

# Louisiana Property and Casualty Insurance Commission

## Full Commission Meeting

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Thursday, February 2, 2012  
Louisiana Department of Insurance  
Plaza Hearing Room  
1:30 p.m.

### Minutes

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**Commission Members Present:** Commissioner Donelon, Ted Haik, Jeff Albright, Senator Dan Morrish, Representative Greg Cromer, Representative Kirk Talbot, Raymond Aleman, Sr., Lee Ann Alexander, Jamie Bourg (representing Paul Buffone), Manuel DePascual, Nick Gautreaux, Michael Guy, Carey Holliday (representing Wes Hataway), Mike Barron (representing LTC John LeBlanc), Ann Metrailler, Robert Moorman, J.E. Brignac, Jr. (representing Stephen Schrempp), Earl Taylor, and Ann Cassidy (representing Rina Thomas)

**Commission Members Absent:** Senator Eric LaFleur, Sheriff Greg Champagne, and Chris Roy, Jr.

**Commission Staff Present:** Terrell Moss, David Evans and Katie Walsh

**DOI Staff Present:** Noble Ellington, Ed O'Brien, Linda Gonzales, Judy Wright, Ben Darnell, and Bernadette Williams

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The Louisiana Property and Casualty Insurance Commission (LPCIC) meeting was called to order at 1:45 p.m. by chairman Ted Haik. He welcomed commission members, guest speakers and all others in attendance. Mr. Haik recognized Representative Talbot and Representative Cromer, chairman of the House Insurance Committee, as new commission members.

Ms. Walsh called the roll, reporting that a quorum was present.

Mr. Haik briefed the commission on a written summary received from CEO Robertson on the status of a class-action lawsuit against Louisiana Citizens (*Geraldine Oubre v. Louisiana Citizens*). The suit claims that Citizens took more than 30 days to initiate adjustment of claims after Hurricanes Katrina and Rita, violating state law. In recent weeks in a 4-3 decision, the Louisiana Supreme Court reinstated the trial court's \$92 million judgment against Citizens and denied rehearing. In recent days Justice Scalia of the United States Supreme Court rejected Citizens' motion to stay the judgment. Citizens is considering its options. Mr. Haik, in summation, read a sentence from the report that concluded that the judgment had been reached "...without ever considering the circumstances of Katrina, or the efforts put forth by Louisiana Citizens to initiate loss adjustment in the face of the worst natural disaster in American history."

Commissioner Donelon provided additional background and perspective, noting that similar suits brought against private insurers in federal court were denied class-action status. He stated that although Citizens has the funds to pay the judgment (which may climb to \$150 million with attorneys' fees), the depletion of its cash will put all property insurance policyholders in the state at risk of an assessment to pay Citizens' claims should a Gustav level event hurricane hit the state in the next several years. The Commissioner termed the situation "wrong" and "unconscionable".

Mr. Manuel DePascual, Chairman of the LPCIC Homeowner's Ad Hoc Committee, reported that several new homeowners' insurers have been admitted in the state and that the homeowners' market is doing well. The topics of wind mitigation and building codes were discussed amongst commission members. Chairman Haik suggested that there should be more awareness and education of wind mitigation for homeowners. Mr. DePascual said that the Louisiana State Uniform Construction Code Council is regulating wind mitigation surveyors. Mr. Albright suggested that agents should be primarily responsible for informing policyholders about wind mitigation credits and that education will be provided to those agents in upcoming seminars. He also stated that Commissioner Donelon's annual Storm Tour typically provides the public with information. Mr. Gautreaux suggested that forms could be given to homeowners by the Contactors Association at the times repairs and upgrades are made to a home. Mr. DePascual noted that some homeowners may find upgrading to the code unattractive because of the upfront costs. No recommendations were proposed.

Mr. Nick Gautreaux, Commissioner, Office of Motor Vehicles (OMV), Department of Public Safety and Corrections, briefed the LPCIC on topics and issues of importance to OMV. The issues presented were: mandatory electronic reporting of the initiation (SR-22) and cancellation (SR-26) of high risk drivers' insurance policies to modernize the reporting system and reduce human error; clarify that insurers should report required information to OMV "per vehicle" rather than "per policy" as worded in existing law; implementation of "real time" verification of liability insurance to help reduce the uninsured motorist rate. LPCIC members questioned and discussed the issues during Mr. Gautreaux's presentation.

During the discussion Mr. Haik asked if he wanted the LPCIC's support of any of these issues as legislative recommendations. Mr. Gautreaux requested support for the first two. Following discussion, Mr. Haik called for a motion.

Mr. Albright made a motion to support the first two concepts: 1) to require electronic reporting of SR-22's and SR-26's to OMV and 2) to clarify language in existing law that an insurer report "*per vehicle*" to OMV.

Ms. Alexander seconded the motion.

Without objection or further discussion, the motion passed.

Mr. Mike Barron, representing LTC John LeBlanc and the Louisiana Highway Safety Commission, presented the following items that were approved at a December meeting of the Governor's DWI/ Vehicular Homicide Task Force:

1) Multiple Test Bill: If an officer suspects that a driver is driving while intoxicated, and the driver passes the breath test but is clearly impaired, there is ambiguity in the current Implied Consent Law as to whether the refusal of a subsequent blood or urine test is a refusal for driver's license suspension purposes. Refusal or failure of a blood/ urine test would result in license suspension if the Multiple Test Bill is passed, as drugged driving and poly-substance abuse is a growing problem.

The discussion that followed included concerns that blood/urine is of limited use in prosecuting drugged driving because there is no presumptive impairment level established in law and traces of drugs may remain detectable weeks after last use and impairment. There was concern that the breath test could be administered twice. Therefore, it was suggested that cautionary language should be added to the bill to provide for exceptions.

Mr. Barron made a motion to adopt the Multiple Test Bill in theory.

Mr. DePascual seconded the motion.

Mr. Taylor abstained from voting on this issue.

Without opposition or further discussion, the motion passed.

2) Repeal Act 605 of 1992: When there is an Implied Consent license suspension, Act 605 allows reinstatement of driving privileges when the DWI charge is dropped to a lesser offense (such as reckless driving), granted Article 894 or is dismissed all together. By repealing this act, refusal of the breath test becomes less attractive.

Mr. Barron made a motion to adopt the proposal to repeal Act 605 of 1992.

Mr. Holliday seconded the motion.

Without opposition or further discussion, the motion passed.

3) Mandatory chemical dependency assessment for *all* DWI offenders: Current law requires these assessments for third and subsequent offenders. By extending this requirement to those charged with first and second offense DWI the sentencing judge will know whether he is dealing with a chronic dependent or a casual user. In response to questioning, Mr. Barron confirmed that many jurisdictions currently perform such a dependency evaluation.

Mr. Barron made a motion to extend the requirement of issuing a chemical dependency assessment to *all* DWI offenders.

Mr. Taylor seconded the motion.

Without opposition or further discussion, the motion passed.

4) Amend the law to assure that the 45 day period of "hard suspension" applies to all second DWI offenders: This technical change to the current law would clarify that all second DWI

offenses would result in a 45 day period of hard suspension (no eligibility for a hardship license). Currently, the law is open to interpretation as to whether the 45 day hard suspension applies to a second offender who submits to a breathalyzer and fails with a reading of .2% BAC or higher.

Mr. Barron made a motion to amend the current law to assure that the 45 day period of “hard suspension” applies to all second DWI offenders.

Representative Cromer seconded the motion.

Without opposition or further discussion, the motion passed.

5) Amend the calculation of the ten year “cleansing period” for DWI prosecution to exclude the time an offender spent on parole: Current law allows enhanced penalties for drivers who commit a subsequent DWI offense within 10 years of an arrest that led to a previous DWI conviction. The proposed recommendation would exclude all parole time from calculating this ten year period.

Mr. Barron made a motion to amend current law to exclude parole time as part of the ten year DWI cleansing period.

Mr. DePascual seconded the motion.

Without opposition or further discussion, the motion passed.

6) Amend the Criminal Code to give an “illegal per se” option in the prosecution of DWI, vehicular homicide, vehicular negligent injuring and first degree vehicular negligent injuring: A lab blood test that detects that a driver’s blood has any trace of a scheduled controlled dangerous substance not prescribed by a doctor would be proof of a violation of these laws. This could prove impairment without quantification.

Mr. Barron made a motion to amend the Criminal Code to give prosecutors an illegal “per se” option for DWI, vehicular homicide, vehicular negligent injuring and first degree negligent injuring.

Mr. Taylor seconded the motion.

The discussion that followed centered on the possibility that the non-prescribed controlled drug might not be the actual cause of the driver’s “impairment.” Mr. Taylor suggested that detection of a non-prescribed scheduled controlled dangerous substance in the driver’s blood constitute a rebuttable presumption of impairment for the purposes of the cited laws.

Mr. Albright motioned to support the concept as long as it includes a “rebuttable presumption.”

The amended motion was seconded by Mr. Gautreaux.

With no opposition or further discussion, the amended motion passed.

Chairman Haik offered the following issues based upon topics that were covered at previous LPCIC meetings as areas for possible LPCIC recommendation:

1) Increase seat belt fines: The LA Occupant Protection Program Assessment of March, 2011 recommended increasing the fine from the current \$25 for a first offense to at least \$50.

The discussion that followed concerned whether the fine should be higher than \$50 and whether the Legislature would set the fine above \$50.

Mr. Taylor motioned to adopt the concept of increasing the seat belt fines to at least \$50.

Mr. DePascual seconded the motion.

Without opposition or further discussion, the motion passed.

2) Appropriate child safety restraints: Make a failure to use age or weight appropriate child restraint a primary offense. Current law states that no restraint is a primary offense and inappropriate restraint is a secondary offense.

Discussion concerned whether law enforcement was capable of making a proper determination of a child's weight and height to warrant a stop, that economically this would primarily impact the poor, and that education was a better deterrent to inappropriate child restraint.

No motion was made on this topic

3) Lower the jury trial threshold: The LPCIC recommended in 2009 that the civil jury threshold be reduced from \$50,000 to \$10,000. Minimum auto liability coverage was 10/20/10 at that time.

Mr. Albright motioned to adopt the concept of lowering the jury trial threshold.

Ms. Alexander seconded the motion.

An extensive discussion with broad participation and diverse views is summarized as follows:

- The high jury trial threshold promotes more – and more unnecessary and frivolous – lawsuits, because trial lawyers prefer trial by judge.
- Any broad suggestion that trial (plaintiff's) lawyers get favorable treatment before judges is an assertion that the system is corrupt and offends both judges and trial lawyers.
- At one time the current positions of the trial lawyers and insurance industry regarding the civil jury trial threshold were reversed.
- Lowering the threshold will result in a civil jury trial in every case, which will clog the courts and make it even more difficult to impanel a jury than it is now.
- Lawsuits impact insurance rates by increasing the cost of claims.
- For many years and by a significant margin, Louisiana has had the highest bodily injury lawsuit rate in the country.

- Louisiana has by far the highest jury trial threshold at \$50,000 with the next closest state at \$15,000 or \$25,000. 33 or 34 states have no threshold, which includes neighboring states.
- Louisiana has a one year prescription law. Most states have a two year prescription. If you want to reduce claims expense and lawsuits, then put Louisiana in a position similar to other states and increase prescription as well as lower the jury threshold.

Mr. Holliday motioned to lower the civil jury trial threshold from \$50,000 to \$10,000 without comment.

Mr. Brignac seconded the motion.

Mr. Gautreaux amended the motion to include extending the prescription period to two years.

Mr. Taylor seconded the amended motion.

The amended motion passed.

\* Mr. Brignac asked that it be noted that his and Ms. Metrailler's votes were against including prescription in the recommendation to lower the jury trial threshold, which they support.

4) LA Citizens Property Insurance Corporation: The LPCIC recommended in 2010 to prohibit penalties in class action lawsuits against Citizens.

Mr. Albright made a motion to amend the concept to instead provide an exception for Citizens in the law that gives an insurer 30 days to initiate adjustment of claims in the case of a natural disaster or catastrophe.

Representative Cromer seconded the amended motion.

With no opposition and no further discussion, the motion passed.

With no further business to discuss and upon a motion to adjourn by Mr. Albright, this meeting of the Louisiana Property and Casualty Insurance Commission ended at 3:35 p.m.