

# **Louisiana Property and Casualty Insurance Commission Full Commission Meeting**

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**Wednesday, December 2, 2009  
Louisiana Department of Insurance  
Plaza Hearing Room  
1:30 p.m.**

## **Minutes**

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**Commission Members Present:** Commissioner Donelon, Jeff Albright, Senator Dan Morrish, Raymond Aleman, Lee Ann Alexander, Chris Broadwater, Sheriff Greg Champagne, Kay Hodges, LTC John LeBlanc, Ann Metrailler, Michael Guy, Cherie Pinac, and Stephen Schrempf

**Commission Members Absent:** Ted Haik, Senator Eric LaFleur, Representative Page Cortez, Representative Nickie Monica, Manuel DePascual, Chris Haik, and Earl Taylor

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

**DOI Staff Present:** Ed O'Brien, Clarissa Preston, Trent Beach, Judy Wright, John Lamke, and Sherice Forte

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Vice-Chairman Jeff Albright called the meeting to order at 1:40 pm. Mr. Albright explained that he would facilitate the meeting because Chairman Haik was unable to attend. Ms. Walsh called the roll, reporting that a quorum was present.

Commissioner Donelon opened the meeting by thanking commission members for their dedication to the Louisiana Property and Casualty Insurance Commission (LPCIC) throughout the year. Louisiana has the third highest auto rates in the country, and the Commissioner assured LPCIC members that he remains committed to lowering those costs through market competition. Commissioner Donelon reported that there has been an influx of competition not only in the auto insurance market, but also in the homeowners' insurance market. He noted that competition cured the crisis in the late 1980's that occurred in the worker's compensation market.

The Louisiana Clerks of Court Association was invited to send a representative to speak on their behalf at the meeting; however, they were unable to attend and issued the following statement on the topic of Jury Trial Threshold: "...after sending a survey to the clerks, 80% of the clerks responding were in favor of maintaining the Jury Threshold at \$50,000 or increasing the threshold..." (Debbie Hudnall, Executive Director).

Mr. Alston Johnson, partner at Phelps Dunbar Law Firm, presented an overview on the direct action statute (presently 22:1269). Mr. Johnson, along with his colleague, Shelby McKenzie, authors a treatise on Louisiana insurance law. A review of the history, limitations, exceptions, defenses available to insurers under the statute, and possible ways in which the statute could be

adjusted were included in the presentation. Mr. Johnson acknowledged that it was possible that the direct action statute may contribute to higher verdicts but suggested that there are other possible and more important causes for the high auto insurance rates in the state, including lax DWI and speeding laws enforcement, road hazards and pure comparative negligence. Under pure comparative negligence, an injured party who is 99% at fault can still get a 1% recovery; whereas in states with modified comparative negligence, an injured party who is 50% or 51% at fault is barred from recovery. Aside from LA, there are only a handful of other states that authorize direct action by the injured party against the liability insurer, including WI, NY, and RI; however, LA's direct action statute is the oldest and the broadest.

Mr. Donald Price and Mr. Richard Broussard, representing the Louisiana Association for Justice, spoke as plaintiffs' lawyers on behalf of their clients, who are primarily claimants under automobile and other types of liability insurance policies. From a claimant's perspective, both direct action and jury trial threshold attempt to streamline and make more efficient the process of litigating the presentation of a claim. Direct action allows all issues and parties involved in a case to be litigated in a single proceeding rather than having sequential proceedings to resolve coverage disputes. This increases efficiency and decreases the expenses involved in resolving claims to all sides – insurer, insured, and claimant. Mr. Price noted that the correlation between direct action statute and high auto insurance rates may not hold true, because WI, a state that also has a broad direct action clause, is ranked 45<sup>th</sup> highest in auto rates, while LA remains third highest in the country.

As plaintiff's attorneys, Mr. Price and Mr. Broussard are advocates for jury trials; however, they are generally opposed to lowering the current \$50,000 civil jury trial threshold. Whether by judge or by jury, Louisiana turns out some very fair decisions, but for lower value claims the additional time and expense of a jury trial takes a larger portion of the claimant's ultimate recovery. Under Louisiana's unique Civil Code, there is no constitutional right to a civil jury trial; the right to a civil jury trial is defined by statute and has included a monetary threshold since the Code of Civil Procedure was enacted. Additionally, the appellate courts of Louisiana have a unique right to review and reconsider the facts as determined by the trial court or judge. In discussion, it was noted that WI has no jury trial threshold.

Ken Moore, Claims Section Manager at State Farm Mutual Automobile Insurance Company, presented an industry viewpoint on the topics of direct action and jury trial threshold, and weighed in on possible causes for the state's high auto insurance rates. Mr. Moore explained that the direct action statute has the perception of increasing jury awards and increases the cost of litigation to the initial extent that the insurer has to hire two attorneys – one for the policyholder and one for itself - in those instances where coverage issues are decided at the outset of trial. In his experience, in those states without a direct action statute, the insurer is involved in all negotiations between the claimant/plaintiff and policyholder/defendant. The only time a case would be "litigated twice" is when the insurer denies coverage under the insurance policy but does not ask the court for a declaratory judgment to determine coverage, the claimant/plaintiff gets a judgment against the policyholder/defendant, and then the claimant/plaintiff takes assignment of the insurance policy and proceeds against the insurer.

In regard to Louisiana's jury trial threshold, Mr. Moore acknowledged the additional expense but felt that a jury trial should be a basic right even though in some jurisdictions in the state, the insurer may prefer trial by judge. Based on the average family's income, Louisiana's auto insurance rates are actually the most expensive per capita. Mr. Moore stated that he did not know how much direct action and jury trial threshold contribute to the cost of insurance, but an insurer's claims experience is a major factor. When reviewing loss history, insurance companies analyze frequency and severity of claims. While LA ranks 41<sup>st</sup> in severity, the state ranks third highest in the frequency of third party claims, according to State Farm data. Pointing to direct action and jury threshold, Mr. Moore said that Louisiana is ranked number three in the nation in the number of outstanding automobile lawsuits behind the more populous Illinois and Pennsylvania. Louisiana ranks sixth in the nation for the amount paid for allocated loss adjustment expense, which is the cost of defense counsel, experts, or any other expense charged to the claim file. Among the other factors Mr. Moore mentioned as contributing to the cost of insurance in the state were: poorer roads and higher rainfall increasing the number of accidents; pure rather than modified comparative negligence; the high number of bodily injury claims in relation to property damage claims – 34%.

Judge Robert Morrison, of the 21<sup>st</sup> Judicial District Court and legislative liaison for the Louisiana District Judges Association, reported that lowering the jury trial threshold will affect case and docket management, allocation of time and resources, and adequate space and facilities for the increased number of jury trials. Lowering the threshold would also increase costs to the court system and make it harder to impanel a sufficient number of jurors. The increased cost would not just be to the court system, since the approximate \$5,000 cost to summon a jury is borne by the party that asks for the jury trial and is not always re-allocated in the ruling. Judge Morrison stated that he believes the issue is perception and cited national statistics from the U.S. Department of Justice that indicate that the plaintiff is successful in automobile and other liability tort cases about as frequently and with similar median final awards whether before a judge or a jury. The judge also suggested that reducing the number of uninsured motorists and requiring a mandatory jail sentence for second offense driving under suspension might have a greater influence on the state's high auto insurance rates. While the judge agrees that the insurance rates are too high, he is unsure that lowering the jury trial threshold would solve the problem.

With no further business to discuss, upon a motion from Sheriff Champagne, the LPCIC meeting adjourned at 3:15 pm.