil Code, where the amount of no individual petitioner's cause of action exceeds five thousand dollars exclusive of interest and costs.

~~(1)~~ (2) A suit, other than one brought pursuant to Chapter 3 of Title V of Book III of the Civil Code, where the amount of no individual petitioner's cause of action exceeds fifty thousand dollars exclusive of interest and costs.

~~(2)~~ (3) A suit on an unconditional obligation to pay a specific sum of money, unless the defense thereto is forgery, fraud, error, want, or failure of consideration.

~~(3)~~ (4) A summary, executory, probate, partition, mandamus, habeas corpus, quo warranto, injunction, concursus, workers' compensation, emancipation,

- 1           tutorship, interdiction, curatorship, filiation, annulment of marriage, or divorce
- 2           proceeding.
- 3           ~~(4)~~(5) A proceeding to determine custody, visitation, alimony, or child
- 4           support.
- 5           ~~(5)~~(6) A proceeding to review an action by an administrative or municipal
- 6           body.
- 7           ~~(6)~~(7) All cases where a jury trial is specifically denied by law.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Ligi

HB No. 343

**Abstract:** Provides for access to jury trials for tort suits where the cause of action amounts to greater than \$5,000.

Present law prohibits certain suits from being tried before a jury, including suits where no individual petitioner's cause of action exceeds \$50,000.

Proposed law retains present law and provides for tort suits, which have a cause of action amounting to greater than \$5,000, to be tried before a jury.

(Amends C.C.P. Art. 1732)

**ACT No. 391**

Regular Session, 2013

HOUSE BILL NO. 589

BY REPRESENTATIVE ABRAMSON AND SENATOR LAFLEUR

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

AN ACT

To amend and reenact Code of Civil Procedure Articles 966(B)(2), (E) and (F), 1732(1), and 1915(B) and to enact Code of Civil Procedure Article 966(G), relative to civil procedure; to provide for submission of and objections to evidence for motions for summary judgment; to provide for limitations on jury trial threshold amounts; to provide for the effect of a partial summary judgment; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Code of Civil Procedure Articles 966(B)(2), (E) and (F), 1732(1), and 1915(B) are hereby amended and reenacted and Code of Civil Procedure Articles 966(G) is hereby enacted to read as follows:

Art. 966. Motion for summary judgment; procedure

\* \* \*

B.

\* \* \*

(2) The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions, together with the affidavits, if any, admitted for purposes of the motion for summary judgment, show that there is no genuine issue as to material fact, and that mover is entitled to judgment as a matter of law. If the motion for summary judgment is denied, the court should provide reasons for the denial on the record, either orally upon rendition or in writing sua sponte or upon request of a party within ten days of rendition.

\* \* \*



1 E.(†) A summary judgment may be rendered dispositive of a particular issue,  
 2 theory of recovery, cause of action, or defense, in favor of one or more parties, even  
 3 though the granting of the summary judgment does not dispose of the entire case as  
 4 to that party or parties ; ~~however, a~~

5 F.(1) A summary judgment ~~shall~~ may be rendered or affirmed only as to  
 6 those issues set forth in the motion under consideration by the court at that time.

7 (2) ~~Only evidence admitted for purposes of~~ Evidence cited in and attached  
 8 to the motion for summary judgment shall or memorandum filed by an adverse party  
 9 is deemed admitted for purposes of the motion for summary judgment unless  
 10 excluded in response to an objection made in accordance with Subparagraph (3) of  
 11 this Paragraph. Only evidence admitted for purposes of the motion for summary  
 12 judgment may be considered by the court in its ruling on the motion.

13 (3) Objections to evidence in support of or in opposition to a motion for  
 14 summary judgment may be raised in memorandum or written motion to strike stating  
 15 the specific grounds therefor.

16 F.G.(1) When the court grants a motion for summary judgment in  
 17 accordance with the provisions of this Article, that a party or nonparty is not  
 18 negligent, not at fault, or did not cause, whether in whole or in part, the injury or  
 19 harm alleged, that party or nonparty shall not be considered in any subsequent  
 20 allocation of fault. Evidence shall not be admitted at trial to establish the fault of that  
 21 party or nonparty nor shall the issue be submitted to the jury nor included on the jury  
 22 verdict form. This Paragraph shall not apply when a summary judgment is granted  
 23 solely on the basis of the successful assertion of an affirmative defense in accordance  
 24 with Article 1005, except for negligence or fault.

25 (2) If the provisions of this Paragraph are applicable to the summary  
 26 judgment, the court shall so specify in the judgment. If the court fails to specify that  
 27 the provisions of this Paragraph are applicable, then the provisions of this Paragraph  
 28 shall not apply to the judgment.

29 \* \* \*

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 Art. 1732. Limitation upon jury trials

2 A trial by jury shall not be available in:

3 (1) A suit where the amount of no individual petitioner's cause of action  
4 exceeds fifty thousand dollars exclusive of interest and costs, except as follows:

5 (a) If an individual petitioner stipulates or otherwise judicially admits sixty  
6 days or more prior to trial that the amount of the individual petitioner's cause of  
7 action does not exceed fifty thousand dollars exclusive of interest and costs, a  
8 defendant shall not be entitled to a trial by jury.

9 (b) If an individual petitioner stipulates or otherwise judicially admits for the  
10 first time less than sixty days prior to trial that the amount of the individual  
11 petitioner's cause of action does not exceed fifty thousand dollars exclusive of  
12 interest and costs, any other party may retain the right to a trial by jury if that party  
13 is entitled to a trial by jury pursuant to this Article and has otherwise complied with  
14 the procedural requirements for obtaining a trial by jury.

15 (c) Notwithstanding Subsubparagraphs (a) and (b) of this Subparagraph, if,  
16 as a result of a compromise or dismissal of one or more claims or parties which  
17 occurs less than 60 days prior to trial, an individual petitioner stipulates or otherwise  
18 judicially admits that the amount of the individual petitioner's cause of action does  
19 not exceed fifty thousand dollars exclusive of interest and costs, a defendant shall not  
20 be entitled to a trial by jury.

21 \* \* \*

22 Art. 1915. Partial final judgment; partial judgment; partial exception; partial  
23 summary judgment

24 \* \* \*

25 B.(1) When a court renders a partial judgment or partial summary judgment  
26 or sustains an exception in part, as to one or more but less than all of the claims,  
27 demands, issues, or theories against a party, whether in an original demand,  
28 reconventional demand, cross-claim, ~~third party~~ third-party claim, or intervention,  
29 the judgment shall not constitute a final judgment unless it is designated as a final

1 judgment by the court after an express determination that there is no just reason for  
2 delay.

3 (2) In the absence of such a determination and designation, any such order  
4 or decision ~~which adjudicates fewer than all claims or the rights and liabilities of~~  
5 ~~fewer than all the parties, shall not terminate the action as to any of the claims or~~  
6 ~~parties and~~ shall not constitute a final judgment for the purpose of an immediate  
7 appeal. Any such order or decision issued and may be revised at any time prior to  
8 rendition of the judgment adjudicating all the claims and the rights and liabilities of  
9 all the parties.

10 \* \* \*

\_\_\_\_\_  
SPEAKER OF THE HOUSE OF REPRESENTATIVES

\_\_\_\_\_  
PRESIDENT OF THE SENATE

\_\_\_\_\_  
GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_

## Statute of Limitations

A statute of limitations, also known as a legal prescriptive period, is the time allowed from when an incident occurs to the deadline for filing a related legal claim. The lengths of prescriptive periods vary from state to state. Louisiana has a one-year prescriptive period for filing personal injury claims and a two-year prescriptive period for filing a lawsuit for injuries resulting from violent crimes.

Louisiana is only one of three states (Kentucky, Louisiana, Tennessee) that have a one-year prescriptive period for personal injuries. This amount of time is insufficient and has several negative repercussions:

- Many claims are complex and a one-year prescriptive period is not long enough to adequately gather evidence, request and receive records and prepare a case. Louisiana's law, which is much more restrictive than filing periods allowed in other states, does not serve the best interest of citizens whose meritorious claims essentially get "shut out" when prescription expires. This especially is a matter of concern for individuals who are undergoing medical treatment and require more than one year to recover from injuries. For these citizens, the current legal prescription period is simply too short. They are forced into filing a lawsuit because at the end of one year the extent of their recovery remains unclear or unresolved. Will they be able to be employed? What are the anticipated expenses of continued treatment? What limitations do they face?
- More consideration is due to citizens who have a valid legal claim but are denied the right of access to justice because their injury required longer than one year for evidence to be compiled.
- Increasing the length of prescriptive period can actually reduce the number of lawsuits filed. Individuals sometimes are forced into filing a lawsuit simply as a placeholder in order to get a claim filed before the prescriptive period expires. Once the prescriptive period runs out, the individual loses the right to file a legal claim.
- Louisiana's one-year prescriptive period favors the wrongdoer and his insurance company, not the person who is injured.



**COMPARISON OF STATES' STATUTE OF LIMITATIONS**      Civil Law – Personal Injury

State	Statute of Limitations	State Law
Alabama	2 years	Ala. Code Sec. 6-2-38
Alaska	2 years	Alaska Stat. Sec. 9.10.070
Arizona	2 years	Ariz. Rev. Stat. Sec. 12-542
Arkansas	2 years	Ark. Stat. Sec. 16-114-203
California	2 years	Cal. Code of Civ. Proc. Sec. 335.1
Colorado	2 years	Colo. Rev. Stat. Sec. 13-80-102
Connecticut	2 years	Conn. Gen. State. Sec. 52-584
Delaware	2 years	Del. Code Ann. Title 10, Sec. 8119
District of Columbia	3 years	D.C. Code Ann. Sec. 12-301
Florida	4 years	Fla. Stat. Ann. Sec. 95.11
Georgia	2 years	Ga. Code Ann. Sec. 9-3-33
Hawaii	2 years	Haw. Rev. Stat. Sec. 657.7
Idaho	2 years	Idaho Code Sec. 5-219
Illinois	2 years	Ill. Ann. State. Ch. 735, Art. 5, Sec. 13-202
Indiana	2 years	Ind. Code Ann. Sec. 34-11-2-4
Iowa	2 years	Iowa Code Ann. Sec. 614.1
Kansas	2 years	Kan. Stat. Ann. Sec. 60-513
Kentucky	1 year	Ky. Rev. Stat. Sec. 413.140
Louisiana	1 year	La. Civ. Code Ann. Art. 3492
Maine	6 years	Maine Rev. Stat. Ann. Title 14, Ch. 205, Sec. 752
Maryland	3 years	Md. Ann. Code Sec. 5-101
Massachusetts	3 years	Mass. Gen. Laws, Art. 260, Secs. 2A, 4
Michigan	3 years	Mich. Comp Laws Sec. 600.5805(9)
Minnesota	2 years	Minn. Stat. Ann. Sec. 541.05, 541.07
Mississippi	3 years	Miss. Code Ann. Sec. 15-1-49
Missouri	5 years	Missouri Ann. Stat. Title 35, Sec. 516.120
Montana	3 years	Mont. Code Ann. Sec. 27-2-204, 27-2-207
Nebraska	4 years	Neb. Rev. Stat. Sec. 25-207
Nevada	2 years	Nev. Rev. Stat. Sec 11.190
New Hampshire	3 years	N.H. Rev. State. Sec. 508.4
New Jersey	2 years	N.J. Stat. Ann. Sec. 2A:14-2
New Mexico	3 years	N.M. Stat. Ann. Sec. 37-1-8
New York	3 years	N.Y. Civ. Prac. R. Sec. 214
North Carolina	3 years	N.C. Gen. Stat. Sec. 1-52
North Dakota	6 years (2/wrongful death)	N.D. Cent. Code Sec. 28-01-16, 28-01-18
Ohio	2 years	Ohio Rev. Code Sec. 2305.10
Oklahoma	2 years	Okla. Stat. Ann. Title 12, Sec. 95
Oregon	2 years	Ore. Rev. Stat. Sec. 12.110
Pennsylvania	2 years	42 Pa. Con. Stat. Sec. 5524
Rhode Island	3 years	R.I. Gen. Laws Sec. 9-1-14
South Carolina	3 years	S.C. Code Ann. Sec. 15-3-530
South Dakota	3 years	S.D. Comp. Laws Ann. Sec. 15-2-14
Tennessee	1 year	Tenn. Code Ann. Sec. 28-3-104
Texas	2 years	Tex. Civ. Prac. & Rem. Code Sec. 16.003
Utah	4 years	Utah Code Ann. Sec. 78-12-28
Vermont	3 years	Vt. Stat. Ann. Title 12, Sec. 512
Virginia	2 years	Va. Code Sec. 8.01-243
Washington	3 years	Wa. Rev. Code Ann. Sec. 4.16.080
West Virginia	2 years	W. Va. Code Sec. 55-2-12
Wisconsin	3 years	Wisc. Stat. Ann. Sec. 893.54
Wyoming	4 years	Wy. Stat. Ann. Sec. 1-3-105

Source: FindLaw, a Thomson Reuters business 2014