

Louisiana Property and Casualty Insurance Commission

Annual Report 2015 – 2016



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

Louisiana Department of Insurance

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Louisiana Property and Casualty Insurance Commission

Message from the Chairman

I am pleased to present the 2015-2016 Annual Report of the Louisiana Property and Casualty Insurance Commission (LPCIC). The LPCIC is a blue ribbon panel composed of members of the Legislature, representatives of the public and consumers, designees from various state agencies, representatives from law enforcement entities, and representatives from the insurance industry.

The mandate of the LPCIC, as set forth in La. R.S. 22:2171, is "...to review and examine the availability and affordability of property and casualty insurance in the state of Louisiana." Further, the LPCIC is charged to "...study and provide oversight and enforcement recommendations...of those laws and programs which affect automobile insurance rates." The goal of the LPCIC is to improve the state's property and casualty insurance market.

Last year the LPCIC addressed insurance issues related to Transportation Network Companies (such as Uber and Lyft) with the intent of ensuring that the citizens of Louisiana will be properly protected. The work of the LPCIC contributed to passage of "The Transportation Network Company Motor Vehicle Responsibility Law," which became Act 266 of the 2015 Regular Session, and was an important part of Commissioner Donelon's legislative package.

Transportation Network Company issues are the first wave in challenges to the current insurance landscape by technology-driven changes to our lives at work, at home, and on the road. Insuring the risk associated with cyber security, the sharing economy (especially Airbnb-type services), and driverless cars are a few of the present and emerging challenges that Louisiana will face in the future that will impact the property and casualty insurance market. The LPCIC intends to study these and other issues in order to provide recommendations for future legislation.

In the coming year the LPCIC will continue to probe deeper into the root causes of Louisiana's high automobile insurance rates. The LPCIC intends to statistically determine the reasons our rates are some of the highest in the United States. The LPCIC will focus on consensus building and statistical data analysis in an effort to provide concrete support for future reforms.

Louis G. Fey, Jr., CPCU, CIC, CRM, AIC
Chairman,
Louisiana Property and Casualty Insurance Commission

State of the Market: Quick Facts (as of December 31, 2015)

Homeowners':

- Competitive voluntary market has been re-established since 2005.
- Insurance market stabilized by increased number of carriers.
- Twenty one (21) new insurers writing in Louisiana who were not here in 2005.
- Residual market share continues to decrease with 50% drop since 2008.
- Market share for the residual homeowners' market decreased from 9.8% to 1.3% since 2008, which is an 87% decrease in the homeowners' market share since 2008.
- Market-wide insurance premium increase of only 0.4% last year—lowest statewide average increase since 2005.
- Louisiana ranked third in the average cost of homeowners' insurance in 2013 at \$1,822; Florida ranked first at \$2,115; Texas ranked second at \$1,837.*
- Louisiana's rates have increased at a rate lower than the national average between 2007 and 2013.

Automobile:

- Market competitive but challenging.
- Increased minimum liability limits in 2010 resulted in a 15-20% rate increase.
- Parishes in the Greater New Orleans area continue to pay the highest rates.
- Market-wide insurance premium increase of 5.9% last year.
- Louisiana ranked third in the combined average cost of insurance in 2013 at \$1,371.*

Workers' Compensation:

- Market remains competitive.
- Claim frequency decreased in 2013.
- Medical severity did not change in 2013.
- Industry premium volume decreased in 2015.
- Market-wide insurance premium decrease of 1.2% last year.
- Overall statewide 2.7% decrease approved for NCCI loss costs for 2016, which decreased across all industry groups. **
- Third consecutive year that Louisiana had a decrease in NCCI loss costs.
- Over the last 10 years, workers' compensation loss costs have decreased by 38%.
- Over the last 20 years, workers' compensation loss costs have decreased by 51%.

* According to the most recent NAIC data.

** According to the most recent NCCI data.

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), 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. Act 590 also designated the ad-hoc committee memberships.

The amended LPCIC membership in 2003 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 also 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, and providing 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 two representatives to the LPCIC membership. The new members are the Deputy Commissioner of Consumer Advocacy of the Louisiana Department of Insurance (LDI) and a representative of the Louisiana Surplus Lines Association. Act 223 of the 2014 Regular Session added one additional member effective August 1, 2014, that being a representative of the National Association of Mutual Insurance Companies. The LPCIC now consists of 24 members.

Louisiana Property and Casualty Insurance Commission as of March 1, 2016:

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

The Honorable John Bel Edwards
Governor of Louisiana

The Honorable Kirk Talbot
House Committee on Insurance Chair

The Honorable Dan Morrish
Senate Committee on Insurance Designee

Vacant
House Committee on Insurance

Marc Carter
LAFAC, Inc. Representative

Paul Buffone
LWCC Representative

Julius W. "Will" Grubbs, Jr.
Consumer Representative, Speaker of the House

Michael Guy
Attorney General's Designee

Sheral Kellar
Office of Workers' Comp-Louisiana Workforce Commission

LTC John LeBlanc
Louisiana Highway Safety Commission

Joe O'Connor
Property Insurance Association of Louisiana

Staff: Thomas D. Travis, Director
Ron Williams, Assistant Director

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

The Honorable James J. Donelon
Commissioner of Insurance

Raymond Aleman, Jr.
Commissioner's Appointee

Lee Ann Alexander
NAMIC Representative

The Honorable Ronnie Johns
Senate Committee on Insurance

The Honorable Karen St. Germain
LDPS, Commissioner-Office of Motor Vehicles

The Honorable Gregory Champagne
Law Enforcement Representative

Ron Henderson
Deputy Commissioner of Consumer Advocacy, LDI

Christopher S. Haik
Consumer Representative, President of the Senate

Leslie Sallean
Louisiana Surplus Lines Association Representative

Ann Metrailer
PCI Representative

The Honorable Earl Taylor
Louisiana District Attorneys Association

III. Meetings and Presentations

The Louisiana Property and Casualty Insurance Commission held four public meetings during this reporting period to receive information and to discuss issues and trends that affect the property and casualty insurance market in Louisiana. Agendas from this meeting period are set forth in Appendix A of this report.

December 16, 2015 Meeting

Following a roll call, there was a quorum present.

The chairman introduced Tom Travis, the new director of the LPCIC, who was appointed by Commissioner Donelon effective November 16, 2015.

The members discussed organizational matters, a work plan for the 2015-2016 report period, and issues affecting the availability and affordability of insurance rates in the area of automobile, homeowners', and workers' compensation.

January 27, 2016 Meeting

Following a roll call, there was a quorum present.

The members discussed issues related to the effects of distracted and inattentive driving on automobile rates and issues for recommendations and further study to be voted on at the final meeting.

Mr. Ron Whittaker, a retired State Police captain and troop commander, who is now a law enforcement expert with the Louisiana Department of Transportation and Development (DOTD), gave a presentation on the impact of distracted and inattentive driving.

February 17, 2016 Meeting

Following a roll call, there was no quorum present.

Director Sheral Kellar of the Office of Workers' Compensation Administration made a presentation on opioid abuse.

February 29, 2016 Meeting:

Following a roll call, there was a quorum present.

The LPCIC met to discuss and vote on legislative recommendations presented to the membership. The actions taken by the Commission are listed below as recommendations.

IV. Legislative Recommendations for the 2016 Regular Session

1. Maintain or strengthen statewide building codes.

The members discussed the overall positive impact that strong statewide building codes have on premiums paid for both personal and commercial property insurance. Property insurers continue extol the virtues of residential and commercial buildings that are built or retrofitted to meet strong statewide building codes, because these properties are likely to incur limited if any damage from catastrophic events. The LPCIC recommends that the legislature resist any efforts to weaken or diminish the current statewide building codes.

2. Enact legislation to address distracted driving.

All forms of distracted and inattentive driving increase the risk of automobile accidents, which result in an increase in automobile insurance premiums. Cognitive demands of the use of hand-held devices narrows our field of vision and creates distraction that negatively affects driving. Studies have shown that this type of distraction results in risk similar to driving with a .08 BAC and a four times greater chance of being in a traffic crash. The LPCIC recommends that the legislature ban the manual use by the operator of a motor vehicle while in motion of all electronic devices not permanently installed in the vehicle.

3. Enact legislation to increase fines and penalties for seat belt violations, including making a seat belt violation a primary cause for a traffic stop and issuance of a citation.

Statistics show that states with higher fines have a greater use of seat belts by vehicle occupants. In many states, fines for violating seat belt laws are so small that they don't motivate people to wear their seat belts. Increasing a seat belt fine from \$5 to \$100 can increase seat belt use by more than 10 percentage points. For instance, an increase from \$25 (Louisiana) to \$60 should increase belt use by three to four percentage points. The LPCIC recommends that the legislature increase the fines for violating Louisiana's mandatory seat belt laws.

Based on 2013 Stats: 1st Offense Nationwide: 87% Usage Louisiana: 82.5%

Oregon: 98.2% usage with \$110 fine

Texas: 90.3% usage with \$200 fine

Washington: 94.5% usage with \$124 fine

4. Enact legislation to establish a mediation program for residential property claims.

A property insurance mediation program should have a positive impact on residential property insurance. Accordingly, the overall expenses of disputes between insureds and insurers should be reduced. Florida has a property insurance mediation program that has proven to be successful in resolving more than 50% of the disputes between insureds and insurers and thereby reducing overall expenses to the insurers. The LPCIC recommends that the legislature enact a property insurance mediation program for residential property insurance.

5. Enact legislation to lower the civil jury trial threshold.

There are 14 states that have a civil jury trial threshold. Louisiana is at the extreme with a \$50,000 threshold. Maryland is a distant second at \$15,000, followed by Rhode Island and Hawaii at \$5,000. Thirty-six states have no threshold. 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 that results from judgments granted by the trial judge. Lower loss trend projections for insurers would have the effect of reducing premiums for consumers. The LPCIC recommends that the legislature reduce the civil jury threshold.

6. Enact legislation to repeal the direct action statute except where defendant cannot be served.

Louisiana remains the only state in the union with a pure direct action statute. The result is that only in Louisiana is a plaintiff allowed to name an insurance company as a defendant in a lawsuit in addition to or sometimes in the place of the insured. The impact of exposing the insurer as a defendant to the trial jury is a negative factor in efforts to reduce the cost of liability insurance in Louisiana. The LPCIC recommends that the legislature repeal the direct action statute.

7. Enact legislation to reinstate the uninsured/underinsured coverage as a first party coverage.

Louisiana courts have extended the coverage under uninsured/underinsured motorist (UM) insurance to any passenger in the vehicle, which appears to be contrary to limiting UM coverage to named insureds and not to mere passengers. The LPCIC recommends that the legislature limit UM coverage to those named under the policy.

V. Study Issues

1. Monitor transportation network company issues

Monitor the effectiveness of The Transportation Network Company Motor Vehicle Responsibility Law in addressing the needs of drivers and passengers. Observe the market to ascertain any insurance trends relative to transportation networks or the sharing economy in general.

2. Study cybersecurity insurance issues

Cybersecurity is a major issue in law, technology, and national security. Insurance coverage for liabilities and losses that result from breaches of cybersecurity is a major topic of concern throughout the insurance industry. The affordability and availability of insurance coverage for cyber-related losses is a growing concern for firms of all sizes.

3. Study driverless vehicle issues

Driverless vehicle technology will be commercially available in the foreseeable future. It may reduce the risk associated with human error, but it will also add new risk associated with cybersecurity, transportation networks, product liability for software and hardware, and other potential liabilities.

4. Study opioid use and abuse issues

There is a national problem with regard to the abuse of opioids that directly and negatively affects liability and workers' compensation insurance.

5. Study third party litigation funding issues

The LPCIC intends to determine the effect that the funding of litigation by third parties may have on the affordability and availability of insurance coverage.

6. Study collateral source rule issues

Study the effect on insurance costs that the collateral source rule has. Examine the holding in *Hoffman v. 21st Century N. Am. Ins. Co.*, 2014-2279 (La. 10/2/15), __ So.3d __, 2015 WL 5776131 to determine how its rationale may affect premiums for liability insurance.

7. Study Medicare Secondary Payer issues

The Medicare Secondary Payer Act has been enforced in settlement of workers' compensation matters for several years. Study the effect of the Act on the ability of the parties to ordinary personal injury claims to settle such claims.

8. Study bad faith law issues

The LPCIC intends to study how statutes that authorize bad faith damages may negatively impact premiums for property and casualty insurance coverage in Louisiana. This study will include an analysis of the criteria used by Louisiana courts to award bad faith damages and whether the legislature should establish more objective criteria to assist the courts.

This report is available on the Louisiana Department of Insurance website:
www.ldi.la.gov

VI. Appendix A: Meeting Agendas

December 16, 2015—Commission Meeting

- I. Call to Order, Lou Fey, Chair
- II. Roll Call, Lou Fey, Chair
- III. Introduction of Tom Travis, Director, Lou Fey, Chair
- IV. Confirmation of Membership, Tom Travis, Director
- V. Discussions and Presentations, Lou Fey, Chair
 - A. Factors Affecting Availability & Affordability of Automobile Rates
 - 1. Jury Threshold
 - 2. Direct Action Statute
 - 3. Collateral Source Rule
 - 4. Distracted Driving
 - 5. Other Factors
 - B. Factors Affecting Availability & Affordability Homeowners' Rates
 - 1. Statewide Building Codes
 - 2. Other Factors
 - C. Factors Affecting Availability & Affordability Workers' Compensation Rates
 - 1. Safety Training
 - 2. Job Training
 - 3. Severity and Frequency
 - 4. Other Factors
 - D. Other Matters for Discussion
- VI. Public Comments
- VII. Date for Next Meeting
- VIII. Adjournment

January 27, 2016—Commission Meeting

- I. Call to Order, Lou Fey, Chair
- II. Roll Call, Tom Travis, Director
- III. Discussions and Presentations, Lou Fey, Chair
 - A. Presentation by Ron Whittaker, Law Enforcement Expert, LDOTD
 - B. Discussion of Factors Affecting Availability & Affordability of Automobile Rates
 - C. Discussion of Factors Affecting Availability & Affordability of Homeowners' Rates
 - D. Discussion of Factors Affecting Availability & Affordability of Workers' Compensation Rates
 - E. Other Matters for Discussion
- IV. Public Comments
- V. Date for Next Meeting
- VI. Adjournment

February 17, 2016—Commission Meeting

- I. Call to Order, Lou Fey, Chair
- II. Roll Call, Tom Travis, Director
- III. Discussions and Presentations, Lou Fey, Chair
 - A. Review of Legislative Recommendations for 2014 Regular Session
 - 1. Re-examine driver's license reinstatement based on Article 894 pleading
 - 2. Lower the jury trial threshold from \$50,000 to \$10,000

3. Bar “pain and suffering” for uninsured motorists
4. Prohibit or regulate litigation funding by third party vendors/lenders
5. Restrict accrual of pre-judgment judicial interest except when required by contract
6. Repeal the direct action statute except in cases where the defendant cannot be served
7. Amend Louisiana’s UM statute to clarify that UM/UIM claims are to be settled just like BI claims
8. Amend Louisiana’s statute to expand the prohibition on the use of hand held cell phones for all drivers
9. Reinstate the UM statute as a “first party coverage”
- B. Review of Legislative Recommendations for 2015 Regular Session
 1. Allow sunset of the exemption of the 10% surcharge to the Citizen’ policyholders in the designated coastal parishes
 2. Ban the manual use of all electronic devices not permanently installed in a vehicle by the operator of the vehicle, while the vehicle is in motion
 3. Increase seat belt fines
 4. Provide legislation for the regulation of transportation network companies in regards to appropriate liability insurance coverage
 5. Support any effort to lower the civil jury trial threshold
- C. Discussion of Factors Affecting Availability & Affordability of Automobile Rates
- D. Discussion of Factors Affecting Availability & Affordability of Homeowners’ Rates
- E. Discussion of Factors Affecting Availability & Affordability of Workers’ Compensation Rates
 1. Presentation on opioid issues – Sheral Kellar, Director, OWC
- F. Discussion of Potential Matters for Recommendation for 2016 Regular Session
 1. Address the abuse of opioids in Louisiana
 2. Maintain or strengthen statewide building codes
 3. Establish mediation program for residential property claims
 4. Driver’s license reinstatement based on Article 894
 5. Support efforts to lower the current civil jury threshold
 6. Bar “pain and suffering” for uninsured motorist
 7. Prohibit or regulate litigation funding by third parties
 8. Repeal the direct action statute except in cases where defendant can’t be served
 9. Reinstate the UM statute as a first party coverage
 10. Amend Louisiana’s UM statute to clarify that UM/UIM claims are to be settled like bodily injury claims
 11. Address the myriad of issues caused by distracted driving
 12. Ban the manual use of all electronic devices not permanently installed in a vehicle by the owner/operator of the vehicle, while the vehicle is in motion, and amend Louisiana’s statute to expand prohibition on the use of hand held cell phones for all drivers
 13. Increase fines/penalties for seat belt violation, including making a seat belt violation a primary cause for a traffic stop and issuance of a citation
- G. Discussion of Potential Matters for Study by the LPCIC
 1. Monitor transportation network company issues
 2. Monitor cybersecurity insurance issues
 3. Monitor driverless vehicle issues
 4. Monitor opioid use issues
 5. Monitor distracted driving issues
 6. Other matters for study
- H. Discussion of Any Other Matters to be Considered by the LPCIC
- IV. Public Comments
- V. Date for Next Meeting
- VI. Adjournment

February 29, 2016—Commission Meeting

I. Call to Order, Lou Fey, Chair

II. Roll Call, Tom Travis, Director

III. Discussions and Presentations, Lou Fey, Chair

A. Final Discussion of Factors Affecting Availability & Affordability of Automobile Rates

B. Final Discussion of Factors Affecting Availability & Affordability of Homeowners' Rates

C. Final Discussion of Factors Affecting Availability & Affordability of Workers' Compensation Rates

D. Discussion and Vote on Recommendations for Legislation for 2016 Regular Session

1. Support legislation to maintain or strengthen statewide building codes

2. Support legislation to establish a mediation program for residential property claims

3. Support legislation to lower the current civil jury threshold

4. Support legislation to repeal the direct action statute except in cases where defendant can't be served

5. Support legislation to reinstate the UM statute as a first party coverage

6. Support legislation on distracted driving

7. Support legislation to increase fines/penalties for a seat belt violation, including making a seat belt violation a primary cause for a traffic stop and issuance of a citation

8. Support any other legislation as discussed and approved by the LPCIC

E. Discussion and Vote on Recommendations for Future Study by the LPCIC

1. Study transportation network company issues

2. Study cybersecurity insurance issues

3. Study driverless vehicle issues

4. Study opioid use/abuse issues

5. Study distracted driving issues

6. Study third party litigation funding issues

7. Study collateral source rule issues

8. Study Medicare Secondary Payor issues

9. Study bad faith law issues

10. Study any other issues as discussed and approved by the LPCIC

F. Discussion of Any Other Matters to be Considered by the LPCIC

IV. Discuss Submission of Report to the Legislature for 2016 Regular Session

V. Public Comments

VI. Adjournment