

Louisiana Property and Casualty Insurance Commission Full Commission Meeting

Thursday, December 5, 2013
Louisiana Department of Insurance
Plaza Hearing Room
1:30 p.m.

Minutes

Commission Members Present: Denise Brignac (representing Commissioner Donelon), Ted Haik, Senator Dan Morrish, Representative Greg Cromer, Representative Kirk Talbot, Ray Aleman, Jr., Lee Ann Alexander, J.E. Brignac, Jr., Jody Boudreaux (representing Lou Fey), Michael Guy, Rachael Lundy (representing Ron Henderson), Scott Landry, Robert Moorman, Frank Opelka, and Earl Taylor

Commission Members Absent: Jeff Albright, Senator Ronnie Johns, Paul Buffone, Steve Campbell, Sheriff Greg Champagne, Chris Haik, Wes Hataway, and LTC. John LeBlanc

Commission Staff Present: Terrell Moss and David Evans

DOI Staff Present: Noble Ellington, Warren Byrd, Trent Beach, Rachelle Carter, Linda Gonzales, Larry Steinert, Judy Wright, and Bernadette Williams

The Louisiana Property and Casualty Insurance Commission (LPCIC) meeting was called to order at 1:35 p.m. by chairman Ted Haik.

Mr. Evans called the roll and reported a quorum present.

Chairman Haik welcomed the commission members and all in attendance. He recognized new members Senator Ronnie Johns of the Senate Insurance Committee and Mr. Frank Opelka, the Governor's designee. He also recognized Mr. Warren Byrd as the new Deputy Commissioner of the Department of Insurance's Office of Property and Casualty. The chairman introduced the four speakers who would discuss auto insurance issues as they relate to reforming rates and laws.

Mr. Noel Young, Regional Counsel for Allstate, noted that a recent study found Louisiana's auto insurance rates averaged the highest in the country at about \$2,700 per vehicle, Michigan second highest at \$2,520, and Maine the lowest at \$934. Mr. Young stated that among the things that affect Louisiana's rates and that need to be addressed are:

- Jury Threshold – Louisiana has the highest in the country at \$50,000.
- Collateral Source Rule – The medical insurer of an injured party (the collateral source) will typically pay about one-third of the amount billed for treatment as payment in full. However, when the at-fault party's auto liability insurer reimburses the medical insurer, it is at the full amount billed.

Mr. Young suggested that one claims-cost saving resolution could be that the tortfeasor's insurer reimburse the actual amount paid and, in addition, pay the injured party's medical insurance premium for that year.

- Direct Action Statute – Louisiana is one of two states that allow the tortfeasor's insurer to be named in a liability lawsuit.
- Prior Approval – Louisiana is one of the states that require an insurer to have its auto insurance rates approved prior to use. Mr. Young stated that under this system insurers are reluctant to file for rate reductions, whereas most of the states with the lowest rates have some form of file-and-use.
- Uninsured Motorists and “No Pay, No Play” – Louisiana bars the uninsured motorist from recovering the first \$15,000 of bodily injuries. Mr. Young suggested that Louisiana should follow the lead of California and bar the uninsured motorist from collecting for “pain and suffering.”

Mr. Martin Rarick, Product Manager in Louisiana for Progressive, provided an update on usage-based insurance –also known as telematics– in general and in Louisiana, structural differences that affect the costs in Louisiana, and an example claim.*

Mr. Rarick explained that usage-based insurance (UBI) is a way for an insurer to calculate an insured's risk/future loss costs based on driving behavior and for the insured to control and reduce his premium with a discount of up to 30% for favored behavior. In Louisiana, drivers that have chosen to participate in the program have received an average discount of \$272 or about 10%.

Mr. Rarick observed that rates reflect underlying costs. The major difference in Progressive's average premium in Louisiana is that the bodily injury component averages twice as much as the average for the rest of the country and the uninsured motorist-bodily injury component averages four times as much.

Mr. Rarick endorsed Mr. Young's list of distinctions that affect rates in Louisiana and added another:

- Court's Discretion to Restrict Evidence to be admitted in a jury trial, specifically photographic evidence, repair estimates, and repair costs. Mr. Rarick explained that the exclusion of this evidence from the jury when there is a low-impact collision, but “high-impact” bodily injury claim can result in an inordinately, large medical award.

Mr. Bo Gilbert, Assistant Vice President Midwest Region, Government & Industry Relations for USAA, agreed with Mr. Young that the principal issues that are a concern in Louisiana are related to civil practices, specifically: jury threshold, collateral source, and additionally:

- Litigation Funding – encourages litigation to go on longer than it otherwise would and consumers may be abused by lack of appropriate disclosure and/or protections concerning fees, interest, and other expenses. Mr. Gilbert would prefer that this type of funding of plaintiff's expenses as currently practiced by 3rd party vendors be prohibited or at least regulated.

Mr. Gilbert also endorsed Mr. Young's suggestion that insurers be allowed to "File and Use" rates, or alternatively, some other flexible rating system. Mr. Gilbert also noted:

- Dram Shop Liability
- E-Commerce – adjustment. While not a claims cost this does affect operating expense.
- Uninsured Motorists – Mr. Gilbert stated that about 13% or 1 in 7 of Louisiana motorists are uninsured. He suggested that our impoundment law be mandatory ("immediate") rather than discretionary. He further suggested an insurance verification program, such as in Texas. Mr. Gilbert also suggested that the issue of illegal immigrant drivers needs to be addressed.

Mr. Martin Cantu, Claims Section Manager for State Farm, echoed jury threshold as one of the main concerns and gave a general endorsement of the other issues raised. Additional concerns were:

- Pure Comparative Negligence – This system in Louisiana permits the payment of damages to an injured party to the extent the other party is at fault. Conceivably, an injured party who was 99% at fault could collect the 1% of damages attributed to the other party, which can be a considerable amount when there is a fatality.

Mr. Cantu suggested that a Modified Comparative Negligence system is preferable because a party that is 50% or 51% at fault (negligent) is barred from collecting damages. He noted that premiums are 60% to 75% lower under Arkansas' modified comparative negligence system than in Louisiana. In terms of State Farm's internal data, almost twice as much is paid for claims in Louisiana than in Arkansas and there are far more claims in our state. According to Mr. Cantu, some of this can be attributed to settlement payments under our pure comparative negligence system.

- Judicial Interest – In Louisiana judicial interest runs from the date suit is filed to judgment, which the plaintiff may see as an incentive to extend the case, and then another set of judicial interest runs from the date of judgment. In other states, judicial interest only runs from the date judgment is entered.
- General Damages for Minor Soft-Tissue Injury – Mr. Cantu noted that the "quantum" for "pain and suffering" appears to be a sliding scale that varies with jurisdiction. He suggested these general damage awards do not appear to be "a factor of what the true figure should be" and may promote "treating to the policy maximum."
- Public Education – The public lacks an understanding of the expenses that drive rates. Better public education may improve claim behavior.

Mr. J.E. Brignac, Jr., Founding Director of Imperial Fire & Casualty Insurance Company, addressed his fellow commission members to express his concern that the Uninsured Motorist coverage purchased by his Imperial policyholders and which expressly provides only for injuries to first party claimants, has been ruled by the Louisiana Supreme Court to provide coverage for "guest passengers," as well. This not only diminishes the amount available to the first party claimant, but allows a "guest passenger," who has his own UM coverage, to collect first from the owner's coverage and then his own or, if the "guest passenger" has rejected his own UM, he collects from the owner's anyway.

Mr. Brignac suggested that the Legislature revisit this issue and restore uninsured motorist coverage to the exclusive protection of first party claimants by: 1) making a “guest passenger’s” own UM coverage primary and 2) barring recovery for any vehicle owner who has rejected UM or who has failed to purchase compulsory liability insurance.

Each of the presentations prompted detailed questions from the commission members and considerable discussion.

With no further discussion, the chair asked if there were any comments from the public in attendance. When there were none, the chair called for a motion to adjourn which was offered by Mr. Taylor. The LPCIC meeting adjourned at 2:56 pm.

*PowerPoint presentation attached as part of these minutes.

Snapshot Product Design

- Participation is optional and free
- 0% to 30% usage based discount
- Partial monitoring model. Return device after 6 months.
- \$50 device non-return fee

- Discount based on:
 - How you drive (hard brakes)
 - How much you drive
 - When you drive



Consumers Like Snapshot

- T12 premium = \$1.8 Billion
- 1.2 million Snapshot policies in force
- Average discount is \$272 in LA



The Benefit of UBI is Relative to the Underlying Cost

- LA average BI premium is 2x country average
- LA average UMBI premium is 4x country average
- Structural differences affect cost in LA
 - Jury trial threshold of \$50k
 - Lack of de novo appeal and subsequent re-hearing by a jury
 - Medical costs for auto carriers compared to health care carriers (Hoffman case)
 - Court discretion to restrict evidence (particularly photographic evidence)
 - Direct action against carriers



A Closer Look at the Issues



Situation Facts

- Low impact rear-end collision occurs
- Damage to third party vehicle repaired for \$252
- Third party alleges need for future multi-level spine fusions and case is tried three years later
- Jury interested in causation, but court refused request for repair bills and photos
- Jury awards verdict for approximately \$140k, with very little attributed to pain and suffering
- On appeal, an additional \$80k awarded
- Plaintiff has no surgical treatment in 3 years between claim and trial
- Plaintiff played college football and participated in a multiple games of a full court basketball tournament weekend prior to the trial

