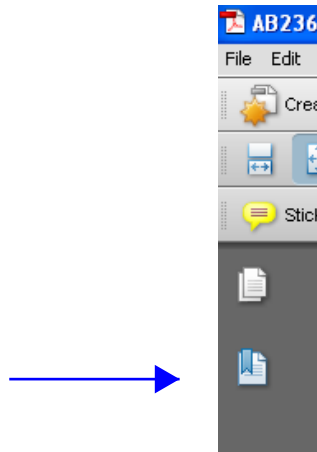


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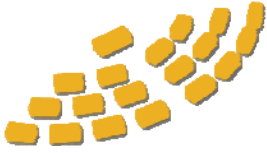
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LEGISLATIVE HISTORY REPORT AND ANALYSIS

Re: **Louisiana House Bill No. 776 (Dimos and Thompson – 1991)**
Act No. 850, Statutes of 1991

The legislative history of **Louisiana Revised Statutes section 22:695**, which was added in 1991 by House Bill No. 776, is documented by materials[♦] itemized below as Exhibits A and B, and are organized as follows:

Exhibit A – House Bill No. 776, No. 850, Statutes of 1991

Exhibit B – Background Materials

HOUSE BILL NO. 776 (DIMOS AND THOMPSON – 1991) **ACT NO. 850, STATUTES OF 1991**

House Bill 776 was introduced by Representative Jimmy Dimos on April 24, 1991. (See [Exhibit A, #1a and #2](#)) He was joined later as co-author by Representative Francis Thompson. (See [Exhibit A, #1c, page 1](#))

After its introduction, House Bill 776 was reviewed by the House and Senate Committees on Commerce. (See [Exhibit A, #2](#)) Both Committees amended the proposed law. (See [Exhibits A, #1b and #1c](#))

After the House approved the Senate amendments, the bill was enrolled and presented to the Governor for approval, who signed the bill on July 23, 1991. (See [Exhibit A, #2](#)) House Bill 776 became Act No. 850, effective on September 6, 1991. (Id.)

As introduced, the *House Legislative Services Digest* described the bill as follows:

Proposed law would provide for a “valued policy clause” which would prohibit a fire insurance policy from insuring property against fire loss in an amount less than the total amount for which the property is insured. Would provide for circumstances in which

[♦] For information on document numbers, research policies, request for judicial notice and more, please visit www.legintent.com and click on “**Research Aids and Policies**” and “**Points and Authorities**” at the bottom of the web page.

the insurer would pay the full amount of the coverage, either in case of total destruction or in case of partial damage when the property could be restored to its original condition.

(See Exhibit A, #1a, page 3)

The House Committee on Commerce Minutes contained discussion regarding the background, objectives and purposes of the proposals in the bill, stating, in small part:

Representative Dimos presented House Bill No. 776, which would provide for valued policy clauses in fire insurance policies. He explained that policies were written for certain amounts, such as a policy on a city lot of \$100,000. The agent writes the policy for that amount, a fire loss is sustained, and the insurer determines the extent of the loss, whether partial or total. The policyholder thinks that he should recover \$100,000 for his loss since that was the amount of his policy. However, the insurer's expert determines that the value of the pretty was only \$75,000, so that is what the policyholder gets. Representative Dimos said that this was what he was trying to correct.

(See Exhibit A, #3, page 7)

These same minutes provide summaries of testimony given by industry members who suggested various amendments. (See Exhibit A, #3, pages 7, et seq.)

A full understanding of legislative intent may be dependent upon knowing about the various proposals as introduced into the bill and then as amended throughout the bill's consideration by the Assembly and the Senate Committees reviewing this measure. (See Exhibit A, #1a through #1d) This can be particularly helpful where your focus is on specific language; by contrasting that enacted with the prior proposals in the bill one can gain insight as to the intended meaning or the apparent controversy generated by the language of interest. (Id.)

The House amendments following the bill's introduction were set forth by the House Legislative Services as follows:

Committee Amendments Proposed by House Committee on Commerce to the original bill

1. Provides that if an insurer who insures property against loss by fire places a valuation upon the property and uses that valuation to determine the premium charged for the policy, then the insurer shall indemnify the insured for loss or damage at such valuation without deduction or offset unless a different method is used for computation of loss.

2. Provides that, if a different method for computation of loss is used, it shall be set forth in prominent type on the policy or application therefore.

House Floor Amendments to the engrossed bill

1. Deletes provision that permits the insurer to replace the property if it is partially damaged or totally destroyed.
(See Exhibit A, #1b, page 3)

We enclose copies of the *House Journal* excerpted for House Bill 776, with the proposed amendments indicated, which you may find helpful. (See generally, Exhibit A, #5a through #5g)

As the bill was thereafter reviewed by the Senate Committee on Commerce, it was described in the Senate Committee Minutes as follows:

... The bill would provide that if an insurer places a value upon a piece of property which it is insuring against loss from fire and uses that valuation to determine the premium charged for the policy, then the insurer would compute, indemnify, and compensate the insured for any covered loss or damage at such valuation without deduction or offset unless a different method is to be used for computation of loss. The bill would also provide that if a different method was used, it shall be set forth in prominent type. Also, the insurer's liability is not to exceed the insurable interest of the insured.
(See Exhibit A, #4, page 2)

At this time, the Senate Committee proposed amendments to the bill that:

... would specify inanimate, immovable property and also allow for total loss of that property. Language was also substituted to provide for "equal" instead of "prominent" size print in the policy. Another amendment was added to specify that the section of law would only apply to policies issued or renewed after January 1, 1992. Without objection, the amendments were adopted.
(See Exhibit A, #4, pages 2 and 3)

The *Senate Journal* is included which also includes the amendments proposed for House Bill 776. (See Exhibit A, #6a through #6e)

A copy of the statutory language as finally enrolled and sent to the Governor is included. (See Exhibit A, #1d)

Not very much survives on the Louisiana Legislature's consideration of this bill in the form of legislative bill files for the Committees, authors or even the Governor.

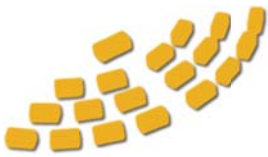
We looked for related treatises, publications, studies, and reports. Our review included *Tort and Insurance Law Journal*, the *Tulane Law Review* and *Louisiana Law Review*, and any articles on the topic possibly published by the Louisiana State Bar. We also culled through the 1990 – 1991 contemporary trade association and lobbyists' periodicals as well as contemporaneous law reviews and treatises in an unsuccessful effort to obtain commentary on the history of the bill.

However, we located other articles generated in 2005 that discussed the general topic and/or the section and include them herewith. ([See generally, Exhibit B](#)) The discussions in these articles may provide sufficient insight that might inform arguments regarding the statutory language.

We include a copy of the statutory language as it was amended in 1995 for your review. ([See Exhibit A, #6](#)) If you would like to order the legislative history the 1995 amendment, please contact our office.

Any analysis provided in this report is based upon the nature and extent of your request to us, as well as a brief review of the enclosed documents. As such, it must be considered tentative in nature. A more conclusive statement of the impact of the legislative history in your case would be dependent upon a complete understanding of all of the factual issues involved and the applicable legal principles.

We appreciate the opportunity to provide this assistance and hope that these efforts will be of value to you.



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DECLARATION OF JENNY S. LILLGE

I, Jenny S. Lillge, declare:

I am an attorney licensed to practice in California, State Bar No. 265046, and am employed by Legislative Intent Service, Inc., a company specializing in researching the history and intent of legislation.

Under my direction and the direction of other attorneys on staff, the research staff of Legislative Intent Service, Inc. undertook to locate and obtain all documents relevant to the enactment of Louisiana House Bill 776 of 1991. House Bill 776 was approved by the Legislature and was enacted as Act 850 of the Louisiana Statutes of 1991.

The following list identifies all documents obtained by the staff of Legislative Intent Service, Inc. on Louisiana House Bill 776 of 1991. All listed documents have been forwarded with this Declaration except as otherwise noted in this Declaration. All documents gathered by Legislative Intent Service, Inc. and all copies forwarded with this Declaration are true and correct copies of the originals located by Legislative Intent Service, Inc. In compiling this collection, the staff of Legislative Intent Service, Inc. operated under directions to locate and obtain all available material on the bill.

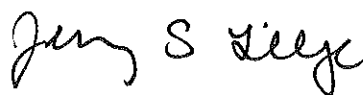
EXHIBIT A - LOUISIANA HOUSE BILL NO. 776 OF 1991:

1. All available versions of House Bill No. 776 (Dimos-1991);
2. Legislative History of House Bill No. 776 from the *Legislative Calendar*;
3. Excerpt of House Bill No. 776 from the House Commerce Committee Minutes of June 6, 1991;
4. Excerpt of House Bill No. 776 from the Senate Commerce Committee Minutes of July 3, 1991;
5. Excerpts regarding House Bill No. 776 from the 1991 *House Journal*;
6. Excerpts regarding House Bill No. 776 from the 1991 *Senate Journal*;
7. Excerpt regarding Louisiana Revised Statutes section 22:695 from *West's Louisiana Statutes Annotated*.

EXHIBIT B: BACKGROUND MATERIALS

1. Memorandum on "Property Insurance Issues Following Hurricane Katrina," dated September 9, 2005, prepared by Taylor, Porter, Brooks & Phillips, LLP;
2. Article entitled "Hurricane Katrina – Yet Another Defining Event," prepared by Benfield, Inc., dated September 15, 2005;
3. Article entitled "2005 Catastrophe Losses," prepared by Benfield Limited, dated September 26, 2005;
4. Report entitled "Hurricane Policy, Coverage and FEMA Issues," prepared by Nancy Scott Degan of Baker Donelson Bearman Caldwell & Berkowitz, P.C., dated September 30, 2005;
5. Article entitled "Wind Versus Water: Why 'Proximate Cause' Should Help, Not Hurt, Policyholders Who Seek Coverage for Hurricane Claims," from *ExpressO Preprint Series*, prepared by Rhonda D. Orin of Anderson Kill & Olick, P.C., dated 2005;
6. Article entitled "Facing the Aftermath: Wind and Flood Coverage Considerations in the Wake of Hurricane Katrina," prepared by Forrest S. Latta, et al., of Bowron, Latta & Wasden, P.C., dated November 18, 2005;
7. Excerpt regarding Representatives Jimmy Dimos and Francis Thompson from "Membership in the Louisiana House of Representatives, 1880 – 2004, as revised May 21, 2019, and available online at <http://house.louisiana.gov>.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 7th day of July, 2009 at Woodland, California.



JENNY S. LILLGE

ORIGINAL

HOUSE BILL NO. 776

BY REPRESENTATIVE DIMOS

INSURANCE/FIRE & CASUALTY: Provides for valued policy clauses in fire insurance policies

1 AN ACT
2 To enact R.S. 22:695, relative to fire insurance policies; to provide
3 for valued policy clauses in fire insurance policies; to require
4 the payment of the total amount for which the property is
5 insured in case of total destruction; to provide for the
6 reduction of insurance and liability of the insurer under
7 certain conditions in case of partial destruction; and to
8 provide for related matters.
9 Be it enacted by the Legislature of Louisiana:
10 Section 1. R.S. 22:695 is hereby enacted to read as follows:
11 §695. Valued policy clause; exceptions
12 A. Any insurer of a policy of fire insurance issued by an
13 insurer on property in this state shall pay to the insured, in
14 case of total destruction, without criminal fault on the part of
15 the insured or assigns of the insured, the total amount for
16 which the property is insured, at the time of the total
17 destruction, in the policy of the insurer.
18 B. Any insurer of a policy of fire insurance issued by an
19 insurer on property in this state shall pay to the insured, in
20 case of partial damage, without criminal fault on part of the
21 insured or assigns of the insured, an amount, not to exceed an
22 amount for which the property is insured at the time of the

Page 1 of 3

ORIGINAL

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

1 partial damage, in the policy of the insurer, that shall permit
2 the insured to restore the damaged property to its original
3 condition. However, any loss which would constitute total loss
4 under Subsection A of this Section but which loss is covered by
5 a blanket-form policy insurance, Subsection B of this Section
6 shall apply and the insurer shall pay to the insured an amount
7 equal to the actual cash value at the time of the loss of each
8 insured object destroyed, not to exceed the total amount of the
9 insurance.

10 C. Nothing provided for in this Section shall be construed
11 to prevent the insurer of a fire insurance policy, at the
12 expense of the insurer and without contribution on the part of
13 the insured, from replacing the property partially damaged or
14 totally destroyed.

15 D. Any clause, condition, or provision of a policy of fire
16 insurance contrary to the provisions of this Section shall be
17 null and void, and have no legal effect. Nothing contained
18 herein shall be construed to prevent any insurer from cancelling
19 or reducing, as provided by law, the insurance on any property
20 prior to damage or destruction.

21 E. The liability of the insurer of a policy of fire
22 insurance, in the event of total or partial loss, shall not
23 exceed the insurable interest of the insured in the property
24 unless otherwise provided for by law. Nothing in this Section
25 shall be construed as to preclude the insurer from questioning
26 or contesting the insurable interest of the insured.

27 Section 2. This Act shall affect the obligation of insurers
28 under policies issued prior to the effective date of this Act. Any
29 policy forms approved prior to the effective date of this Act shall
30 be altered for the benefit of the insured.



DIGEST

The digest printed below was prepared by House Legislative Services.
It constitutes no part of the bill.

Dimos

Act

HB No.

Proposed law would provide for a "valued policy clause" which would prohibit a fire insurance policy from insuring property against fire loss in an amount less than the total amount for which the property is insured. Would provide for circumstances in which the insurer would pay the full amount of the coverage, either in case of total destruction or in case of partial damage when the property could be restored to its original condition.

(Adds R.S. 22:695)

ORIGINAL

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



ENGROSSED

INSURANCE/FIRE & CASUALTY: Provides for valued policy clauses in fire insurance policies

1 AN ACT

2 To enact R.S. 22:695, relative to fire insurance policies; to provide
3 for valued policy clauses in fire insurance policies; to require
4 the payment of the total amount for which the property is
5 insured in case of total destruction; to provide for the
6 reduction of insurance and liability of the insurer under
7 certain conditions in case of partial destruction; and to
8 provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 22:695 is hereby enacted to read as follows:

11 §695. Valued policy clause; exceptions

12 ... In any case in which a policy includes coverage for
13 loss of or damage for property of the insured from the period of
14 fire, if the insurer places a valuation upon the covered
15 property and uses such valuation for purposes of determining the
16 premium charge to be made under the policy, the insurer shall
17 compute and indemnify or compensate any covered loss of or
18 damage to such property which occurs during the term of the
19 policy at such valuation without deduction or offset, unless a
20 different method is to be used in the computation of loss, in
21 which latter case, the policy, and any application therefor,
22 shall set forth in type of prominent size, the actual method of



1 such loss computation by the insurer. Coverage may be voided
2 under said contract in the event of criminal fault on the part
3 of the insured or the assigns of the insured.

4 B. Nothing provided for in this Section shall be construed
5 to prevent the insurer of a fire insurance policy, at the
6 expense of the insurer and without contribution on the part of
7 the insured, from replacing the property partially damaged or
8 totally destroyed.

9 C. Any clause, condition, or provision of a policy of fire
10 insurance contrary to the provisions of this Section shall be
11 null and void, and have no legal effect. Nothing contained
12 herein shall be construed to prevent any insurer from cancelling
13 or reducing, as provided by law, the insurance on any property
14 prior to damage or destruction.

15 D. The liability of the insurer of a policy of fire
16 insurance, in the event of total or partial loss, shall not
17 exceed the insurable interest of the insured in the property
18 unless otherwise provided for by law. Nothing in this Section
19 shall be construed as to preclude the insurer from questioning
20 or contesting the insurable interest of the insured.

21 Section 2. This Act shall affect the obligation of insurers
22 under policies issued prior to the effective date of this Act. Any
23 policy forms approved prior to the effective date of this Act shall
24 be altered for the benefit of the insured.

DIGEST

The digest printed below was prepared by House Legislative Services.
It constitutes no part of the bill.

Dimos

Act

HB No. 776

Proposed law would provide that, if an insurer places a valuation
upon property which it is insuring against loss from fire and uses

Page 2 of 3

ENGROSSED

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law; words underlined are additions.



such valuation to determine the premium charged for the policy, then the insurer shall compute, indemnify, and compensate the insured for any covered loss or damage at such valuation without deduction or offset unless a different method is to be used for computation of loss.

Proposed law would provide that, if a different method for computation of loss is used, it shall be set forth in prominent type in the policy or application therefor.

Proposed law would permit the insurer to replace the property if it is partially damaged or totally destroyed and provides that the insurer's liability shall not exceed the insurable interest of the insured.

(Adds R.S. 22:695)

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Commerce to the original bill

1. Provides that if an insurer who insures property against loss by fire places a valuation upon the property and uses that valuation to determine the premium charged for the policy, then the insurer shall indemnify the insured for loss or damage at such valuation without deduction or offset unless a different method is used for computation of loss.
2. Provides that, if a different method for computation of loss is used, it shall be set forth in prominent type on the policy or application therefor.



REENGROSSED

INSURANCE/FIRE & CASUALTY: Provides for valued policy clauses in fire insurance policies

1 AN ACT
2 To enact R.S. 22:695, relative to fire insurance policies; to provide
3 for valued policy clauses in fire insurance policies; to require
4 the payment of the total amount for which the property is
5 insured in case of total destruction; to provide for the
6 reduction of insurance and liability of the insurer under
7 certain conditions in case of partial destruction; and to
8 provide for related matters.
9 Be it enacted by the Legislature of Louisiana:
10 Section 1. R.S. 22:695 is hereby enacted to read as follows:
11 \$695. Valued policy clause; exceptions
12 A. In any case in which a policy includes coverage for
13 loss of, or damage to, property of the insured from the peril of
14 fire, if the insurer places a valuation upon the covered
15 property and uses such valuation for purposes of determining the
16 premium charge to be made under the policy, the insurer shall
17 compute and indemnify or compensate any covered loss of, or
18 damage to, such property which occurs during the term of the
19 policy at such valuation without deduction or offset, unless a
20 different method is to be used in the computation of loss, in
21 which latter case, the policy, and any application therefor,
22 shall set forth in type of prominent size, the actual method of

Page 1 of 3

REENGROSSED

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LIS - 1c

Regular Session, 1991

HOUSE BILL NO. 776

BY REPRESENTATIVES DIMOS AND THOMPSON

ENROLLED

ACT No. 850

AN ACT

To enact R.S. 22:695, relative to fire insurance policies; to provide for valued policy clauses in fire insurance policies; to require the payment of the total amount for which the property is insured in case of total destruction; to provide for the reduction of insurance and liability of the insurer under certain conditions in case of partial destruction; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 22:695 is hereby enacted to read as follows:

§695. Valued policy clause; exceptions

A. Under any fire insurance policy insuring inanimate, immovable property in this state, if the insurer places a valuation upon the covered property and uses such valuation for purposes of determining the premium charge to be made under the policy, in the case of total loss the insurer shall compute and indemnify or compensate any covered loss of, or damage to, such property which occurs during the term of the policy at such valuation without deduction or offset, unless a different method is to be used in the computation of loss, in which latter case, the policy, and any application therefor, shall set forth in type of equal size, the actual method of such loss computation by the insurer. Coverage may be voided under said contract in the event of criminal fault on the part of the insured or the assigns of the insured.

B. Any clause, condition, or provision of a policy of fire insurance contrary to the provisions of this Section shall be



null and void, and have no legal effect. Nothing contained herein shall be construed to prevent any insurer from cancelling or reducing, as provided by law, the insurance on any property prior to damage or destruction.

C. The liability of the insurer of a policy of fire insurance, in the event of total or partial loss, shall not exceed the insurable interest of the insured in the property unless otherwise provided for by law. Nothing in this Section shall be construed as to preclude the insurer from questioning or contesting the insurable interest of the insured.

D. This Section shall only apply to policies issued or renewed after January 1, 1992.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____



June 20--

Reported with amendments; rules suspended; Committee amendments adopted; read by title; referred to the Legislative Bureau. p. 9

June 24--

Reported without Legislative Bureau amendments; read by title; passed to third reading. p. 4

July 3--

Read by title; finally passed as amended, 29 yeas, 2 nays; title read and adopted and the bill was ordered to the House. p. 48

----- HOUSE -----

July 6--

Received from the Senate with amendments. p. 5

July 7--

Read by title; roll called, 99 yeas, 0 nays. Senate amendments concurred in. p. 13

July 8--

Enrolled and signed by the House Speaker and Senate President; sent to the Governor for executive approval. p. 193

----- SENATE -----

July 8--

Signed by the President of the Senate. p. 169

----- HOUSE -----

July 23--

Becomes Act No. 849 effective on 09/06/91.

HOUSE BILL No. 774

BY REPRESENTATIVE C. R. JONES
AN ACT

To amend and reenact R.S. 24:31.1(A), 502(A), and 506(A), relative to the salaries of members of the Legislature of Louisiana and legislative officers; to provide for the salaries of the members of the legislature, the president of the Senate, and the speaker of the House of Representatives; to provide for an effective date for such provisions; and to provide for related matters.

----- HOUSE -----

April 24--

Read by title. p. 2

April 25--

Read by title; under the rules referred to the Committee on APPROPRIATIONS. p. 5

April 29--

Read by title; withdrawn from the files of the House. p. 93

HOUSE BILL No. 775

BY REPRESENTATIVE DELPIT
AN ACT

To enact Chapter 38-A of Title 17 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 17:3861 through R.S. 17:3861.10, relative to educational employees; to declare state policy relative to public school teachers and other employees of city or parish school boards, vocational-technical schools, special schools, postsecondary schools, and state colleges and

universities regarding employer-employee labor relations; to define terminology; to recognize the rights of public educational employees to form, join, and participate in the activities of employee unions of their choosing; to prohibit unfair labor practices; to provide for the creation of a statewide board, its functions, membership, powers, and duties; to provide for the determination of appropriate bargaining units; to provide for the certification and decertification of exclusive representatives; to provide for agreements entered into through negotiations; to provide for review of board decisions; to provide for impasse procedures; to provide for binding arbitration over contract disputes; to provide for penalties for violations; to provide for an effective date; and to provide for related matters.

----- HOUSE -----

April 24--

Read by title. p. 2

April 25--

Read by title; under the rules referred to the Committee on EDUCATION. p. 5

HOUSE BILL No. 776 ✓

BY REPRESENTATIVES DIMOS AND THOMPSON
AN ACT

To enact R.S. 22:695, relative to fire insurance policies; to provide for valued policy clauses in fire insurance policies; to require the payment of the total amount for which the property is insured in case of total destruction; to provide for the reduction of insurance and liability of the insurer under certain conditions in case of partial destruction; and to provide for related matters.

----- HOUSE -----

April 24--

Read by title. p. 3

April 25--

Read by title; under the rules referred to the Committee on COMMERCE. p. 5

June 6--

Reported with amendments (12-0) (R).

June 7--

Read by title; amendments adopted; ordered engrossed and passed to third reading - regular calendar. p. 9

June 19--

Read by title; amended; roll call on final passage 101 yeas, 0 nays. Finally passed; title adopted; ordered to the Senate. p. 32

----- SENATE -----

June 20--

Received in the Senate; rules suspended; read first and second time by title; referred to the Committee on COMMERCE. p. 33

July 3--

Rules suspended; reported with amendments. Rules suspended; committee amendments read and adopted. Read by title and referred to the Legislative Bureau. p. 15

July 5--

Reported without Legislative Bureau amendments; read by title; passed to third reading. p. 1

July 8--
Read by title; amended; returned to the calendar subject to call.
p. 43
Called from the calendar.
Read by title; finally passed as amended, 29 yeas, 0 nays; title read and adopted and the bill was ordered to the House. p. 141

----- HOUSE -----

July 8--
Received from the Senate with amendments. p. 167
Read by title; roll called, 100 yeas, 0 nays. Senate amendments concurred in. p. 168
Enrolled and signed by the House Speaker and Senate President; sent to the Governor for executive approval. p. 194

----- SENATE -----

July 8--
Signed by the President of the Senate.

----- HOUSE -----

July 23--
Becomes Act No. 850 effective on 09/06/91.

HOUSE BILL No. 777

BY REPRESENTATIVE STINE AND SENATOR COX
AN ACT
To amend and reenact R.S. 30:2280, relative to the authority of the secretary of the Department of Environmental Quality; to provide for public meetings and comments in remedial actions; and to provide for related matters.

----- HOUSE -----

April 24--
Read by title. p. 3

April 25--
Read by title; under the rules referred to the Committee on NATURAL RESOURCES. p. 5

May 16--
Reported with amendments (9-0) (R). p. 42

May 17--
Read by title; amendments adopted; ordered engrossed and passed to third reading - regular calendar. p. 9

May 21--
* Read by title; roll call on final passage 98 yeas, 0 nays. Finally passed; title adopted; ordered to the Senate. p. 39

----- SENATE -----

May 22--
Received in the Senate; rules suspended; read first and second time by title; referred to the Committee on ENVIRONMENTAL QUALITY. p. 3

June 4--
Rules suspended; reported favorably. p. 46

June 5--
Read by title; referred to the Legislative Bureau. p. 5

June 6--
Reported without Legislative Bureau amendments; read by title; passed to third reading. p. 3

June 20--
Read by title; roll call 29 yeas, 0 nays; finally passed; title adopted; ordered to the House. p. 13

----- HOUSE -----

June 20--
Received from the Senate without amendments. p. 54

June 21--
Enrolled and signed by the House Speaker and Senate President; sent to the Governor for executive approval. p. 43

----- SENATE -----

June 25--
Signed by the President of the Senate. p. 60

----- HOUSE -----

July 2--
Becomes Act No. 224 effective on 09/06/91.

HOUSE BILL No. 778

BY REPRESENTATIVES STINE, ROACH, AND STELLY
AN ACT
To enact R.S. 47:6005, relative to certain tax credits; to provide a credit against state income and corporation franchise taxes for the purchase of qualified recycling equipment; and to provide for related matters.

----- HOUSE -----

April 24--
Read by title. p. 3

April 25--
Read by title; under the rules referred to the Committee on WAYS AND MEANS. p. 5

May 21--
Reported with amendments (9-0) (R). p. 49

May 22--
Read by title; amendments adopted; ordered engrossed and passed to third reading - regular calendar. p. 23

May 29--
Read by title; roll call on final passage 97 yeas, 0 nays. Finally passed; title adopted; ordered to the Senate. p. 28

----- SENATE -----

May 29--
Received in the Senate; rules suspended; read first and second time by title; referred to the Committee on REVENUE AND FISCAL AFFAIRS. p. 26



House Commerce Committee

Minutes of Meeting
1991 Regular Session
June 6, 1991

I. CALL TO ORDER

Representative C. Dale Sittig, Chairman of the House Commerce Committee, called the meeting to order at 9:26 a.m. in Committee Room 1 of the State Capitol in Baton Rouge, Louisiana. The secretary called the roll and a quorum was established as shown below.

II. ROLL CALL

MEMBERS PRESENT:

Representative Dale Sittig,
Chairman
Representative James Donelon,
Vice Chairman
Representative John Alario
Representative Wilford Carter
Representative N. J. Damico
Representative Eddie Deano, Jr.
Representative John "Juba" Diez
Representative Hunt Downer
Representative Clark Gaudin
Representative Terry Gee
Representative Kernan "Skip" Hand
Representative Francis C. Heitmeier
Representative Charles D. Jones
Representative Michael McCleary
Representative Charles Melancon
Representative Sean Reilly
Representative A. Jess Smith
Representative Tim Stine
Representative John D. Travis

MEMBERS ABSENT:

III. STAFF MEMBERS PRESENT:

Theresa Ray, Senior Analyst
T. Michael White, Attorney
Dan Boudreaux, Attorney



Charlesetta Lavergne, Secretary
John Hernandez, Clerk
Melanie Carter, Sergeant at Arms

IV. DISCUSSION OF LEGISLATION ✓

House Bill No. 575 by Representative Jackson

Representative Jackson presented House Bill No. 575, which would provide additional grounds for refusing, suspending, or revoking certificates of registration and provide for additional fees.

There was no further discussion in support of or in opposition to House Bill No. 575.

Representative Diez moved to report House Bill No. 575 favorably. There were no objections, and House Bill No. 575 was reported favorably by a vote of 10 yeas and 0 nays. The members voting were Sittig, Donelon, Damico, Deano, Diez, Gaudin, McCleary, Melancon, A. Jess Smith, and Travis.

House Bill No. 1900 by Representative Armstrong

Representative Armstrong presented House Bill No. 1900, and indicated that he had amendments which would make the bill a substitute. The bill would provide for insurance brokers of automobile insurance and penalties for failure to maintain automobile coverage. (Testimony on the bill was previously given at the June 5, 1991, meeting of the House Commerce Committee.) Representative Armstrong indicated that the bill was relative to liability insurance policies, policy binders, and the status of the binder when an agent or broker had been issued a nonsufficient fund check.

Representative Diez offered amendments which would add "in case of nonpayment or nonreceipt for an application for a binder" on page 2, line 23, of the substitute bill. (The committee had adopted other amendments to House Bill No. 1900 on June 5, 1991). Mr. Groh stated that it would clarify the reason that a binder could be cancelled.

Representative Travis asked if the amendment discussed by the committee on June 5, 1991, had been dealt with. Mr. Groh indicated that it had. He added that the other part of the amendment would be that if an agent gives a bad check to the insurer, the insurer would not cancel the insured's policy. It would also provide relative to installment payments of premiums. There were no objections, and the amendments were adopted by a vote of 10 yeas and 0 nays. The members voting were Sittig, Donelon, Damico, Deano, Diez, Gaudin, McCleary, A. Jess Smith, and Travis.



Representative Donelon moved to report House Bill No. 544 favorably. There were no objections, and House Bill No. 544 was reported favorably by a vote of 14 yeas and 0 nays. The members voting were Donelon, Alario, Damico, Deano, Diez, Downer, Gaudin, Gee, McCleary, Melancon, A. Jess Smith, and Travis.

✓ **House Bill No. 776 by Representative Dimos**

Representative Dimos presented House Bill No. 776, which would provide for valued policy clauses in fire insurance policies. He explained that policies were written for certain amounts, such as a policy on a city lot of \$100,000. The agent writes the policy for that amount, a fire loss is sustained, and the insurer determines the extent of the loss, whether partial or total. The policyholder thinks that he should recover \$100,000 for his loss since that was the amount of his policy. However, the insurer's expert determines that the value of the property was only \$75,000, so that is what the policyholder gets. Representative Dimos said that this was what he was trying to correct.

Representative Dimos explained that when the law on valued property clauses was repealed several years ago that section of the law was repealed through oversight. He also stated that insurers were concerned that they could not cover existing homes fifteen or thirty years old if those types of policies existed. He said he was willing to work on an amendment to compromise to address the situation.

Mr. E. L. Henry, representing State Farm Insurance, Premier Towers, Baton Rouge, Louisiana, appeared before the committee on House Bill No. 776. He stated he had an amendment to be proposed which would address the problem Representative Dimos was trying to resolve. He acknowledged that there was concern because there were some bad insurance companies as well as bad agents. The bill would go further than Representative Dimos was seeking, he said, because a person could buy a 100 acre tract of land that has a \$10,000 dwelling on the property. The land was valued at \$1,000 an acre and a bank might inform the land buyer that in order for them to lend him money, he has to insure the land at \$100,000. When the dwelling on the property burns down in a fire, the insurance company has to pay \$110,000. He continued that contracts like this should not be allowed to exist. The amendment would provide that when a policy includes coverage for loss to a dwelling of the insured and if the company places a valuation on the property and used the valuation for purposes of determining what to charge for the premium, the company would compute a loss on the same basis unless a different method of computing loss was utilized. In that case, the method would be set forth in prominent type on the policy or application.

Mr. Henry hypothesized that a home had burned down and there was a total loss. If the cost to replace the home was equal to or less than the policy limit, the insurer must replace the home. The policyholder could even ask for cash; however, in those instances, it will be actual cash value of the home. However, the insurer must replace the home under the terms of the policy. He said that most people buy fire



insurance so that in case their house is burned or partially destroyed, it would be replaced. The amendment would also provide that if there was a loss, the insurer must replace the partial loss. If the bill passes in its original form, older homes would not be insurable. He explained that if there was a fifty-year old home which is partially destroyed and the insurer must replace it to its original and pay face value on a total loss, then a person was not going to find insurers willing to take that kind of risk. The amendment would address the problems .

Mr. Joel Ory, Audubon Insurance Company, appeared before the committee for informational purposes. He stated that he would speak from an underwriting perspective on the bill. There were many older dwellings in the state and there was a problem insuring them. If a policy comes in for a certain amount, an insurer would have to pay it for a loss. The problem with this, he said, was that the insurance companies were not receiving enough premiums. If insurers do not provide the coverage in the admitted market at the best rates, it was going to force the owners of the older homes into the nonadmitted market. The amendment discussed by Mr. Henry would enable insurers to continue to provide coverage in the admitted market.

Representative Alario said that the insurers did not seem to have a quarrel with Representative Dimos' concern when an agent sells a person too much coverage where the policyholder would at least recover up to that amount. Mr. Ory replied that insurers did have a problem with that. Representative Alario asked if insurers who sell those kinds of policies send someone out to check the property to see if it is actually worth the coverage being sought. Mr. Ory replied that they try to get the information from the agent to determine the value. He said that if a house was worth only \$75,000, but was insured for \$100,000, it has created a moral risk. Representative Alario said that if there was no claim on the policy for over twenty years, the insurer had overcharged the policyholder for that coverage. He asked if the insurers did not charge for the amount of the coverage written. Mr. Henry responded that a person should not insure a home for more than it was worth. Mr. Henry added that it should be the responsibility of the property owner and the insurer to agree on the value of the property being insured.

Representative Alario asked what happens to the premiums the policyholder has paid over a twenty-year period without ever filing a claim. There was no response.

Representative Sittig asked if the insurance industry examined the property to determine its worth before issuing a policy. Mr. Henry replied that State Farm's agents did, by taking pictures and also by checking the vicinity of the fire hydrant from the property. He added that he would be the last to say that there were no unscrupulous agents in the market, but the bill without the amendment would encourage people to commit fraud.

Representative Donelon asked if Representative Dimos was in agreement to the amendment referred to by Mr. Henry. Representative Dimos replied that he was.



Representative Donelon offered the amendment which would provide that if an insurer who insured property against loss by fire places a valuation upon the property and uses that valuation to determine the premium charged for the policy, then the insurer shall indemnify the insured for loss or damage at such valuation without deduction or offset unless a different method was used for computation of loss. The amendments also provide that if a different method was used for computation of loss, it shall be set forth in prominent type on the policy or application. There were no objections, and the amendments were adopted by a vote of 12 yeas and 0 nays. The members voting were Donelon, Alario, Damico, Deano, Diez, Downer, Gaudin, Gee, McCleary, Melancon, A. Jess Smith, and Travis.

Representative McCleary stated that he had an insurance policy with an automatic premium increase for escalation in value of the property. He said that his property was now worth less than five years ago but the automatic increase in premiums continues. Mr. Henry replied that it might take the amount of the policy to continue insuring the property in order to replace it if there was a total loss.

Representative Travis said that an insurance policy was a contract, with a mutual agreement between two parties. If an insurer wrote a policy for a certain amount and there was a loss, the insurer should pay up to the maximum amount in the policy. It is the responsibility of the insurer as much as the insured. Representative Dimos said that he was correct, but that during the 1988 Regular Session, a bill made it through that took away the valued policy clause in fire insurance policies. Representative Travis asked if the amendments would give the insurer the right to say it would rebuild a property rather than give the total amount of the policy. He also asked if he had a right to collect his \$100,000 rather than having the property rebuilt or does the insurer make the determination. Representative Dimos replied that the insurer would replace the house up to the value it determines.

Representative Travis stated that the law should read that if an insurer sold a policy for a certain amount, and in the case of a loss, should be made to pay the amount of the policy.

Representative Travis also suggested that an amendment be placed on the bill requiring that insurance agents go out and examine and evaluate properties before issuing a policy. Whatever the property is appraised for would be the amount the agent could write the policy for; that would be all he could charge for premiums. If the losses were so great to insurance company, why do they not appraise the properties, he asked. Mr. Henry responded that he would find that, in most instances, the reputable companies do this.

Representative Melancon moved to report House Bill No. 776 with amendments. There were no objections, and House Bill No. 776 was reported with amendments



by a vote of 12 yeas and 0 nays. The members voting were Donelon, Alario, Damico, Deano, Diez, Downer, Gaudin, Gee, McCleary, Melancon, A. Jess Smith, and Travis.

House Bill No. 1574 by Representative Adley

On behalf of Representative Adley, Mr. Kell McInnis, Department of Wildlife and Fisheries, Post Office 98000, Baton Rouge, Louisiana 70898, presented House Bill No. 1574, which would provide for a class one penalty for certain boating violations. He explained that there was a backlog in the court system on misdemeanor cases referred to as "class one" violations by the department. In order to solve the problem, the department decriminalized the class one violation. This violation was for hunting or fishing without a license. This removed over 12,000 cases from the court system. Boating violations also fall into the same monetary category. There was a \$25 fine plus court costs. In drafting the bill last year, the department did not specifically include Title 34 violations, which are boating violations. The bill would clarify that the Title 34 minor violations were also class one violations.

There was no further discussion in support of or in opposition to House Bill No. 1574.

Representative Donelon moved to report House Bill No. 1574 favorably. There were no objections, and House Bill No. 1574 was reported favorably by a vote of 12 yeas and 0 nays. The members voting were Donelon, Alario, Damico, Deano, Diez, Downer, Gaudin, Gee, McCleary, Melancon, A. Jess Smith, and Travis.

House Bill No. 1932 by Representative Holden

Representative Holden requested that the bill be deferred.

Representative Downer moved to defer action on House Bill No. 1932, which would require that consumers be given the opportunity to review and dispute credit reports prior to dissemination. There were no objections, and action on House Bill No. 1932 was deferred by a vote of 12 yeas and 0 nays. The members voting were Donelon, Deano, Diez, Downer, Gaudin, Gee, Hand, Melancon, Reilly, A. Jess Smith, Stine, and Travis.

House Bill No. 1737 by Representative Bradley

Representative Bradley presented House Bill No. 1737, which would regulate private review agents who conduct utilization reviews. He requested that the committee consider amendments to make the bill a substitute.

Representative A. Jess Smith moved to adopt the amendments to House Bill No. 1737. There were no objections, and the motion passed by a vote of 12 yeas and 0



Louisiana State Senate

COMMITTEE MEMBERS

in J.E. Jumonville, Jr.
Chairman
in Gregory Tarver
Vice Chairman
in Diana Bajoie
in Larry Bankston
in Randy Ewing
in Mike Foster
in John Saucers



Committee on Commerce

Box 94183, Capitol Station
Baton Rouge, Louisiana 70804
Telephone 504 342 2040

Alan Miller
Committee Researcher

Diane O'Quinn
Committee Secretary

MINUTES OF MEETING July 3, 1991

The Senate Commerce Committee met at 9:20 a.m. in Senate Committee Room E in the State Capitol in Baton Rouge, Louisiana. The Chairman, J. E. Jumonville, Jr., called the meeting to order and the secretary called the roll. The following members were present:

Senator J. E. Jumonville, Jr., Chairman
Senator Gregory Tarver
Senator Diana Bajoie
Senator Larry Bankston
Senator Mike Foster

The following staff was present:

Tom Tyler, Commerce Committee Attorney
Alan Miller, Commerce Committee Researcher
Diane O'Quinn, Commerce Committee Secretary

The following witnesses were present and/or testified:

Lt. Col. Charlie Clark, Wildlife & Fisheries Commission
Dennis Caballero, Security Industrial Ins. Co.
E. L. Henry, State Farm Insurance
Butch Spyridon, Convention & Visitors Bureau
John "Red" Bourg, La. AFL-CIO
Tom Ed McHugh, Mayor President
Davis Rhorer, Downtown Development District
Zella Scheve, City of Baton Rouge
Genry McCann, Better Business Bureau, City of New Orleans
J. R. Chatelain, Chatelain's TV Service
Harold Richard, La. Satellite Dealers Assn.
George Meaux, Morris TV
Howard Vick, Howard's TV
John Morris, Morris TV



Morton Jones, Jones' TV
Bob Leonard, Audio Systems Specialists
Jessie Pugh, State Radio & TV Technicians Board
Isaac F. Isaac, Ike's TV & Appliance
Orese Fuselier, Fuselier Radio & TV
Kirk Gunillian, Advanced Video
Phyllis Perron, Golden Rule Insurance Co.
Dave Evans, La. Farm Bureau
Pete Adams, L.A.F.A.C.
Don Phelps, National Assn. of Independent Insurers

TAPES DID NOT RECORD

LEGISLATION

House Bill No. 632 by Representative Scogin requires persons aboard certain recreational vessels to wear personal flotation devices.

Mr. Deano presented the bill on behalf of Mr. Scogin. He introduced Lt. Col. Clark who stated that wearing life jackets on boats will save lives.

Senator Foster offered an amendment which would require that persons sixteen and under be required to wear life jackets. The amendment failed.

Senator Tarver offered an amendment which would change the age requirement to eighteen. The amendment was adopted.

Senator Tarver to report the bill as amendment. There was objection and the following vote was occurred: Yeas: Senators Tarver and Bajoie; Nays: Senators Jumonville, Bankston and Foster. **House Bill No. 632 was not reported.**

✓ **House Bill No. 776 by Representative Dimos** provides for valued policy clauses in fire insurance policies.

Mr. Henry and Mr. Caballero explained the bill to the committee. The bill would provide that if an insurer places a value upon a piece of property which it is insuring against loss from fire and uses that valuation to determine the premium charged for the policy, then the insurer would compute, indemnify, and compensate the insured for any covered loss or damage at such valuation without deduction or offset unless a different method is to be used for computation of loss. The bill would also provide that if a different method was used, it shall be set forth in prominent type. Also, the insurer's liability is not to exceed the insurable interest of the insured.

Senator Bankston offered amendments to the bill which would specify inanimate, immovable property and also allow for total loss of that property. Language was also substituted



to provide for "equal" instead of "prominent" size print in the policy. Another amendment was added to specify that the section of law would only apply to policies issued or renewed after January 1, 1992. Without objection, the amendments were adopted.

Upon motion by Senator Bankston and without objection, **House Bill No. 776** was reported with amendments.

House Bill No. 829 by Representative C. D. Jones provides recovery of damages and other costs in certain cases.

There was no opposition to the bill and upon motion by Senator Tarver and without objection, **House Bill No. 829** was reported favorably.

House Bill No. 897 by Representative Jetson provides that the proceeds from the state sales tax upon the occupancy of hotel rooms in certain parishes shall be used for capital improvements or tourism promotion.

Senator Jumonville offered an amendment to the bill which would provide that the provisions of the Act shall terminate on June 30, 2001 and after that date the funds formerly paid into the East Baton Rouge Parish Centroplex Fund shall remain in the state general fund. There was no objection to the amendment and it was adopted.

Upon motion by Senator Jumonville and without objection, **House Bill No. 897** was reported with amendments.

House Bill No. 984 by Representative McCleary provides for the licensure of persons engaged in the business of maintaining or repairing satellite signal receiving equipment and video cassette recorders.

Mr. McCleary presented his bill before the committee. He explained that this bill would allow persons engaged in the maintenance and repair of satellite signal receiving equipment or video cassette recorders for at least two years prior to September 7, 1990 to apply for licensure without taking an examination.

Mr. Jessie Pugh spoke in opposition to the bill. He stated that persons engaged in this type of business should be required to take an examination before being licensed. This in essence would be granting a license to a person who has been violating the law for two years. This would be grossly unfair to those who have taken the examination and have been licensed and have abided by the law.

Senator Tarver moved to defer the bill. Senator Bankston made a substitute motion to report the bill favorably to which there was objection. The following vote was taken: Yeas: Senators Bankston and Foster; Nays: Senators Jumonville, Tarver and Bajoie. The motion failed. Without objection, the original motion carried and **House Bill No. 984** was deferred.



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7th Day's Proceedings--April 24, 1991

HOUSE CONCURRENT RESOLUTION No. 50 -- BY REPRESENTATIVE C. R. JONES

A CONCURRENT RESOLUTION

To express the sympathy and extend the condolences of the Louisiana Legislature to the family of Darian L. D'Amico of New Orleans upon her recent death.

Read by title.

Lies over under the rules.

HOUSE CONCURRENT RESOLUTION No. 51 -- BY REPRESENTATIVE SALTER

A CONCURRENT RESOLUTION

To urge and request hospital administrators and medical directors of hospitals owned, operated, or managed by the Department of Health and Hospitals and Louisiana State University to meet periodically with their peers in the private sector to discuss common issues.

Read by title.

Lies over under the rules.

HOUSE CONCURRENT RESOLUTION No. 52 -- BY REPRESENTATIVE STINE

A CONCURRENT RESOLUTION

To urge and request the Louisiana Board of Regents to recognize American Sign Language (ASL) as a foreign language and to require instruction in American Sign Language as part of the regular college curriculum at all public institutions of higher education in the state.

Read by title.

Lies over under the rules.

HOUSE CONCURRENT RESOLUTION No. 53 -- BY REPRESENTATIVE TRAVIS

A CONCURRENT RESOLUTION

To authorize the introduction and receipt of matter intended to have the effect of law after midnight of the fifteenth calendar day of this session.

Read by title.

Lies over under the rules.

Introduction of House Bills and Joint Resolutions ✓

The following named members introduced the following entitled House Bills and Joint Resolutions, which were read the first time by their titles, and placed upon the calendar for their second reading:

HOUSE BILL No. 770 -- BY REPRESENTATIVE THOMAS

AN ACT

To amend and reenact R.S. 22:1466(B), relative to motor vehicle insurance; provides that a "nonfault incident" shall mean an accident, collision, or other incident or occurrence involving a vehicle when the driver was not at fault; and to provide for related matters.

Read by title.

HOUSE BILL No. 771 --

BY REPRESENTATIVES ROACH, ACKAL, ADLEY, BENOIT, CASTILLE, CRANE, DAMICO, DASTUGUE, DEANO, DIMOS, DOWNER, GLOVER, GUIDRY, HAIK, HEBERT, HIGGINBOTHAM, HOLDEN, JOHN, LABORDE, LANCASTER, LANDRIEU, MILLER, MONTGOMERY, ODINET, PATTI, REILLY, SCOGIN, SIRACUSA, JOHN SMITH, STELLY, STINE, STRAIN, SAM THERIOT, STEVE THERIOT, THOMPSON, TOOMY, TRICHE, WARNER AND SENATORS NUNEZ, BAGERT, BANKSTON, BRINKHAUS, CHABERT, COX, CRAIN, CROSS, DECUIR, DOLAND, HINTON, JUMONVILLE, KELLY, NELSON, OSTERBERGER, PICARD, ULLO, AND WINDHORST

AN ACT

To enact Chapter 5-A of Subtitle I of Title 30 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 30:311 through 316, to create the Coastal Environment Protection Trust Fund; to provide for the purposes of the fund, definitions, and deposit of monies into the fund; investment of monies in the fund; to provide for the disbursement and administration of monies; to provide for the development of a coastal environment protection plan; and to provide for related matters.

Read by title.

HOUSE BILL No. 772 -- BY REPRESENTATIVE ROACH

AN ACT

To amend and reenact R.S. 56:499(B) and (C) and to enact R.S. 56:499(D), relative to saltwater shrimp; to provide for an increase in net mesh sizes; and to provide for related matters.

Read by title.

HOUSE BILL No. 773 -- BY REPRESENTATIVE ROACH

AN ACT

To enact R.S. 23:1310.1(D), relative to worker's compensation; to provide with respect to administrative hearing officers; to provide for term of employment; to provide for a standard of conduct; and to provide for related matters.

Read by title.

HOUSE BILL No. 774 -- BY REPRESENTATIVE C. R. JONES

AN ACT

To amend and reenact R.S. 24:31.1(A), 502(A), and 506(A), relative to the salaries of members of the Legislature of Louisiana and legislative officers; to provide for the salaries of the members of the legislature, the president of the Senate, and the speaker of the House of Representatives; to provide for an effective date for such provisions; and to provide for related matters.

Read by title.

HOUSE BILL No. 775 -- BY REPRESENTATIVE DELPIT

AN ACT

To enact Chapter 38-A of Title 17 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 17:3861 through R.S. 17:3861.10, relative to educational employees; to declare state policy relative to public school teachers and other employees of city or parish school boards, vocational-technical schools, special schools, postsecondary schools, and state colleges and universities regarding employer-employee labor relations; to define terminology; to recognize the rights of public educational employees to form, join, and participate in the activities of employee unions of their choosing; to prohibit unfair labor practices; to provide for the creation of a statewide board, its functions, membership, powers, and duties; to provide for the determination of appropriate bargaining units; to provide for the certification and decertification of exclusive representatives; to provide for agreements entered into through negotiations; to provide for review of board decisions; to provide for impasse procedures; to provide for binding arbitration over contract disputes; to provide for penalties for violations; to provide for an effective date; and to provide for related matters.

Read by title.

7th Day's Proceedings--April 24, 1991

HOUSE BILL No. 776 -- BY REPRESENTATIVE DIMOS

AN ACT

To enact R.S. 22:695, relative to fire insurance policies; to provide for valued policy clauses in fire insurance policies; to require the payment of the total amount for which the property is insured in case of total destruction; to provide for the reduction of insurance and liability of the insurer under certain conditions in case of partial destruction; and to provide for related matters.

Read by title.

HOUSE BILL No. 777 -- BY REPRESENTATIVE STINE

AN ACT

To amend and reenact R.S. 30:2280, relative to the authority of the secretary of the Department of Environmental Quality; to provide for public meetings and comments in remedial actions; and to provide for related matters.

Read by title.

HOUSE BILL No. 778 -- BY REPRESENTATIVES STINE, ROACH, AND STELLY

AN ACT

To enact R.S. 47:6005, relative to certain tax credits; to provide a credit against state income and corporation franchise taxes for the purchase of qualified recycling equipment; and to provide for related matters.

Read by title.

HOUSE BILL No. 779 -- BY REPRESENTATIVE STINE

AN ACT

To amend and reenact R.S. 30:2039(A), relative to waste sites; to provide for recordation and notice; and to provide for related matters.

Read by title.

HOUSE BILL No. 780 -- BY REPRESENTATIVE DALE SMITH

AN ACT

To amend and reenact R.S. 56:6(25)(a), 22(A), 318.1(A), 325(A)(1), (B), and (C), and 326.3, relative to black bass fishing; to establish the minimum size, daily take, and possession limits of black bass; to prohibit the issuance of special tournament permits for the fishing of black bass; to provide exceptions to the rulemaking and regulatory authority of the Wildlife and Fisheries Commission; and to provide for related matters.

Read by title.

HOUSE BILL No. 781 -- BY REPRESENTATIVE DALE SMITH

AN ACT

To amend and reenact R.S. 56:123(E)(1)(a) and (b) and (3)(a) and 124(9), relative to prohibitions against night hunting; to provide for penalties; and to provide for related matters.

Read by title.

House and House Concurrent Resolutions

The following House and House Concurrent Resolutions lying over were taken up and acted upon as follows:

HOUSE CONCURRENT RESOLUTION No. 47 -- BY REPRESENTATIVE HOLDEN

A CONCURRENT RESOLUTION

To authorize the introduction and receipt of matter intended to have the effect of law after midnight of the fifteenth calendar day of this session.

Read by title.

On motion of Rep. Holden, the rules were suspended in order to consider the adoption of the resolution.

Rep. Holden moved the adoption of the resolution.

A record vote was asked for and ordered by the House.

ROLL CALL

The roll was called with the following result:

YEAS		
Mr. Speaker	Guzzardo	Orr
Accardo	Haik	Patti
Alario	Hebert	Roach
Alexander, R.--13th	Heitmeier	St. Raymond
Anding	Higginbotham	Scogin
Armstrong	Holden	Singleton
Ater	Hopkins	Siracusa
Benoit	Irvin	Sittig
Bradley	Ivon	Smith, A.D. --22nd
Bruneau	Jones, C. D.--17th	Smith, J.D. --50th
Carrier	Jones, C. R.--96th	Sour
Carter	Kennard	Stelly
Castille	Laborde	Stine
Copelin	Lalonde	Strain
Crane	Lancaster	Theriot, S.J.--84th
Diez	LeBlanc	Thomas
Donelon	Lemoine	Thompson
Duke	Long	Toomy
Eason	McCleary	Travis
Ellington	McFerren	Triche
Forster	Melancon	Volentine
Gaudin	Montgomery	Warner
Guidry	Morrell	Warren
Gunter	Odinot	
Total-- 71		

NAYS

Total-- 0

ABSENT

Ackal	DeWitt	John
Adley	Dixon	Kimball
Alexander, A.--93rd	Downer	Landrieu
Ansardi	Garrity	Martin
Bacque	Gee	McDonald
Brun	Glover	Miller
Cain	Hand	Reilly
Damico	Herring	Salter
Dastugue	Jackson	Smith, A.J. --18th
Deano	Jenkins	Smith, J.R. --30th
Delpit	Jetson	Theriot, S.H.--47th
Total-- 33		

The resolution, having received a two-thirds vote of the elected members, was adopted.

Ordered to the Senate.

Senate Concurrent Resolutions

The following Senate Concurrent Resolutions lying over were taken up and acted upon as follows:

SENATE CONCURRENT RESOLUTION No. 6 -- BY SENATOR HINTON

A CONCURRENT RESOLUTION

To express the gratitude of the people of Louisiana to the service men and women who have sacrificed so much to serve the cause of freedom during the Persian Gulf Crisis in the Middle East.

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8th Day's Proceedings--April 25, 1991

regular college curriculum at all public institutions of higher education in the state.

Read by title.

Under the rules, the above resolution was referred to the Committee on EDUCATION.

HOUSE CONCURRENT RESOLUTION No. 53 -- BY REPRESENTATIVE TRAVIS

A CONCURRENT RESOLUTION

To authorize the introduction and receipt of matter intended to have the effect of law after midnight of the fifteenth calendar day of this session.

On motion of Rep. Travis, the resolution was returned to the calendar subject to call.

HOUSE CONCURRENT RESOLUTION No. 54 -- BY REPRESENTATIVE DALE SMITH

A CONCURRENT RESOLUTION

To nullify the body of rules and regulations known as Bulletin 1877.

Read by title.

Under the rules, the above resolution was referred to the Committee on EDUCATION.

HOUSE CONCURRENT RESOLUTION No. 55 -- BY REPRESENTATIVE LABORDE

A CONCURRENT RESOLUTION

To memorialize the Congress of the United States to amend laws relative to Medicare coverage of heart transplants; to provide that Medicare cover the cost of all required or necessary medications, directly related to this particular surgery, which are prescribed to Medicare-eligible patients following a heart transplant.

Read by title.

Under the rules, the above resolution was referred to the Committee on HEALTH AND WELFARE.

HOUSE CONCURRENT RESOLUTION No. 56 -- BY REPRESENTATIVE SIRACUSA

A CONCURRENT RESOLUTION

To express the condolences of the Legislature of Louisiana upon the recent death of Stanley O. Graham of Baton Rouge, Louisiana.

Read by title.

On motion of Rep. Siracusa, and under a suspension of the rules, the resolution was adopted.

Ordered to the Senate.

HOUSE CONCURRENT RESOLUTION No. 57 -- BY REPRESENTATIVE JETSON

A CONCURRENT RESOLUTION

To urge and request the Louisiana Welfare Reform Coordinating Committee as required by R.S. 46:458(F), to submit an annual report in writing to the Joint Committee on Health and Welfare regarding implementation of the Louisiana Welfare Reform Act.

Read by title.

Under the rules, the above resolution was referred to the Committee on HEALTH AND WELFARE.

HOUSE CONCURRENT RESOLUTION No. 58 -- BY REPRESENTATIVE LALONDE

A CONCURRENT RESOLUTION

To urge and request the State Board of Elementary and Secondary Education to study the current roles of guidance counselors in vocational education, including counselors at the elementary, secondary, and postsecondary levels; to make any necessary recommendations toward improving or changing these roles; and to report its findings and recommendations to the House Committee on Education and the Senate Committee on Education prior to the beginning of the 1992 Regular Session of the Legislature.

Read by title.

Under the rules, the above resolution was referred to the Committee on EDUCATION.

House Bills and Joint Resolutions on Second Reading to be Referred

The following House Bills and Joint Resolutions on second reading to be referred to committees were taken up, read, and referred to committees, as follows:

HOUSE BILL No. 770 -- BY REPRESENTATIVE THOMAS

AN ACT

To amend and reenact R.S. 22:1466(B), relative to motor vehicle insurance; provides that a "nonfault incident" shall mean an accident, collision, or other incident or occurrence involving a vehicle when the driver was not at fault; and to provide for related matters.

Read by title.

Under the rules, the above bill was referred to the Committee on COMMERCE.

HOUSE BILL No. 771 --

BY REPRESENTATIVES ROACH, ACKAL, ADLEY, BENOIT, CASTILLE, CRANE, DAMICO, DASTUGUE, DEANO, DIMOS, DOWNER, GLOVER, GUIDRY, HAIK, HEBERT, HIGGINBOTHAM, HOLDEN, JOHN, LABORDE, LANCASTER, LANDRIEU, MILLER, MONTGOMERY, ODINET, PATTI, REILLY, SCOGIN, SIRACUSA, JOHN SMITH, STELLY, STINE, STRAIN, SAM THERIOT, STEVE THERIOT, THOMPSON, TOOMY, TRICHE, WARNER AND SENATORS NUNEZ, BAGERT, BANKSTON, BRINKHAUS, CHABERT, COX, CRAIN, CROSS, DECUIR, DOLAND, HINTON, JUMONVILLE, KELLY, NELSON, OSTERBERGER, PICARD, ULLO, AND WINDHORST

AN ACT

To enact Chapter 5-A of Subtitle I of Title 30 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 30:311 through 316, to create the Coastal Environment Protection Trust Fund; to provide for the purposes of the fund, definitions, and deposit of monies into the fund; investment of monies in the fund; to provide for the disbursement and administration of monies; to provide for the development of a coastal environment protection plan; and to provide for related matters.

Read by title.

Under the rules, the above bill was referred to the Committee on NATURAL RESOURCES.

HOUSE BILL No. 772 -- BY REPRESENTATIVE ROACH

AN ACT

To amend and reenact R.S. 56:499(B) and (C) and to enact R.S. 56:499(D), relative to saltwater shrimp; to provide for an increase in net mesh sizes; and to provide for related matters.

Read by title.

Under the rules, the above bill was referred to the Committee on NATURAL RESOURCES.

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HOUSE BILL No. 773 --
BY REPRESENTATIVE ROACH

AN ACT

To enact R.S. 23:1310.1(D), relative to worker's compensation; to provide with respect to administrative hearing officers; to provide for term of employment; to provide for a standard of conduct; and to provide for related matters.

Read by title.

Under the rules, the above bill was referred to the Committee on **LABOR AND INDUSTRIAL RELATIONS**.

HOUSE BILL No. 774 --
BY REPRESENTATIVE C. R. JONES

AN ACT

To amend and reenact R.S. 24:31.1(A), 502(A), and 506(A), relative to the salaries of members of the Legislature of Louisiana and legislative officers; to provide for the salaries of the members of the legislature, the president of the Senate, and the speaker of the House of Representatives; to provide for an effective date for such provisions; and to provide for related matters.

Read by title.

Under the rules, the above bill was referred to the Committee on **APPROPRIATIONS**.

HOUSE BILL No. 775 --
BY REPRESENTATIVE DELPIT

AN ACT

To enact Chapter 38-A of Title 17 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 17:3861 through R.S. 17:3861.10, relative to educational employees; to declare state policy relative to public school teachers and other employees of city or parish school boards, vocational-technical schools, special schools, postsecondary schools, and state colleges and universities regarding employer-employee labor relations; to define terminology; to recognize the rights of public educational employees to form, join, and participate in the activities of employee unions of their choosing; to prohibit unfair labor practices; to provide for the creation of a statewide board, its functions, membership, powers, and duties; to provide for the determination of appropriate bargaining units; to provide for the certification and decertification of exclusive representatives; to provide for agreements entered into through negotiations; to provide for review of board decisions; to provide for impasse procedures; to provide for binding arbitration over contract disputes; to provide for penalties for violations; to provide for an effective date; and to provide for related matters.

Read by title.

Under the rules, the above bill was referred to the Committee on **EDUCATION**.

HOUSE BILL No. 776 --
BY REPRESENTATIVE DIMOS

AN ACT

To enact R.S. 22:695, relative to fire insurance policies; to provide for valued policy clauses in fire insurance policies; to require the payment of the total amount for which the property is insured in case of total destruction; to provide for the reduction of insurance and liability of the insurer under certain conditions in case of partial destruction; and to provide for related matters.

Read by title.

Under the rules, the above bill was referred to the Committee on **COMMERCE**.

HOUSE BILL No. 777 --
BY REPRESENTATIVE STINE

AN ACT

To amend and reenact R.S. 30:2280, relative to the authority of the secretary of the Department of Environmental Quality; to provide for public meetings and comments in remedial actions; and to provide for related matters.

Read by title.

Under the rules, the above bill was referred to the Committee on **NATURAL RESOURCES**.

HOUSE BILL No. 778 --
BY REPRESENTATIVES STINE, ROACH, AND STELLY

AN ACT

To enact R.S. 47:6005, relative to certain tax credits; to provide a credit against state income and corporation franchise taxes for the purchase of qualified recycling equipment; and to provide for related matters.

Read by title.

Under the rules, the above bill was referred to the Committee on **WAYS AND MEANS**.

HOUSE BILL No. 779 --
BY REPRESENTATIVE STINE

AN ACT

To amend and reenact R.S. 30:2039(A), relative to waste sites; to provide for recordation and notice; and to provide for related matters.

Read by title.

Under the rules, the above bill was referred to the Committee on **NATURAL RESOURCES**.

HOUSE BILL No. 780 --
BY REPRESENTATIVE DALE SMITH

AN ACT

To amend and reenact R.S. 56:6(25)(a), 22(A), 318.1(A), 325(A)(1), (B), and (C), and 326.3, relative to black bass fishing; to establish the minimum size, daily take, and possession limits of black bass; to prohibit the issuance of special tournament permits for the fishing of black bass; to provide exceptions to the rulemaking and regulatory authority of the Wildlife and Fisheries Commission; and to provide for related matters.

Read by title.

Under the rules, the above bill was referred to the Committee on **NATURAL RESOURCES**.

HOUSE BILL No. 781 --
BY REPRESENTATIVE DALE SMITH

AN ACT

To amend and reenact R.S. 56:123(E)(1)(a) and (b) and (3)(a) and 124(9), relative to prohibitions against night hunting; to provide for penalties; and to provide for related matters.

Read by title.

Under the rules, the above bill was referred to the Committee on **NATURAL RESOURCES**.

HOUSE BILL No. 782 --
BY REPRESENTATIVE SITTING

AN ACT

To amend and reenact R.S. 37:493(B), relative to the Louisiana State Board of Cosmetology; to provide that one member of the board may be connected with the ownership of schools of cosmetology licensed in the state; and to provide for related matters.

Read by title.

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services are arranged on an individual case-by-case basis; and to provide for related matters.

Read by title.

HOUSE BILL No. 2021--
BY REPRESENTATIVE HERRING (INTRODUCED PURSUANT TO THE AUTHORITY OF H.C.R. NO. 232)

AN ACT

To enact R.S. 22:614.1, relative to life insurance; to provide that charities may be an insurable interest for life insurance policy purposes; and to provide for related matters.

Read by title.

HOUSE BILL No. 2022--
BY REPRESENTATIVE DASTUGUE (INTRODUCED PURSUANT TO THE AUTHORITY OF H.C.R. NO. 235)

AN ACT

To enact R.S. 42:851(B)(4), relative to group health insurance; to authorize the state of Louisiana to pay seventy-five percent of the premium under the policy of group health insurance for certain retirees; and to provide for related matters.

Read by title.

HOUSE BILL No. 2023--
BY REPRESENTATIVE R. ALEXANDER (INTRODUCED PURSUANT TO THE AUTHORITY OF H.C.R. NO. 218)

AN ACT

To enact R.S. 32:1302.1, relative to motor vehicle inspections; to provide for the duties of the secretary of the Department of Public Safety and Corrections; to provide for the inspection of certain school buses and for the conduct of such inspections; to provide for the issuance of official certificates of inspection and approval; to provide for implementation; to provide limitations; to provide for an effective date; and to provide for related matters.

Read by title.

HOUSE BILL No. 2024--
BY REPRESENTATIVE MCCLEARY (INTRODUCED PURSUANT TO THE AUTHORITY OF H.C.R. NO. 216)

AN ACT

To amend and reenact R.S. 33:2372(19) and 2378(A)(7), to enact R.S. 33:2375.3, 2375.4, 2378(D)(5), 2378.1, 2378.2, and 2378.3, and to repeal R.S. 33:2381.2, relative to the Municipal Police Employees' Retirement System; to provide with respect to qualified plan status under the Internal Revenue Code for tax sheltering of contributions; and to provide for related matters.

Read by title.

Reports of Committees

The following reports of committees were received and read:

Rep. Long, Chairman, on behalf of the Committee on Education, submitted the following report:

House of Representatives
State Capitol
State of Louisiana

June 6, 1991, Baton Rouge, Louisiana

To the Speaker and Members of the House of Representatives:

I am directed by your Committee on Education to submit the following report:

House Bill No. 1058, by Long
Reported favorably. (13-0)(Regular)

House Bill No. 1898, by Long
Reported with amendments. (12-0)(Regular)

House Concurrent Resolution No. 230, by Odinet
Reported with amendments. (15-0)

Senate Bill No. 52, by Fields
Reported favorably. (10-0)(Regular)

Senate Bill No. 237, by Johnson
Reported favorably. (15-0)(Regular)

Senate Bill No. 539, by Bankston
Reported with amendments. (14-0)(Regular)

Senate Bill No. 977, by Bankston
Reported favorably. (14-0)(Regular)

Senate Bill No. 1057, by Johnson
Reported favorably. (13-0)(Regular)

JIMMY D. LONG
Chairman

The above Senate Bills reported favorably or with amendments were referred to the Legislative Bureau.

Rep. Roach, Chairman, on behalf of the Committee on Natural Resources, submitted the following report:

House of Representatives
State Capitol
State of Louisiana

June 6, 1991, Baton Rouge, Louisiana

To the Speaker and Members of the House of Representatives:

I am directed by your Committee on Natural Resources to submit the following report:

House Concurrent Resolution No. 132, by Martin
Reported favorably. (9-0)

House Concurrent Resolution No. 187, by Hopkins
Reported favorably. (9-0)

House Bill No. 533, by Roach
Reported with amendments. (9-0)(Regular)

House Bill No. 771, by Roach
Reported by substitute. (9-0)(Regular)

House Bill No. 998, by Siracusa
Reported with amendments. (9-0)(Regular)

House Bill No. 1177, by Roach
Reported with amendments. (9-0)(Regular)

House Bill No. 1181, by Roach
Reported with amendments. (10-0)(Regular)

House Bill No. 1285, by Ellington
Reported favorably. (7-5)(Regular)

House Bill No. 1593, by Roach
Reported with amendments. (6-5)(Regular)

House Bill No. 1594, by Roach
Reported with amendments. (7-3)(Regular)

House Bill No. 1596, by Roach
Reported favorably. (11-0)(Regular)

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Reported favorably. (7-0)(Regular)

Senate Bill No. 823, by Cross
Reported favorably. (7-0)(Regular)

RALPH R. MILLER
Chairman

The above Senate Bills reported favorably or with amendments
were referred to the Legislative Bureau.

Rep. Sittig, Chairman, on behalf of the Committee on
Commerce, submitted the following report:

House of Representatives
State Capitol
State of Louisiana

June 6, 1991, Baton Rouge, Louisiana

To the Speaker and Members of the House of Representatives:

✓ I am directed by your Committee on Commerce to submit the
following report:

House Concurrent Resolution No. 231, by Haik
Reported favorably. (14-0)

House Bill No. 1900, by Armstrong
Reported by substitute. (10-0)(Regular)

House Bill No. 575, by Jackson
Reported favorably. (10-0)(Regular)

House Bill No. 1514, by Hebert
Reported unfavorably. (14-0)

House Bill No. 1574, by Adley
Reported favorably. (12-0)(Regular)

House Bill No. 1705, by Sittig
Reported by substitute. (15-0)(Regular)

House Bill No. 1737, by Bradley
Reported by substitute. (15-0)(Regular)

House Bill No. 526, by Smith, A.J.
Reported with amendments. (10-0)(Regular)

House Bill No. 544, by Dimos
Reported favorably. (14-0)(Regular)

House Bill No. 747, by Jetson
Reported favorably. (12-0)(Regular)

House Bill No. 754, by Smith, A.J.
Reported with amendments. (10-0)(Regular)

✓ House Bill No. 776, by Dimos
Reported with amendments. (12-0)(Regular)

House Bill No. 937, by John
Reported favorably. (10-0)(Regular)

House Bill No. 976, by McCleary
Reported with amendments. (9-0-1)(Regular)

House Bill No. 984, by McCleary
Reported favorably. (7-3)(Regular)

House Bill No. 1237, by Armstrong
Reported by substitute. (7-2-1)(Regular)

House Bill No. 1300, by Patti

Reported with amendments. (14-0)(Regular)

House Bill No. 1375, by Martin
Reported favorably. (15-0)(Regular)

House Bill No. 1371, by Miller
Reported favorably. (12-0)(Regular)

House Bill No. 1450, by Melancon
Reported by substitute. (12-0)(Regular)

House Bill No. 1557, by Stine
Reported favorably. (10-0)(Regular)

DALE SITTIG
Chairman

Message from the Senate

SIGNED SENATE BILLS AND JOINT RESOLUTIONS

June 6, 1991

To the Honorable Speaker and Members of the House of
Representatives:

I am directed to inform your honorable body that the
President of the Senate has signed the following Senate Bills and
Joint Resolutions:

Senate Bill No. 50.

Senate Bill No. 558.

and ask the Speaker of the House of Representatives to affix
his signature to the same.

Respectfully submitted,

MICHAEL S. BAER, III,
Secretary of the Senate.

The Senate Bills and Joint Resolutions contained herein were
signed by the Speaker of the House.

Message from the Senate

SIGNED SENATE CONCURRENT RESOLUTIONS

June 6, 1991

To the Honorable Speaker and Members of the House of
Representatives:

I am directed to inform your honorable body that the
President of the Senate has signed the following Senate
Concurrent Resolutions:

Senate Concurrent Resolution No. 147.

and ask the Speaker of the House of Representatives to affix
his signature to the same.

Respectfully submitted,

MICHAEL S. BAER, III,
Secretary of the Senate.

The Senate Concurrent Resolutions contained herein were
signed by the Speaker of the House.

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On motion of Rep. Roach, the resolution was ordered passed to its third reading for final consideration.

✓ House Bills and Joint Resolutions on Second Reading Reported by Committees

The following House Bills and Joint Resolutions on second reading reported by committees were taken up and acted upon as follows:

HOUSE BILL No. 100 -- BY REPRESENTATIVES MONTGOMERY AND LEBLANC AN ACT

To enact Code of Criminal Procedure Article 895.3, relative to conditions of probation and crime stoppers organizations; to provide for payments to crime stoppers organizations by persons placed upon probation; and to provide for related matters.

Read by title.

Reported favorably by the Committee on ADMINISTRATION OF CRIMINAL JUSTICE.

On motion of Rep. Miller, the above bill was ordered engrossed and passed to its third reading.

Under the rules, placed on the regular calendar.

HOUSE BILL No. 490 -- BY REPRESENTATIVE DOWNER AN ACT

To amend and reenact R.S. 14:108(A), relative to the offense of resisting an officer; to include the act of interfering with an officer in that offense; and to provide for related matters.

Read by title.

Reported favorably by the Committee on ADMINISTRATION OF CRIMINAL JUSTICE.

On motion of Rep. Miller, the above bill was ordered engrossed and passed to its third reading.

Under the rules, placed on the regular calendar.

HOUSE BILL No. 526 -- BY REPRESENTATIVE JESS SMITH AN ACT

To enact R.S. 22:636.2(C), relative to property, casualty, and liability insurance policies; to prohibit the denial of coverage or cancellation of homeowner's policies for possession of nonvicious dogs and all-terrain vehicles; and to provide for related matters.

Read by title.

Reported with amendments by the Committee on COMMERCE.

The committee amendments were read as follows:

HOUSE COMMITTEE AMENDMENTS

Amendments proposed by House Committee on Commerce to House Bill No. 526 by Representative A. Jess Smith

Amend original bill as follows:

AMENDMENT NO. 1

On page 1, line 19, after "beings." delete the remainder of the line

AMENDMENT NO. 2

On page 1, delete lines 20 through 22 in their entirety and insert in lieu thereof "An insurer may, with the written consent of the insured, exclude coverage for dogs or an all-terrain vehicle (ATV)."

On motion of Rep. Sittig, the amendments were adopted.

On motion of Rep. Sittig, the bill, as amended, was ordered engrossed and passed to its third reading.

Under the rules, placed on the regular calendar.

HOUSE BILL No. 533 -- BY REPRESENTATIVE ROACH AN ACT

To amend and reenact R.S. 56:495.1(A), relative to trawling vessels; to provide for the size of trawls and trawl doors; and to provide for related matters.

Read by title.

Reported with amendments by the Committee on NATURAL RESOURCES.

The committee amendments were read as follows:

HOUSE COMMITTEE AMENDMENTS Amendments proposed by House Committee on Natural Resources to House Bill No. 533 by Representative Roach

Amend original bill as follows:

AMENDMENT NO. 1

On page 2, line 1, change "thirty-four" to "forty"

On motion of Rep. Roach, the amendments were adopted.

On motion of Rep. Roach, the bill, as amended, was ordered engrossed and passed to its third reading.

Under the rules, placed on the regular calendar.

HOUSE BILL No. 544 -- BY REPRESENTATIVE DIMOS AN ACT

To amend and reenact R.S. 22:215.9(A)(1) and 2059, relative to group health and accident policies; to provide that the indemnification trusts are required to notify its members certain increases in policies rates, of cancellations, and nonrenewals within certain periods of time; and to provide for related matters.

Read by title.

Reported favorably by the Committee on COMMERCE.

On motion of Rep. Sittig, the above bill was ordered engrossed and passed to its third reading.

Under the rules, placed on the regular calendar.

HOUSE BILL No. 575 -- BY REPRESENTATIVE JACKSON AN ACT

To amend and reenact R.S. 37:375 and to enact R.S. 37:372(10) and (11), relative to barbers; to provide additional grounds for refusing, suspending, or revoking certificates of registration; to provide with respect to certain fees; and to provide for related matters.

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Department of Employment and Training; to provide for an effective date; and to provide for related matters.

Read by title.

Reported favorably by the Committee on COMMERCE.

On motion of Rep. Sittig, the above bill was ordered engrossed and passed to its third reading.

Under the rules, placed on the regular calendar.

HOUSE BILL No. 754 — BY REPRESENTATIVE JESS SMITH

AN ACT

To amend and reenact R.S. 22:229, relative to health and accident insurance; to provide that no premium for a policy, rider, or amendment shall be increased more than once in a six-month period regardless of when such coverage was commenced or renewed; and to provide for related matters.

Read by title.

Reported with amendments by the Committee on COMMERCE.

The committee amendments were read as follows:

HOUSE COMMITTEE AMENDMENTS

Amendments proposed by House Committee on Commerce to House Bill No. 754 by Representative A. Jess Smith

Amend original bill as follows:

AMENDMENT NO. 1

On page 1, line 13, change "amendments" to "amendment"

On motion of Rep. Sittig, the amendments were adopted.

On motion of Rep. Sittig, the bill, as amended, was ordered engrossed and passed to its third reading.

Under the rules, placed on the regular calendar.

HOUSE BILL No. 771 —

BY REPRESENTATIVES ROACH, ACKAL, ADLEY, BENOIT, CASTILLE, CRANE, DAMICO, DASTUGUE, DEANO, DIMOS, DOWNER, GLOVER, GUIDRY, HAIK, HEBERT, HIGGINBOTHAM, HOLDEN, JOHN, LABORDE, LANCASTER, LANDRIEU, MILLER, MONTGOMERY, ODINET, PATTI, REILLY, SCOGIN, SIRACUSA, JOHN SMITH, STELLY, STINE, STRAIN, SAM THERIOT, STEVE THERIOT, THOMPSON, TOOMY, TRICHE, WARNER AND SENATORS NUNEZ, BAGERT, BANKSTON, BRINKHAUS, CHABERT, COX, CRAIN, CROSS, DECUIR, DOLAND, HINTON, JUMONVILLE, KELLY, NELSON, OSTERBERGER, PICARD, ULLO, AND WINDHORST

AN ACT

To enact Chapter 5-A of Subtitle 1 of Title 30 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 30:311 through 316, to create the Coastal Environment Protection Trust Fund; to provide for the purposes of the fund, definitions, and deposit of monies into the fund; investment of monies in the fund; to provide for the disbursement and administration of monies; to provide for the development of a coastal environment protection plan; and to provide for related matters.

Read by title.

Reported by substitute by the Committee on NATURAL RESOURCES.

The substitute was read by title as follows:

HOUSE BILL No. 2025—

BY REPRESENTATIVES HAIK, BENOIT, GLOVER, HOLDEN, JOHN, ROACH, SIRACUSA (SUBSTITUTE BILL FOR HOUSE BILL NO. 771 BY REPRESENTATIVE ROACH)

AN ACT

To enact Chapter 5-A of Subtitle 1 of Title 30 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 30:311 through 313, to create the Louisiana Outer Continental Shelf Impact Assistance Fund; to provide for purposes of the fund, deposit of monies into the fund, investment of monies in the fund; to provide for expenditures from the fund; and to provide for related matters.

On motion of Rep. Roach, the substitute was adopted and became House Bill No. 2025 by Rep. Haik, on behalf of the Committee on NATURAL RESOURCES, as a substitute for House Bill No. 771 by Rep. Haik.

Under the rules, lies over in the same order of business.

→ HOUSE BILL No. 776 — BY REPRESENTATIVE DIMOS

AN ACT

To enact R.S. 22:695, relative to fire insurance policies; to provide for valued policy clauses in fire insurance policies; to require the payment of the total amount for which the property is insured in case of total destruction; to provide for the reduction of insurance and liability of the insurer under certain conditions in case of partial destruction; and to provide for related matters.

Read by title.

Reported with amendments by the Committee on COMMERCE.

The committee amendments were read as follows:

HOUSE COMMITTEE AMENDMENTS

Amendments proposed by House Committee on Commerce to House Bill No. 776 by Representative Dimos

Amend original bill as follows:

AMENDMENT NO. 1

On page 1, delete lines 12 through 22 in their entirety and insert lieu thereof the following:

"A. In any case in which a policy includes coverage for loss or damage for property of the insured from the period of fire, the insurer places a valuation upon the covered property and uses such valuation for purposes of determining the premium charge be made under the policy, the insurer shall compute and indemnify or compensate any covered loss of or damage to such property which occurs during the term of the policy at such valuation without deduction or offset, unless a different method is to be used in the computation of loss, in which latter case, the policy, and any application therefor, shall set forth in type of prominent size, the actual method of such loss computation by the insurer. Coverage may be voided under said contract in the event of criminal fault on the part of the insured or the assigns of the insured."

AMENDMENT NO. 2

On page 2, delete lines 1 through 9 in their entirety

AMENDMENT NO. 3

On page 2, line 10, change "C" to "B"

AMENDMENT NO. 4

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On page 2, line 15, change "D" to "C"

AMENDMENT NO. 5

On page 2, line 21, change "E" to "D"

On motion of Rep. Sittig, the amendments were adopted.

On motion of Rep. Sittig, the bill, as amended, was ordered engrossed and passed to its third reading.

Under the rules, placed on the regular calendar.

HOUSE BILL No. 937 -- BY REPRESENTATIVE JOHN

AN ACT

To amend and reenact R.S. 12:1198, relative to professional occupational therapy corporations; to remove extraneous references; and to provide for related matters.

Read by title.

Reported favorably by the Committee on COMMERCE.

On motion of Rep. Sittig, the above bill was ordered engrossed and passed to its third reading.

Under the rules, placed on the regular calendar.

HOUSE BILL No. 976 -- BY REPRESENTATIVE MCCLEARY

AN ACT

To enact R.S. 22:636.6, relative to automobile liability coverage; to prohibit an automobile liability policy from containing a time limitation for payment and reimbursement of certain medical expenses; and to provide for related matters.

Read by title.

Reported with amendments by the Committee on COMMERCE.

The committee amendments were read as follows:

HOUSE COMMITTEE AMENDMENTS

Amendments proposed by House Committee on Commerce to House Bill No. 976 by Representative McCleary

Amend original bill as follows:

AMENDMENT NO. 1

On page 1, delete line 13 in its entirety and insert in lieu thereof the following:

"a covered accident when the injuries are diagnosed within one year of the accident and are reported to the insurer within three years of the accident."

On motion of Rep. Sittig, the amendments were adopted.

On motion of Rep. Sittig, the bill, as amended, was ordered engrossed and passed to its third reading.

Under the rules, placed on the regular calendar.

HOUSE BILL No. 984 -- BY REPRESENTATIVE MCCLEARY

AN ACT

To enact R.S. 37:2317(D), relative to video cassette recorders and satellite signal receiving equipment technicians; to provide for licensure; and to provide for related matters.

Read by title.

Reported favorably by the Committee on COMMERCE.

On motion of Rep. Sittig, the above bill was ordered engrossed and passed to its third reading.

Under the rules, placed on the regular calendar.

HOUSE BILL No. 998 -- BY REPRESENTATIVES SIRACUSA AND KIMBALL

AN ACT

To enact R.S. 56:13 and 14 and R.S. 17:3454(A)(15), relative to mariculture; to provide for legislative intent; to authorize certain agreements by the Department of Wildlife and Fisheries; to authorize certain agreements by the Louisiana Universities Marine Consortium for Research and Education; and to provide for related matters.

Read by title.

Reported with amendments by the Committee on NATURAL RESOURCES.

The committee amendments were read as follows:

HOUSE COMMITTEE AMENDMENTS

Amendments proposed by House Committee on Natural Resources to House Bill No. 998 by Representatives Siracusa and Kimball

Amend original bill as follows:

AMENDMENT NO. 1

On page 1, line 2, after "56:13" and before "and" insert "and 14"

AMENDMENT NO. 2

On page 1, at the end of line 2, after the semicolon ";," add "to provide for legislative intent;"

AMENDMENT NO. 3

On page 1, line 8, after "56:13" and before "hereby" delete "is" and insert in lieu thereof "and 14 are"

AMENDMENT NO. 4

On page 1, between lines 8 and 9 insert the following:

"§13. Mariculture; legislative intent

A. The legislature does hereby recognize that mariculture, the cultivation of seafood in the sea and its estuaries, has the potential for enormously increasing the natural production of seafood; that the potential for the development of mariculture in the state of Louisiana is vast and that such development can enure to the benefit of all citizens, as well as to public and private landowners and to commercial and sport fishing, by increasing the fish, shrimp, and crab production, and by providing the natural resources for development of new industry and jobs in processing and packaging plants, in seafood breeding, canning, and the handling and trucking and otherwise transporting products and servicing the industry from production to the ultimate consumer.

B. The legislature further recognizes that mariculture depends upon proper coastal zone management to insure the physical security of the coastal zone from erosion and from saltwater intrusion into brackish waters which are the spawning and growing habitat for most species of seafood. The legislature



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Reported favorably by the Committee on CIVIL LAW AND PROCEDURE.

Reported without amendments by the Legislative Bureau.

On motion of Rep. Bradley, the above bill was ordered passed to its third reading.

Under the rules, placed on the regular calendar.

SENATE BILL No. 1065--
BY SENATOR BANKSTON (INTRODUCED PURSUANT TO THE AUTHORITY OF SCR NO. 130)

AN ACT

To amend and reenact R.S. 40:1299.44(D)(2), relative to the Patient's Compensation Fund; to authorize the oversight board to defend the Patient's Compensation Fund and obtain indemnity and reimbursement; and to provide for related matters.

Read by title.

Reported with amendments by the Committee on APPROPRIATIONS.

The committee amendments were read as follows:

HOUSE COMMITTEE AMENDMENTS

Amendments proposed by House Committee on Appropriations to Senate Bill No. 1065 by Senator Bankston

Amend reengrossed bill as follows:

AMENDMENT NO. 1

On page 1, line 2, after "reenact" delete R.S. 40:1299.44(D)(2) insert "R.S. 40:1299.42(E) and 1299.44(D)(2)"

AMENDMENT NO. 2

On page 1, line 2, after "relative" insert "to medical malpractice, to provide relative to self-insurance by health care providers, to provide relative"

AMENDMENT NO. 3

On page 1, line 7, after "Section 1." insert "R.S. 40:1299.42(E) and" and change "is" to "are"

AMENDMENT NO. 4

On page 1, between lines 8 and 9, insert the following:

§1299.42. Limitation of recovery

* * *

E. (1) Financial responsibility of a health care provider under this Section may be established only by filing with the board proof that the health care provider is insured by a policy of malpractice liability insurance in the amount of at least one hundred thousand dollars per claim with qualification under this Section taking effect and following the same form as the policy of malpractice liability insurance of the health care provider, or in the event the health care provider is self-insured, proof of financial responsibility by depositing one hundred twenty-five thousand dollars in cash or represented by irrevocable letters of credit, federally insured certificates of deposit, bonds, securities, cash values of insurance, or any other security approved by the board. In the event any portion of said amount is seized pursuant to the judicial process, the self-insured health care provider shall have five days to deposit with the board the amounts so seized. The health care provider's failure to timely post said amounts with the board shall terminate his enrollment in the Patient's Compensation Fund.

(2) For the purposes of this Subsection, any group of self-insured health care providers organized to and actually practicing together or otherwise related by ownership shall be deemed a single health care provider and shall not be required to post more than one deposit as long as all members of the group or all of the related entities agree to be solidarily liable with all other members of the group or related entities for any liability of any of them which is covered by the Patient's Compensation Fund."

Reported without amendments by the Legislative Bureau.

On motion of Rep. Adley, the amendments were adopted.

On motion of Rep. Adley, the bill, as amended, was ordered passed to its third reading.

Under the rules, placed on the regular calendar.

Reconsideration

HOUSE BILL No. 261 --
BY REPRESENTATIVE HAIK

AN ACT

To enact R.S. 14:91.11.1, relative to the sale or distribution of lyrics harmful to minors; to prohibit the sale or distribution of those items which encourage certain behavior; and to provide for related matters.

Read by title.

On motion of Rep. Haik, the vote by which the above House Bill failed to pass on yesterday was reconsidered.

Returned to the calendar under the rules.

Suspension of the Rules

On motion of Rep. Long, the rules were suspended in order to take up House Bills and Joint Resolutions on Third Reading and Final Passage at this time.

House Bills and Joint Resolutions on Third Reading and Final Passage

The following House Bills and Joint Resolutions on third reading and final passage were taken up and acted upon as follows:

Regular Calendar

HOUSE BILL No. 377 --
BY REPRESENTATIVE LONG

AN ACT

To enact R.S. 56:327(G), relative to the sale or purchase of freshwater or saltwater game fish; to exempt certain research projects or programs; and to provide for related matters.

Read by title.

On motion of Rep. Long, the bill was returned to the calendar subject to call.

HOUSE BILL No. 378 --
BY REPRESENTATIVE LONG

AN ACT

To amend and reenact R.S. 17:154.1(A), relative to requirements for the length of the school day; to provide for an incremental increase in the length of the school day; to provide relative to a

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On motion of Rep. A. J. Smith, the amendments were adopted.

Rep. A. J. Smith moved the final passage of the bill, as amended.

ROLL CALL

The roll was called with the following result:

YEAS		
Accardo	Gaudin	McDonald
Adley	Gee	McFerren
Alario	Glover	Melancon
Alexander, A.--93rd	Guidry	Miller
Alexander, R.--13th	Gunter	Montgomery
Anding	Guzzardo	Morrell
Ansardi	Haik	Odinot
Armstrong	Hand	Orr
Ater	Hebert	Patti
Benoit	Heitmeier	Pratt
Bradley	Herring	Reilly
Brun	Higginbotham	Roach
Bruneau	Holden	St. Raymond
Cain	Hopkins	Singleton
Carrier	Irvin	Siracusa
Carter	Ivon	Sittig
Castille	Jackson	Smith, A.D.--22nd
Copelin	Jenkins	Smith, A.J.--18th
Crane	Jetson	Smith, J.D.--50th
Damico	John	Smith, J.R.--30th
Dastugue	Jones, C. D.--17th	Sour
Deano	Jones, C. R.--96th	Stelly
Delpit	Kennard	Stine
DeWitt	Kimball	Strain
Diez	Laborde	Theriot, S.H.--47th
Dixon	Lalonde	Theriot, S.J.--84th
Donelon	Lancaster	Thomas
Downer	Landrieu	Thompson
Duke	LeBlanc	Toomy
Eason	Lemoine	Travis
Ellington	Long	Triche
Forster	Martin	Volentine
Garrity	McCleary	Warner
Total-- 99		

NAYS

Total-- 0

ABSENT

Mr. Speaker	Bacque	Scogin
Ackal	Salter	Warren
Total-- 6		

The Chair declared that the above bill was finally passed.

The title of the above bill was read and adopted.

Rep. A. J. Smith moved to reconsider the vote by which the above bill was finally passed, and, on his own motion, the motion to reconsider was laid on the table.

HOUSE BILL No. 544 --

BY REPRESENTATIVE DIMOS

AN ACT

To amend and reenact R.S. 22:215.9(A)(1) and 2059, relative to group health and accident policies; to provide that the risk indemnification trusts are required to notify its members of certain increases in policies rates, of cancellations, and nonrenewals within certain periods of time; and to provide for related matters.

Called from the calendar.

Read by title.

Rep. Dimos moved the final passage of the bill.

ROLL CALL

The roll was called with the following result:

YEAS

Mr. Speaker	Forster	McCleary
Accardo	Garrity	McDonald
Ackal	Gaudin	McFerren
Adley	Gee	Melancon
Alario	Glover	Miller
Alexander, A.--93rd	Guidry	Montgomery
Alexander, R.--13th	Gunter	Morrell
Anding	Guzzardo	Odinot
Ansardi	Haik	Orr
Armstrong	Hand	Patti
Ater	Hebert	Pratt
Bacque	Heitmeier	Reilly
Benoit	Herring	Roach
Bradley	Higginbotham	St. Raymond
Brun	Holden	Singleton
Bruneau	Hopkins	Siracusa
Cain	Irvin	Sittig
Carrier	Ivon	Smith, A.D.--22nd
Carter	Jackson	Smith, A.J.--18th
Castille	Jenkins	Smith, J.D.--50th
Copelin	Jetson	Smith, J.R.--30th
Crane	John	Sour
Damico	Jones, C. D.--17th	Stelly
Dastugue	Jones, C. R.--96th	Stine
Deano	Kennard	Strain
Delpit	Kimball	Theriot, S.H.--47th
DeWitt	Laborde	Theriot, S.J.--84th
Diez	Lalonde	Thomas
Dixon	Lancaster	Thompson
Donelon	Landrieu	Toomy
Downer	LeBlanc	Travis
Duke	Lemoine	Triche
Eason	Long	Volentine
Ellington	Martin	Warner
Total--102		

NAYS

Total-- 0

ABSENT

Salter	Scogin	Warren
Total-- 3		

The Chair declared that the above bill was finally passed.

The title of the above bill was read and adopted.

Rep. Dimos moved to reconsider the vote by which the above bill was finally passed, and, on his own motion, the motion to reconsider was laid on the table.

HOUSE BILL No. 776 --

BY REPRESENTATIVES DIMOS AND THOMPSON

AN ACT

To enact R.S. 22:695, relative to fire insurance policies; to provide for valued policy clauses in fire insurance policies; to require the payment of the total amount for which the property is insured in case of total destruction; to provide for the reduction of insurance and liability of the insurer under certain conditions in case of partial destruction; and to provide for related matters.

Read by title.

Rep. Bruneau sent up floor amendments which were read as follows:

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HOUSE FLOOR AMENDMENTS

Amendments proposed by Representative Bruneau on behalf of the Legislative Bureau to House Bill No. 776 by Representative Dimos

Amend the engrossed bill as follows:

AMENDMENT NO. 1

On page 1, line 13, following "damage" and before "property" change "for" to "to"

AMENDMENT NO. 2

On page 1, line 13, following "of" and before "property" insert commas ","

AMENDMENT NO. 3

On page 1, lines 17 and 18, following "of" and before "property" insert commas ","

On motion of Rep. Bruneau, the amendments were adopted.

Rep. Dimos sent up floor amendments which were read as follows:

HOUSE FLOOR AMENDMENTS

Amendments proposed by Representative Dimos to House Bill No. 776 by Representative Dimos

Amend engrossed bill as follows:

AMENDMENT NO. 1

On page 1, line 13, change "period" to "peril"

On motion of Rep. Dimos, the amendments were adopted.

Rep. Brun sent up floor amendments which were read as follows:

HOUSE FLOOR AMENDMENTS

Amendments proposed by Representative Brun to House Bill No. 776 by Representative Dimos

Amend engrossed bill as follows:

AMENDMENT NO. 1

On page 2, delete lines 4 through 8 in their entirety

AMENDMENT NO. 2

On page 2, at the beginning of line 9, change "C." to "B."

AMENDMENT NO. 3

On page 2, at the beginning of line 15, change "D." to "C."

Rep. Brun moved the adoption of the amendments.

Rep. Dimos objected.

By a vote of 54 yeas and 43 nays, the amendments were adopted.

Rep. Dimos moved the final passage of the bill, as amended.

ROLL CALL

The roll was called with the following result:

YEAS

Mr. Speaker	Garritty	McDonald
Accardo	Gaudin	Melancon
Ackal	Gee	Miller
Adley	Glover	Montgomery
Alario	Guidry	Morrell
Alexander, A.--93rd	Gunter	Odinet
Alexander, R.--13th	Guzzardo	Orr
Anding	Haik	Patti
Ansardi	Hand	Pratt
Armstrong	Hebert	Reilly
Ater	Heitmeier	Roach
Bacque	Herring	St. Raymond
Benoit	Higginbotham	Salter
Bradley	Holden	Singleton
Brun	Hopkins	Siracusa
Bruneau	Irvin	Sittig
Cain	Ivon	Smith, A.D. --22nd
Carrier	Jackson	Smith, A.J. --18th
Carter	Jenkins	Smith, J.D. --50th
Castille	Jetson	Smith, J.R. --30th
Copelin	John	Sour
Crane	Jones, C. D.--17th	Stelly
Damico	Jones, C. R.--96th	Stine
Dastugue	Kennard	Strain
Deano	Kimball	Theriot, S.H.--47th
Delpit	Laborde	Theriot, S.J.--84th
DeWitt	Lalonde	Thomas
Dixon	Lancaster	Thompson
Donelon	Landrieu	Toomy
Downer	LeBlanc	Travis
Duke	Lemoine	Triche
Eason	Long	Volentine
Ellington	Martin	Warner
Forster	McCleary	
Total--101		

Total-- 0

NAYS

Diez	ABSENT	
McFerren	Scogin	Warren
Total-- 4		

The Chair declared that the above bill was finally passed.

The title of the above bill was read and adopted.

Rep. Dimos moved to reconsider the vote by which the above bill was finally passed, and, on his own motion, the motion to reconsider was laid on the table.

HOUSE BILL No. 937 -- BY REPRESENTATIVE JOHN

AN ACT

To amend and reenact R.S. 12:1198, relative to professional occupational therapy corporations; to remove extraneous references; and to provide for related matters.

Read by title.

Rep. John moved the final passage of the bill.

ROLL CALL

The roll was called with the following result:

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AMENDMENT NO. 1

On page 1, delete lines 2 and 3 in their entirety and insert in lieu thereof the following:

"To appropriate the sum of Thirty-four Million One Hundred Seventy-six Thousand Nine Hundred Fifty-three and No/100 (\$34,176,953.00)"

AMENDMENT NO. 2

On page 2, delete lines 19 through 21 in their entirety, and insert in lieu thereof the following:

"Section 1. A. The sum of Thirty-four Million One Hundred Seventy-six Thousand Nine Hundred Fifty-three and No/100 (\$34,176,953.00), or so much thereof as may be necessary, is"

AMENDMENT NO. 3

On page 8, delete lines 7 and 8 in their entirety and insert in lieu thereof the following:

"C. The additional sum of One Million One Hundred Twenty-three Thousand Six Hundred Ninety-nine and No/100 (\$1,123,699.00) Dollars is hereby"

AMENDMENT NO. 4

On page 8, delete line 23 in its entirety and insert in lieu thereof the following:

"D. The legislative fiscal officer"

AMENDMENT NO. 5

On page 10, delete lines 3 through 8 in their entirety, and insert in lieu thereof the following:

"B. The sum of Five Hundred Seventy-four Thousand and No/100 (\$574,000.00) Dollars is hereby allocated out of the total appropriation from the state general fund made in Section 1 of this Act to the Legislative Budgetary Control Council to pay the expenses of the initial year of performance auditing to be conducted by the legislature in the 1991-1992 Fiscal Year."

Rep. Adley moved that the amendments, proposed by the Senate, be rejected.

ROLL CALL

The roll was called with the following result:

YEAS

Accardo
Ackal
Adley
Alario
Alexander, R.--13th
Ansardi
Armstrong
Ater
Bacque
Benoit
Bradley
Brun
Bruneau
Cain
Carrier
Carter
Castille
Copelin
Crane
Damico
Dastugue

Glover
Guidry
Gunter
Guzzardo
Haik
Hand
Hebert
Heitmeier
Herring
Higginbotham
Holden
Hopkins
Irvin
Ivon
Jackson
Jenkins
Jetson
John
Jones, C. D.--17th
Jones, C. R.--96th
Kennard

Miller
Montgomery
Morrell
Odinet
Orr
Patti
Pratt
Reilly
Roach
St. Raymond
Salter
Scogin
Singleton
Siracusa
Sittig
Smith, A.D. --22nd
Smith, A.J. --18th
Smith, J.D. --50th
Smith, J.R. --30th
Sour
Stelly

Deano
DeWitt
Diez
Dixon
Donelon
Downer
Duke
Ellington
Forster
Garrity
Gaudin
Gee
Total-- 99

Kimball
Laborde
Lalonde
Lancaster
Landrieu
LeBlanc
Lemoine
Long
McCleary
McDonald
McFerren
Melancon

Stine
Strain
Theriot, S.H.--47th
Theriot, S.J.--84th
Thomas
Thompson
Toomy
Travis
Triche
Volentine
Warner
Warren

Total-- 0

NAYS

Mr. Speaker
Alexander, A.--93rd
Total-- 6

ABSENT
Anding
Delpit

Eason
Martin

The amendments proposed by the Senate were rejected.

Conference committee appointment pending.

Conference Committee Appointment

The Speaker appointed the following conferees on the part of the House to confer with a like committee from the Senate on the disagreement to House Bill No. 1856.

Reps. Adley, Dimos, and Bruneau.

Message from the Senate

APPOINTMENT OF CONFERENCE COMMITTEE

July 8, 1991

To the Honorable Speaker and Members of the House of Representatives:

I am directed to inform your honorable body that the President of the Senate has appointed the following committee to serve with a like committee from the House to confer on the disagreement to House Bill No. 1856: Sens. Kelly, Rayburn, and Nunez.

Respectfully submitted,

MICHAEL S. BAER, III,
Secretary of the Senate

Message from the Senate

HOUSE BILLS

July 8, 1991

To the Honorable Speaker and Members of the House of Representatives:

I am directed to inform your honorable body that the Senate has passed the following House Bills:

✓ House Bill No. 776.

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Reported with amendments.

Respectfully submitted,

MICHAEL S. BAER, III,
Secretary of the Senate

Conference Committee Appointment

The Speaker appointed the following conferees on the part of the House to confer with a like committee from the Senate on the disagreement to House Bill No. 394.

Reps. Montgomery, Morrell, and Ivon.

House Bills and Joint Resolutions Returned from the Senate with Amendments

Rep. Dimos asked for and obtained a suspension of the rules to take up at this time the following House Bills and Joint Resolutions just returned from the Senate, with amendments, with a view of acting on same:

HOUSE BILL No. 776 -- BY REPRESENTATIVES DIMOS AND THOMPSON AN ACT

To enact R.S. 22:695, relative to fire insurance policies; to provide for valued policy clauses in fire insurance policies; to require the payment of the total amount for which the property is insured in case of total destruction; to provide for the reduction of insurance and liability of the insurer under certain conditions in case of partial destruction; and to provide for related matters.

Read by title.

The above bill was taken up with the amendments proposed by the Senate.

SENATE COMMITTEE AMENDMENTS

Amendments proposed by Senate Committee on Commerce to reengrossed House Bill No. 776 by Representatives Dimos and Thompson.

AMENDMENT NO. 1

On page 1, line 12, after "A." delete the remainder of the line and delete line 13 in its entirety and insert in lieu thereof the following:

"Under any fire insurance policy insuring inanimate, immovable property in this state,"

AMENDMENT NO. 2

On page 1, line 14, delete "fire,"

AMENDMENT NO. 3 On page 1, line 16, between "policy," and "the" insert the following:

"in the case of total loss"

AMENDMENT NO. 4

On page 1, line 22, change "prominent" to "equal"

AMENDMENT NO. 5

On page 2, delete lines 16 through 19 in their entirety and insert in lieu thereof the following:

"D. This Section shall only apply to policies issued or renewed after January 1, 1992."

On motion of Rep. Dimos, a vote was ordered on the concurrence of the above amendments proposed by the Senate.

ROLL CALL

The roll was called with the following result:

YEAS

Mr. Speaker	Glover	Miller
Accardo	Guidry	Montgomery
Adley	Gunter	Morrell
Alario	Guzzardo	Odinot
Alexander, R.--13th	Haik	Orr
Ansardi	Hand	Patti
Armstrong	Hebert	Pratt
Ater	Heitmeier	Reilly
Bacque	Herring	Roach
Benoit	Higginbotham	St. Raymond
Bradley	Holden	Salter
Brun	Hopkins	Scogin
Bruneau	Irvin	Singleton
Carrier	Ivon	Siracusa
Carter	Jackson	Sittig
Castille	Jenkins	Smith, A.D. --22nd
Copelin	Jetson	Smith, A.J. --18th
Crane	John	Smith, J.D. --50th
Damico	Jones, C. D.--17th	Smith, J.R. --30th
Dastugue	Jones, C. R.--96th	Sour
Deano	Kennard	Stelly
Delpit	Kimball	Stine
DeWitt	Laborde	Strain
Diez	Lalonde	Theriot, S.H.--47th
Dixon	Lancaster	Theriot, S.J.--84th
Donelon	Landrieu	Thomas
Downer	LeBlanc	Thompson
Duke	Lemoine	Toomy
Eason	Long	Travis
Ellington	McCleary	Triche
Forster	McDonald	Volentine
Garrity	McFerren	Warner
Gaudin	Melancon	Warren
Gee		
Total--100		

NAYS

Total-- 0

ABSENT

Ackal	Anding	Martin
Alexander, A.--93rd	Cain	
Total-- 5		

The above amendments, proposed by the Senate, were concurred in by the House.

Motion

Rep. Montgomery moved that the House take up the Conference Committee Report on House Bill No. 394 at this time.

Conference Committee Report

The following Conference Committee Report was received and read:

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HOUSE CONCURRENT RESOLUTION No. 313 --
BY REPRESENTATIVES ROACH, HOLDEN, AND PATTI
A CONCURRENT RESOLUTION

To request the House Natural Resources Committee and the Senate Committee on Environmental Quality to meet and function as a joint committee to study groundwater monitoring of hazardous waste injection wells; and to request that the Louisiana Geological Survey study and make recommendations to the joint committee regarding the need for such groundwater monitoring.

HOUSE CONCURRENT RESOLUTION No. 327 --
BY REPRESENTATIVE ORR AND SENATOR EWING
A CONCURRENT RESOLUTION

To express the condolences of the Legislature of Louisiana upon the recent death of Mr. William Lynn "Ikey" Sanderson, the first and only mayor of the village of Choudrant, Louisiana.

Respectfully submitted,

SAMUEL H. THERIOT,
Chairman.

The above House Concurrent Resolutions contained in the report were signed by the Speaker of the House and taken to the Senate by the Clerk and were signed by the President of the Senate and taken by the Clerk of the House and presented to the Secretary of State in accordance with the rules of the House.

✓ **Privilege Report of the Committee on Enrollment**

Rep. S. H. Theriot, Chairman, on behalf of the Committee on Enrollment, submitted the following report:

House of Representatives
State Capitol
State of Louisiana
July 8, 1991
Baton Rouge, La.

To the Speaker and Members of the House of Representatives:

I am directed by your Committee on Enrollment to submit the following report:

That the following House Bills have been properly enrolled:

HOUSE BILL No. 68 --
BY REPRESENTATIVES IRVIN, LONG, MCDONALD, AND HOLDEN
AND SENATOR FIELDS

AN ACT

To amend and reenact R.S. 17:497(A)(2) and to enact R.S. 17:497(A)(3), relative to school bus drivers' operational schedules; to provide relative to such compensation; to provide for implementation; and to provide for related matters.

HOUSE BILL No. 75 --
BY REPRESENTATIVE JETSON

AN ACT

To amend and reenact R.S. 42:657(B), relative to the Louisiana State Employees' Retirement System; to provide with respect to waiver of the time period for refund of contributions in emergencies; and to provide for related matters.

HOUSE BILL No. 198 --
BY REPRESENTATIVES JOHN SMITH, ACCARDO, BRUNEAU, COPELIN, DIXON, ELLINGTON, HEBERT, LANCASTER, LEBLANC, AND MARTIN AND SENATOR POSTON

AN ACT

To amend and reenact R.S. 4:144(A), and to enact R.S. 4:214(K), relative to the Louisiana State Racing Commission; to provide for the membership of the commission; to provide relative to the appointment of certain members from congressional districts; to provide for appointment of members at large; to provide for implementation; to provide relative to the rights of

licensees; to provide relative to the effective date of these provisions; and to provide for related matters.

HOUSE BILL No. 252 --
BY REPRESENTATIVE LONG AND SENATOR KELLY
AN ACT

To amend and reenact R.S. 33:2218.2(C)(8) and to enact R.S. 33:2218.8(E), relative to supplemental pay; to provide for the reinstatement of supplemental pay to elected marshals under certain circumstances; to provide for supplemental pay to certain deputy sheriffs under certain circumstances; and to provide for related matters.

HOUSE BILL No. 264 --
BY REPRESENTATIVES GUNTER, CARRIER, AND JETSON
AN ACT

To enact R.S. 32:852(E), relative to the Motor Vehicle Safety Responsibility Law; to provide that certain notices of violations be sent by certified or registered mail; and to provide for related matters.

HOUSE BILL No. 283 --
BY REPRESENTATIVES BRUNEAU, JACKSON, AND JETSON
AN ACT

To enact R.S. 26:91(9) and 287(11) and Part V-B of Chapter 14 of Title 33 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 33:4862.1 through 4862.19, relative to video draw poker devices; to authorize and provide with respect to ownership, distribution, inspection, and licensing; to provide for fees, franchise payments, permits, revenues, winnings, and regulation thereof; to create the Video Draw Poker Device Fund; to provide for the levy of occupational license taxes by local governing authorities; to provide for distribution of net device revenue; to provide for criminal penalties; to provide for violations by and licensing sanctions against alcoholic beverage retail permittees; and to provide for related matters.

HOUSE BILL No. 305 --
BY REPRESENTATIVE REILLY

AN ACT

To amend and reenact R.S. 13:4751(C), relative to change of name; to provide that a custodial parent may unilaterally petition for the name change of his minor child under certain conditions; and to provide for related matters.

HOUSE BILL No. 490 --
BY REPRESENTATIVE DOWNER AND SENATOR BANKSTON

AN ACT

To amend and reenact R.S. 14:108(A), relative to the offense of resisting an officer; to include the act of interfering with an officer in that offense; and to provide for related matters.

HOUSE BILL No. 515 --
BY REPRESENTATIVE GUNTER

AN ACT

To enact R.S. 32:387(C)(3)(e) and (f), to provide for a special permit for overweight trucks hauling trash, garbage, and refuse waste which are loaded at approved pickup or transfer stations; to provide for the fee for the permit; and to provide for related matters.

HOUSE BILL No. 532 --
BY REPRESENTATIVE ROACH

AN ACT

To amend and reenact Civil Code Art. 974, relative to proper party plaintiffs in actions of incapacity or unworthiness; to include assigns of heirs; and to provide for related matters.

HOUSE BILL No. 735 --
BY REPRESENTATIVES COPELIN AND ST. RAYMOND
AN ACT

To amend and reenact R.S. 3:2772(B), relative to dog and cat license fees in municipalities and parishes with populations in excess of four hundred seventy-five thousand persons; to provide for an increase in the amount of the fee; and to provide for related matters.



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and requesting review of the board's decisions in district court; and to provide for related matters.

HOUSE BILL No. 1906--

BY REPRESENTATIVES HERRING, JACKSON, CARRIER, DIEZ, DUKE, GUNTER, HAIK, IRVIN, LANDRIEU, MARTIN, JESS SMITH, AND JACK SMITH

AN ACT

To amend and reenact R.S. 40:1234(D) and (E) and to enact R.S. 40:1234(F) and (G) and 1231(10), relative to providers of emergency medical services; to provide for delivery of automated cardiac defibrillation by emergency medical service providers; to provide relative to certified first responders and the duties thereof; and to provide for related matters.

HOUSE BILL No. 1907--

BY REPRESENTATIVE COPELIN AND SENATOR JOHNSON

AN ACT

To amend and reenact R.S. 41:1212(G) and 1215(B)(introductory paragraph), (4), (7), and (8), relative to the lease of public lands; to provide that public benefit corporations may own property; to provide that public benefit corporations may lease property without advertisement for bids; to make certain limitations applicable to leases and subleases by public benefit corporations in cities with a population in excess of four hundred seventy-five thousand; and to provide for related matters.

HOUSE BILL No. 1925--

BY REPRESENTATIVE JESS SMITH (INTRODUCED PURSUANT TO THE AUTHORITY OF H.C.R. NO. 29)

AN ACT

To enact R.S. 13:2607, relative to particular justice of the peace courts; to provide for the number of courts in Morehouse Parish; to provide for the election of the justices of the peace and constables; and to provide for related matters.

HOUSE BILL No. 1941--

BY REPRESENTATIVE COPELIN (INTRODUCED PURSUANT TO THE AUTHORITY OF H.C.R. NO. 110)

AN ACT

To amend and reenact R.S. 33:2152(2) and (3), relative to the Firefighters' Retirement System; to revise definitions related thereto; and to provide for related matters.

HOUSE BILL No. 1951--

BY REPRESENTATIVE BACQUE (INTRODUCED PURSUANT TO THE AUTHORITY OF H.C.R. NO. 128)

AN ACT

To amend and reenact R.S. 33:2385.8(C)(3) and (4) and to enact R.S. 33:2385.8(C)(5), relative to the Policemen's Pension and Relief Fund for the City of Lafayette; to provide with respect to the procedure for computing pensions and retirement benefits payable out of the fund based on years of service; to define average monthly salary; to provide for the application of the definition; and to provide for related matters.

HOUSE BILL No. 1963--

BY REPRESENTATIVE SITTIG (INTRODUCED PURSUANT TO THE AUTHORITY OF H.C.R. NO. 167)

AN ACT

To enact R.S. 13:2104, relative to the Eunice City Court; to authorize the judge of the court to transfer surplus funds from the court's civil fee account to the court's general operational fund; and to provide for related matters.

HOUSE BILL No. 2004--

BY REPRESENTATIVE DONELON (SUBSTITUTE FOR HOUSE BILL NO. 1149 BY REPRESENTATIVE DONELON)

AN ACT

To amend and reenact R.S. 8:655, relative to human remains; to provide for control of interment of remains; and to provide for related matters.

HOUSE BILL No. 2035--

BY REPRESENTATIVE ALARIO (INTRODUCED PURSUANT TO THE AUTHORITY OF H.C.R. NO. 228)

AN ACT

To enact R.S. 33:4712.5, relative to the powers of the city of Westwego, to authorize the city of Westwego to lease or grant concessions or rights of use for any property or portions thereof, including real property, owned by the city, which is to be used for purposes which benefit the public, and to provide for related matters.

HOUSE BILL No. 1995--

BY REPRESENTATIVE DIEZ (INTRODUCED PURSUANT TO THE AUTHORITY OF H.C.R. NO. 209)

AN ACT

To amend and reenact R.S. 22:6(1) and to enact R.S. 22:644, relative to life insurance; to provide for certain benefits of life insurance policies to be paid to the insured for health care provider services; to require certain conditions in provisions of insurance policies for prepayments; and to provide for related matters.

HOUSE BILL No. 306 --

BY REPRESENTATIVES SINGLETON AND C. D. JONES

AN ACT

To provide with respect to the terms of office of persons elected to succeed to certain court of appeal judgeships established pursuant to Acts 1981, No. 3, Regular Session, the terms of which were extended by Acts 1985, No. 47, Regular Session, and Acts 1987, No. 155, Regular Session, and to provide for related matters.

HOUSE BILL No. 394 --

BY REPRESENTATIVE MONTGOMERY

AN ACT

To enact R.S. 33:2501.1 and 2531.1, relative to municipal fire and police civil service in certain municipalities; to authorize municipal fire and police civil service boards to assess attorney fees; to provide for the continuation of the fire and police civil service system in certain municipalities; and to provide for related matters.

HOUSE BILL No. 444 --

BY REPRESENTATIVE GARRITY

AN ACT

To enact Code of Civil Procedure Art. 4845(C), relative to jurisdiction of incidental demands in courts of limited jurisdiction; to provide for payment of costs of a transfer of a case from a parish court; to provide for the effects of a failure to pay such costs timely; and to provide for related matters.

HOUSE BILL No. 740 --

BY REPRESENTATIVE DONELON

AN ACT

To amend and reenact R.S. 22:1382(A)(4), relative to the authority of the Insurance Guaranty Association; to permit the association, on contradictory motion, to seek annulment based on fraud or other ill practice of any unsatisfied preinsolvency settlement; and to provide for related matters.

HOUSE BILL No. 768 --

BY REPRESENTATIVE DIXON

AN ACT

To amend and reenact R.S. 56:1681(A)(2)(introductory paragraph) and to enact R.S. 56:1681(A)(2)(g), (h), and (i), relative to the State Parks and Recreation Commission; to provide for the membership of the commission; and to provide for related matters.

HOUSE BILL No. 776 --

BY REPRESENTATIVES DIMOS AND THOMPSON

AN ACT

✓ To enact R.S. 22:695, relative to fire insurance policies; to provide for valued policy clauses in fire insurance policies; to require the payment of the total amount for which the property is insured in case of total destruction; to provide for the reduction of insurance and liability of the insurer under certain

58th Day's Proceedings--July 8, 1991

conditions in case of partial destruction; and to provide for related matters.

HOUSE BILL No. 906 -- BY REPRESENTATIVE ST. RAYMOND

AN ACT

To amend and reenact R.S. 13:3881(A)(4)(d) and (e) and to enact R.S. 13:3881(A)(4)(f), relative to exemptions from seizure; to include household pets within the list of those items which are exempt; and to provide for related matters.

HOUSE BILL No. 937 -- BY REPRESENTATIVE JOHN

AN ACT

To amend and reenact R.S. 12:1198, relative to professional occupational therapy corporations; to remove extraneous references; and to provide for related matters.

HOUSE BILL No. 960 -- BY REPRESENTATIVE PATTI

AN ACT

To enact R.S. 56:333, relative to mullet; to require the Wildlife and Fisheries Commission to adopt certain rules relative to zones, seasons, permits, fees, restrictions, use of nets, and penalties; and to provide for related matters.

HOUSE BILL No. 1038-- BY REPRESENTATIVE GEE

AN ACT

To amend and reenact R.S. 38:2241.1 and R.S. 39:1594(C)(1), relative to public contracts; to increase the amount in excess of which purchases are required to be advertised and notice given of invitation to bid by competitive sealed bid under the state procurement code; to provide for acceptance of public work projects by public entities; and to provide for related matters.

HOUSE BILL No. 1104-- BY REPRESENTATIVES BRADLEY, CAIN, DEWITT, AND THOMPSON

AN ACT

To enact R.S. 22:1468, relative to participation in the Insurance Regulatory Information System of the National Association of Insurance Commissioners; to provide for filing requirements for insurers; to provide for immunity and confidentiality; to provide for an effective date; and to provide for related matters.

HOUSE BILL No. 1151-- BY REPRESENTATIVE DONELON

AN ACT

To amend and reenact R.S. 23:101(4) and (8), and to enact R.S. 23:102(E), relative to private employment agencies; to remove certain employer-fee-paid employment services from certain statutory requirements; to provide for exceptions; and to provide for related matters.

HOUSE BILL No. 1209--

BY REPRESENTATIVES MELANCON, BRUN, CARRIER, CRANE, HIGGINBOTHAM, McDONALD, MONTGOMERY, ORR, DALE SMITH, ANDING, ANSARDI, ARMSTRONG, ATER, BACQUE, DASTUGUE, DIEZ, DUKE, EASON, FORSTER, GARRITY, GEE, GLOVER, HERRING, IRVIN, JENKINS, C. D. JONES, KENNARD, LANCASTER, LEMOINE, MCFERREN, MILLER, ODINET, REILLY, ROACH, ST. RAYMOND, SALTER, JACK SMITH, JOHN SMITH, STELLY, THOMPSON, TOOMY, TRAVIS, AND TRICHE

AN ACT

To enact R.S. 17:3027, relative to college tuition scholarships; to provide such scholarships for certain students entering certain colleges and universities; to provide limitations on claiming such scholarships; to provide for administration; to provide methods for determining eligibility; to provide for appropriation of funds; to provide for other sources of funding; to provide for implementation; to provide relative to tuition restrictions for such scholarships; and to provide for related matters.

HOUSE BILL No. 1213-- BY REPRESENTATIVE MELANCON

AN ACT

To amend and reenact R.S. 33:4574.1(A)(2) and (B) and to enact R.S. 33:4574.1(A)(1)(f), relative to parish tourist commissions; to authorize each parish governing authority to levy an additional sales and use tax not to exceed one cent to be dedicated for the use of such commissions; to provide exemption for certain parishes; and to provide for related matters.

HOUSE BILL No. 1593-- BY REPRESENTATIVE ROACH

AN ACT

To amend and reenact R.S. 56:322(C)(4)(b) and to enact R.S. 56:320(H) and R.S. 56:322(C)(4)(c), relative to gill nets; to limit the number and length of set gill nets used in Calcasieu Lake, and to require the marking of such set gill nets; to provide for methods of fishing and penalties; and to provide for related matters.

HOUSE BILL No. 1753-- BY REPRESENTATIVES LABORDE AND DIXON

AN ACT

To amend and reenact R.S. 25:341(D), relative to the Louisiana State Museum; to change the composition of the board of directors; and to provide for related matters.

HOUSE BILL No. 1851-- BY REPRESENTATIVE GEE

AN ACT

To amend and reenact R.S. 38:2211(A), 2212(A)(1)(a), (d), and (e), and (3)(c) and (d), (B), (C), (J), (L), and (M), 2214, and 2215, to enact R.S. 38:2212(A)(3)(e), and to repeal R.S. 38:2212(A)(1)(g) and (G), relative to letting contracts; to provide for definitions and advertisement and letting to the lowest responsible bidder; to provide that public entities shall designate the time and place for opening bids and shall have the right to reject bids; and to provide for related matters.

HOUSE BILL No. 1680-- BY REPRESENTATIVE HOPKINS

AN ACT

To amend and reenact R.S. 33:1991(A), the introductory paragraph of 2002(A), and 2218.2(C)(8) and to enact R.S. 33:2218.8(E), relative to supplemental pay; to provide extra compensation to certain firemen; to provide supplemental pay eligibility for certain elected law enforcement officials; to provide for supplemental pay to certain deputy sheriffs under certain circumstances; and to provide for related matters.

HOUSE BILL No. 1691-- BY REPRESENTATIVES DIXON, JACKSON, AND LANDRIEU AND SENATOR BAJOE

AN ACT

To enact R.S. 40:31.3, relative to adolescent school health; to require the office of public health, Department of Health and Hospitals, to establish an adolescent school health initiative; and to provide for related matters.

HOUSE BILL No. 1759--

BY REPRESENTATIVES BRUN, ARMSTRONG, BRUNEAU, DASTUGUE, EASON, FORSTER, GARRITY, GAUDIN, GEE, HAND, LANCASTER, SCOGIN, SOUR, STELLY, ST. RAYMOND, TOOMY, ADLEY, R. ALEXANDER, BACQUE, BRUNEAU, CAIN, CRANE, DIMOS, DUKE, GLOVER, GUIDRY, HEBERT, HERRING, HIGGINBOTHAM, HOPKINS, IVON, JACKSON, JENKINS, JETSON, KENNARD, LALONDE, LANDRIEU, McDONALD, ODINET, ORR, PATTI, REILLY, SALTER, JOHN SMITH, STINE, AND STRAIN AND SENATORS OSTERBERGER AND HINTON

AN ACT

To amend and reenact R.S. 46:6, relative to state supported charity hospitals; to provide for a minimum fee for any service rendered at any charity hospital; to provide for certain exemptions; and to provide for related matters.

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34th Day's Proceedings—June 20, 1991

HOUSE BILL NO. 100—

BY REPRESENTATIVES MONTGOMERY AND LEBLANC

AN ACT

To enact Code of Criminal Procedure Article 895.3, relative to conditions of probation and crime stoppers organizations; to provide for payments to crime stoppers organizations by persons placed upon probation; and to provide for related matters.

HOUSE BILL NO. 490—

BY REPRESENTATIVE DOWNER

AN ACT

To amend and reenact R.S. 14:108(A), relative to the offense of resisting an officer; to include the act of interfering with an officer in that offense; and to provide for related matters.

HOUSE BILL NO. 1090—

BY REPRESENTATIVES BRUNEAU, DIMOS, HOPKINS, LANCASTER, LEBLANC, AND MARTIN AND SENATOR HAINKEL

AN ACT

To enact R.S. 18:1276.1 and to repeal R.S. 18:1276.2 relative to congressional districts, to provide for seven congressional districts; to provide for the terms of members of congress currently serving; to provide for filing certain vacancies; to provide for effective dates; and to provide for related matters.

HOUSE BILL NO. 1971—

BY REPRESENTATIVES STRAIN AND DEANO (INTRODUCED PURSUANT TO THE AUTHORITY OF HOUSE CONCURRENT RESOLUTION NO. 75)

AN ACT

To enact R.S. 56:1847(52), relative to scenic rivers; to provide for the Bogue Falaya River; and to provide for related matters.

HOUSE BILL NO. 544—

BY REPRESENTATIVE DIMOS

AN ACT

To amend and reenact R.S. 22:215.9(A)(1) and 2059, relative to group health and accident policies; to provide that the risk indemnification trusts are required to notify its members of certain increases in policies rates, of cancellations, and nonrenewals within certain periods of time; and to provide for related matters.

HOUSE BILL NO. 937—

BY REPRESENTATIVE JOHN

AN ACT

To amend and reenact R.S. 12:1198, relative to professional occupational therapy corporations; to remove extraneous references; and to provide for related matters.

HOUSE BILL NO. 976—

BY REPRESENTATIVE MCCLEARY

AN ACT

To enact R.S. 22:636.6, relative to automobile liability coverage; to prohibit an automobile liability policy from containing a time limitation for payment and reimbursement of certain medical expenses; and to provide for related matters.

HOUSE BILL NO. 984—

BY REPRESENTATIVE MCCLEARY

AN ACT

To enact R.S. 37:2317(D), relative to video cassette recorders and satellite receiving equipment technicians; to provide for licensure; and to provide for related matters.

HOUSE BILL NO. 998—

BY REPRESENTATIVES SIRACUSA AND KIMBALL

AN ACT

To enact R.S. 56:13 and R.S. 17:3454(A)(15), relative to mariculture; to authorize certain agreements by the Department of Wildlife

and Fisheries; to authorize certain agreements by the Louisiana Universities Marine Consortium for Research and Education; and to provide for related matters.

HOUSE BILL NO. 1058—

BY REPRESENTATIVE LONG

AN ACT

To enact R.S. 17:7(2)(c), relative to the powers and duties of the State Board of Elementary and Secondary Education; to provide for information relative to the minimum foundation program; to provide for fiscal accountability; to provide for computerization and comparability of data; to provide for the review, analysis, evaluation, and auditing of data; to provide for certain reports; to provide for an effective date; and to provide for related matters.

HOUSE BILL NO. 1177—

BY REPRESENTATIVE ROACH

AN ACT

To amend and reenact R.S. 56:302(A)(4) and 500 and to enact R.S. 56:305(B)(13), relative to castnets; to provide for recreational and commercial castnets; to provide for fees; to provide for shrimp take limits; and to provide for related matters.

HOUSE BILL NO. 1596—

BY REPRESENTATIVE ROACH

AN ACT

To amend and reenact R.S. 56:327(C)(2) and to enact R.S. 56:56(8), relative to violations of commercial fishing licensing requirements; to provide for seizure of tackle and gear of a fisherman who sells shrimp, oysters, fish, or other seafood without a commercial fisherman's license; and to provide for related matters.

HOUSE BILL NO. 1371—

BY REPRESENTATIVE MILLER

AN ACT

To enact Part II of Chapter 3 of Title 51 of the Louisiana Revised Statutes of 1950, comprised of R.S. 51:941 through 943, relative to industrial inducement; to provide for the payment of transportation differentials by the board of commerce and industry; and to provide for related matters.

Respectfully submitted,

ALFRED W. SPEER

Clerk of the House of Representatives

House Bills and Joint Resolutions ✓

Senator Rayburn asked for and obtained a suspension of the rules to take up at this time the following House Bills and Joint Resolutions just received from the House which were taken up, read a first and second time by their titles and referred to committees as follows:

HOUSE BILL NO. 100—

BY REPRESENTATIVE MONTGOMERY

AN ACT

To enact Code of Criminal Procedure Article 895.3, relative to conditions of probation and crime stoppers organizations; to provide for payments to crime stoppers organizations by persons placed upon probation; and to provide for related matters.

On motion of Senator Rayburn, the bill was read by title and referred to the Committee on Judiciary B.

HOUSE BILL NO. 261—

BY REPRESENTATIVE HAIK

AN ACT

To enact R.S. 14:91.11.1, relative to the sale, exhibition, or distribution of lyrics harmful to minors; to prohibit the sale, exhibition, or distribution of those items which encourage certain behavior; and to provide for related matters.

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34th Day's Proceedings—June 20, 1991

On motion of Senator Decuir, the bill was read by title and referred to the Committee on Judiciary C.

HOUSE BILL NO. 490— BY REPRESENTATIVE DOWNER

AN ACT

To amend and reenact R.S. 14:108(A), relative to the offense of resisting an officer; to include the act of interfering with an officer in that offense; and to provide for related matters.

On motion of Senator Rayburn, the bill was read by title and referred to the Committee on Judiciary C.

HOUSE BILL NO. 526— BY REPRESENTATIVE JESS SMITH

AN ACT

To enact R.S. 22:636.2(C), relative to property, casualty, and liability insurance policies; to prohibit the denial of coverage or cancellation of homeowner's policies for possession of nonvicious dogs and all-terrain vehicles; and to provide for related matters.

On motion of Senator Rayburn, the bill was read by title and referred to the Committee on Commerce.

HOUSE BILL NO. 533— BY REPRESENTATIVE ROACH

AN ACT

To amend and reenact R.S. 56:495.1(A), relative to trawling vessels; to provide for the size of trawls and trawl doors; and to provide for related matters.

On motion of Senator Rayburn, the bill was read by title and referred to the Committee on Natural Resources.

HOUSE BILL NO. 544— BY REPRESENTATIVE DIMOS

AN ACT

To amend and reenact R.S. 22:215.9(A)(1) and 2059, relative to group health and accident policies; to provide that the risk indemnification trusts are required to notify its members of certain increases in policies rates, of cancellations, and nonrenewals within certain periods of time; and to provide for related matters.

On motion of Senator Rayburn, the bill was read by title and referred to the Committee on Commerce.

HOUSE BILL NO. 575— BY REPRESENTATIVE JACKSON

AN ACT

To amend and reenact R.S. 37:375 and to enact R.S. 37:372(10) and (11), relative to barbers; to provide additional grounds for refusing, suspending, or revoking certificates of registration; to provide with respect to certain fees; and to provide for related matters.

On motion of Senator Rayburn, the bill was read by title and referred to the Committee on Commerce.

HOUSE BILL NO. 729— BY REPRESENTATIVE ALARIO

AN ACT

To amend and reenact R.S. 47:9004, relative to the board of directors of the Louisiana Lottery Corporation; to provide with respect to membership of the board; to provide relative to powers, duties, authority, qualifications, and compensation of members of the board; to provide with respect to the adoption and promulgation of rules, regulations, and special procedures; to provide

with respect to procurements and lottery operations; and to provide for related matters.

On motion of Senator Rayburn, the bill was read by title and referred to the Committee on Judiciary B.

HOUSE BILL NO. 754— BY REPRESENTATIVE JESS SMITH

AN ACT

To amend and reenact R.S. 22:229, relative to the health and accident insurance; to provide that no premium for a policy, rider, or amendment shall be increased more than once in a six-month period regardless of when such coverage was commenced or renewed; and to provide for related matters.

On motion of Senator Rayburn, the bill was read by title and referred to the Committee on Commerce.

HOUSE BILL NO. 776— BY REPRESENTATIVE DIMOS AND THOMPSON

AN ACT

To enact R.S. 22:695, relative to fire insurance policies; to provide for valued policy clauses in fire insurance policies; to require the payment of the total amount for which the property is insured in case of total destruction; to provide for the reduction of insurance and liability of the insurer under certain conditions in case of partial destruction; and to provide for related matters.

On motion of Senator Rayburn, the bill was read by title and referred to the Committee on Commerce.

HOUSE BILL NO. 937— BY REPRESENTATIVE JOHN

AN ACT

To amend and reenact R.S. 12:1198, relative to professional occupational therapy corporations; to remove extraneous references; and to provide for related matters.

On motion of Senator Rayburn, the bill was read by title and referred to the Committee on Commerce.

HOUSE BILL NO. 976— BY REPRESENTATIVE MCCLEARY

AN ACT

To enact R.S. 22:636.6, relative to automobile liability coverage; to prohibit an automobile liability policy from containing a time limitation for payment and reimbursement of certain medical expenses; and to provide for related matters.

On motion of Senator Rayburn, the bill was read by title and referred to the Committee on Commerce.

HOUSE BILL NO. 984— BY REPRESENTATIVE MCCLEARY

AN ACT

To enact R.S. 37:2317(D), relative to video cassette recorders and satellite receiving equipment technicians; to provide for licensure; and to provide for related matters.

On motion of Senator Rayburn, the bill was read by title and referred to the Committee on Commerce.

HOUSE BILL NO. 998— BY REPRESENTATIVES SIRACUSA AND KIMBALL

AN ACT

To enact R.S. 56:13 and R.S. 17:3454(A)(15), relative to mariculture; to authorize certain agreements by the Department of Wildlife and Fisheries; to authorize certain agreements by the Louisiana Universities Marine Consortium for Research and Education; and to provide for related matters.

On motion of Senator Rayburn, the bill was read by title and referred to the Committee on Natural Resources.

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43rd Day's Proceedings—July 3, 1991

HOUSE BILL NO. 829— BY REPRESENTATIVE C. D. JONES

AN ACT

To amend and reenact R.S. 4:461, relative to discrimination in sports tournaments hosted by private clubs; to provide for damages, attorney fees, and court costs; and to provide for related matters.

Reported favorably.

HOUSE BILL NO. 897— BY REPRESENTATIVE JETSON

AN ACT

To enact R.S. 47:332.2, relative to the state sales tax upon the occupancy of hotel rooms in East Baton Rouge Parish; to provide for the disposition of the proceeds of said tax; to provide for the use of the proceeds of said tax for the Riverside Centroplex; to create and provide with respect to the East Baton Rouge Parish Riverside Centroplex Fund; and to provide for related matters.

Reported with amendments.

HOUSE BILL NO. 1286— BY REPRESENTATIVES ELLINGTON, ALARIO, DOWNER, HAND, MCCLEARY, ME- LANCON, AND TRAVIS

AN ACT

To amend and reenact R.S. 22:212(5), relative to health and accident insurance; to provide with respect to the form of policies; to require that all exceptions and reductions of indemnity be printed in boldface type; and to provide for related matters.

Reported with amendments.

Respectfully submitted,

J. E. JUMONVILLE, JR.
Chairman

✓ House Bills and Joint Resolutions on Second Reading Reported by Committees

Senator Jumonville asked for and obtained a suspension of the rules to take up at this time the following House Bills and Joint Resolutions just reported by Committees.

✓ HOUSE BILL NO. 776— BY REPRESENTATIVES DIMOS AND THOMPSON

AN ACT

To enact R.S. 22:695, relative to fire insurance policies; to provide for valued policy clauses in fire insurance policies; to require the payment of the total amount for which the property is insured in case of total destruction; to provide for the reduction of insurance and liability of the insurer under certain conditions in case of partial destruction; and to provide for related matters.

Reported with amendments by the Committee on Commerce, which were read.

SENATE COMMITTEE AMENDMENTS

Amendments proposed by Senate Committee on Commerce to re-engrossed House Bill No. 776 by Representatives Dimos and Thompson.

AMENDMENT NO. 1—

On page 1, line 12, after "A." delete the remainder of the line and delete line 13 in its entirety and insert in lieu thereof the following:
"Under any fire insurance policy insuring inanimate, immovable property in this state,"

AMENDMENT NO. 2—

On page 1, line 14, delete "fire,"

AMENDMENT NO. 3—

On page 1, line 16, between "policy," and "the" insert the following:

"in the case of total loss"

AMENDMENT NO. 4—

On page 1, line 22, change "prominent" to "equal"

AMENDMENT NO. 5—

On page 2, delete lines 16 through 19 in their entirety and insert in lieu thereof the following:

"D. This Section shall only apply to policies issued or renewed after January 1, 1992."

On motion of Senator Jumonville, the committee amendments were adopted. Under the provisions of Joint Rule No. 3 of the Rules of the Senate, the amended bill was read by title and referred to the Legislative Bureau.

HOUSE BILL NO. 829— BY REPRESENTATIVE C. D. JONES

AN ACT

To amend and reenact R.S. 4:461, relative to discrimination in sports tournaments hosted by private clubs; to provide for damages, attorney fees, and court costs; and to provide for related matters.

Reported favorably by the Committee on Commerce. Under the provisions of Joint Rule No. 3 of the Rules of the Senate, the bill was read by title and referred to the Legislative Bureau.

HOUSE BILL NO. 897— BY REPRESENTATIVE JETSON

AN ACT

To enact R.S. 47:332.2, relative to the state sales tax upon the occupancy of hotel rooms in East Baton Rouge Parish; to provide for the disposition of the proceeds of said tax; to provide for the use of the proceeds of said tax for the Riverside Centroplex; to create and provide with respect to the East Baton Rouge Parish Riverside Centroplex Fund; and to provide for related matters.

Reported with an amendment by the Committee on Commerce, which was read.

SENATE COMMITTEE AMENDMENT

Amendment proposed by Senate Committee on Commerce to the reengrossed House Bill No. 897 by Representative Jetson.

AMENDMENT NO. 1—

On page 2, line 14, between "1991" and the period "." insert the following:

"however, the provisions of this Act creating the East Baton Rouge Parish Riverside Centroplex Fund shall terminate on June 30, 2001. After June 30, 2001 the funds formerly paid into East Baton Rouge Parish Centroplex Fund shall remain in the state general fund"

On motion of Senator Jumonville, the committee amendments were adopted. Under the provisions of Joint Rule No. 3 of the Rules of the Senate, the amended bill was read by title and referred to the Legislative Bureau.

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OFFICIAL JOURNAL
OF THE
SENATE
OF THE
STATE OF LOUISIANA
FORTY-FOURTH DAY'S PROCEEDINGS

Seventeenth Regular Session of the Legislature
Under the Adoption of the
Constitution of 1974

Senate Chamber
State Capitol
Baton Rouge, Louisiana

Friday, July 5, 1991

The Senate was called to order at 4 o'clock P.M., by Hon. Samuel B. Nunez, Jr., President of the Senate.

ROLL CALL

The roll being called, the following members answered to their names:

PRESENT

Mr. President	Bagert	Bagneris
Bankston	Bares	Brinkhaus
Campbell	Cox	Crain
Cross	Decuir	Ensminger
Ewing	Fields	Foster
Hainkel	Hinton	Hollis
Johnson	Jumonville	Kelly
Landry	Lauricella	McPherson
Nelson	Osterberger	Picard
Poston	Rayburn	Saunders
Sevario	Tarver	Thompson
Ullo	Windhorst	
Total—35		

ABSENT

Bajoie	Chabert	Neeson
Total—3		

The President of the Senate announced that there were 35 Senators present and a quorum.

Prayer

The prayer was offered by Senator Ewing, following which the Senate joined in pledging allegiance to the flag of the United States of America.

Reading of the Journal

On motion of Senator Ewing, the reading of the Journal was dispensed with and the Journal of yesterday was adopted.

Morning Hour

**Privilege Report of the
Legislative Bureau** ✓

Senator Nelson, Chairman on behalf of the Legislative Bureau, submitted the following report:

July 5, 1991

To the President and Members of the Senate:

I am directed by your Legislative Bureau to submit the following report:

The following bills are approved as to construction and duplication.

HOUSE BILL NO. 776— ✓
BY REPRESENTATIVES DIMOS AND THOMPSON
AN ACT

To enact R.S. 22:695, relative to fire insurance policies; to provide for valued policy clauses in fire insurance policies; to require the payment of the total amount for which the property is insured in case of total destruction; to provide for the reduction of insurance and liability of the insurer under certain conditions in case of partial destruction; and to provide for related matters.

Reported without amendments.

HOUSE BILL NO. 829—
BY REPRESENTATIVE C. D. JONES
AN ACT

To amend and reenact R.S. 4:461, relative to discrimination in sports tournaments hosted by private clubs; to provide for damages, attorney fees, and court costs; and to provide for related matters.

Reported without amendments.

HOUSE BILL NO. 897—
BY REPRESENTATIVE JETSON
AN ACT

To enact R.S. 47:332.2, relative to the state sales tax upon the occupancy of hotel rooms in East Baton Rouge Parish; to provide for the disposition of the proceeds of said tax; to provide for the use of the proceeds of said tax for the Riverside Centroplex; to create and provide with respect to the East Baton Rouge Parish Riverside Centroplex Fund; and to provide for related matters.

Reported without amendments.

HOUSE BILL NO. 1286—
BY REPRESENTATIVES ELLINGTON, ALARIO, DOWNER, HAND, MCCLEARY, MELANCON, AND TRAVIS
AN ACT

To amend and reenact R.S. 22:212(5), relative to health and accident insurance; to provide with respect to the form of policies; to require that all exceptions and reductions of indemnity be printed in boldface type; and to provide for related matters.

Reported without amendments.

Respectfully submitted,

SYDNEY NELSON
Chairman

Adoption of Legislative Bureau Report

On motion of Senator Nelson, the Bills and Joint Resolutions were read by title and passed to a third reading.

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47th Day's Proceedings—July 8, 1991

gave notice that before the expiration of the Morning Hour of the next succeeding legislative day of the Senate, he would move to reconsider the vote by which the resolution failed to pass.

Called from Calendar

Senator Foster asked that House Concurrent Resolution No. 306 be called from the Calendar at this time.

HOUSE CONCURRENT RESOLUTION NO. 306— BY REPRESENTATIVE SITTIG

A CONCURRENT RESOLUTION

To memorialize congress to support a strong and viable dual banking system and to oppose proposals that would weaken or eliminate that system.

The resolution was read by title. Senator Foster moved to concur in the House Concurrent Resolution.

ROLL CALL

The roll was called with the following result:

YEAS

Mr. President	Bagneris	Bajoie
Bankston	Bares	Campbell
Chabert	Cox	Crain
Cross	Decuir	Ensminger
Ewing	Fields	Foster
Hainkel	Hinton	Hollis
Johnson	Jumonville	Kelly
Landry	Lauricella	McPherson
Neeson	Nelson	Osterberger
Picard	Poston	Sevario
Tarver	Thompson	Ullo
Windhorst		
Total—34		

NAYS

Total—0

ABSENT

Bagert	Brinkhaus	Rayburn
Saunders		
Total—4		

The Chair declared the Senate had concurred in the House Concurrent Resolution and ordered it returned to the House.

House Bills and Joint Resolutions on Third Reading and Final Passage

The following House Bills and Joint Resolutions on third reading and final passage were taken up and acted upon as follows:

HOUSE BILL NO. 1194— BY REPRESENTATIVE DASTUGUE

AN ACT

To amend and reenact R.S. 47:802.2(A)(1), to provide that monies contained within the Transportation Infrastructure Model for Ec-

onomic Development Account shall be funded through the Department of Transportation and Development; and to provide for related matters.

The bill was read by title. Senator Landry moved the final passage of the bill.

ROLL CALL

The roll was called with the following result:

YEAS

Mr. President	Bagneris	Bajoie
Bankston	Bares	Campbell
Chabert	Cox	Crain
Decuir	Ensminger	Ewing
Fields	Foster	Hainkel
Hinton	Hollis	Johnson
Jumonville	Kelly	Landry
Lauricella	McPherson	Neeson
Nelson	Osterberger	Picard
Poston	Rayburn	Sevario
Tarver	Thompson	Ullo
Windhorst		
Total—34		

NAYS

Total—0

ABSENT

Bagert	Brinkhaus	Cross
Saunders		
Total—4		

The Chair declared the bill was passed. The title was read and adopted. Senator Landry moved to reconsider the vote by which the bill was passed and laid the motion on the table.

HOUSE BILL NO. 1201— BY REPRESENTATIVE DASTUGUE

AN ACT

To amend and reenact R.S. 37:3395(6) and to enact R.S. 37:3395(7), relative to the real estate appraisal subcommittee of the Real Estate Commission; to authorize the subcommittee to oversee a bi-annual evaluation of appraisal practices of the Department of Transportation and Development used to acquire rights of way; and to provide for related matters.

The bill was read by title. Senator Landry moved the final passage of the bill.

ROLL CALL

The roll was called with the following result:

YEAS

Mr. President	Bagneris	Bajoie
Bankston	Bares	Campbell
Chabert	Cox	Crain
Cross	Decuir	Ensminger
Fields	Foster	Hainkel
Hinton	Johnson	Jumonville
Kelly	Landry	Lauricella
McPherson	Neeson	Nelson
Osterberger	Picard	Poston
Rayburn	Sevario	Tarver
Thompson	Ullo	Windhorst
Total—33		

Total—0

NAYS

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47th Day's Proceedings—July 8, 1991

The Chair declared the bill was passed. The title was read and adopted. Senator Hinton moved to reconsider the vote by which the bill was passed and laid the motion on the table.

HOUSE BILL NO. 1983—

BY REPRESENTATIVE DONELON (INTRODUCED PURSUANT TO THE AUTHORITY OF HOUSE CONCURRENT RESOLUTION NO. 148)

AN ACT

To amend and reenact R.S. 28:53.2(C), relative to civil commitment procedure; to extend the time period for the examination of a person held under an order for custody; and to provide for related matters.

The bill was read by title. Senator Nelson moved the final passage of the bill.

ROLL CALL

The roll was called with the following result:

YEAS

Mr. President	Bagert	Bagneris
Bajoie	Bankston	Bares
Campbell	Chabert	Cox
Crain	Cross	Decuir
Ensminger	Ewing	Fields
Foster	Hainkel	Hinton
Hollis	Johnson	Jumonville
Kelly	Landry	Lauricella
McPherson	Neeson	Nelson
Osterberger	Picard	Poston
Saunders	Sevario	Tarver
Thompson	Ullo	Windhorst

Total—36

NAYS

Total—0

ABSENT

Brinkhaus	Rayburn
-----------	---------

Total—2

The Chair declared the bill was passed. The title was read and adopted. Senator Nelson moved to reconsider the vote by which the bill was passed and laid the motion on the table.

HOUSE BILL NO. 776—

BY REPRESENTATIVES DIMOS AND THOMPSON

AN ACT

To enact R.S. 22:695, relative to fire insurance policies; to provide for valued policy clauses in fire insurance policies; to require the payment of the total amount for which the property is insured in case of total destruction; to provide for the reduction of insurance and liability of the insurer under certain conditions in case of partial destruction; and to provide for related matters.

On motion of Senator Rayburn, the bill was read by title and returned to the Calendar, subject to call.

HOUSE BILL NO. 829—

BY REPRESENTATIVE C. D. JONES

AN ACT

To amend and reenact R.S. 4:461, relative to discrimination in sports tournaments hosted by private clubs; to provide for damages, attorney fees, and court costs; and to provide for related matters.

The bill was read by title. Senator Fields moved the final passage of the bill.

ROLL CALL

The roll was called with the following result:

YEAS

Mr. President	Bagert	Bagneris
Bajoie	Bankston	Bares
Campbell	Chabert	Cox
Crain	Cross	Decuir
Ensminger	Fields	Foster
Hainkel	Hinton	Hollis
Johnson	Jumonville	Kelly
Landry	Lauricella	McPherson
Neeson	Nelson	Osterberger
Picard	Poston	Rayburn
Sevario	Tarver	Thompson
Ullo	Windhorst	

Total—35

NAYS

Total—0

ABSENT

Brinkhaus	Ewing	Saunders
-----------	-------	----------

Total—3

The Chair declared the bill was passed. The title was read and adopted. Senator Fields moved to reconsider the vote by which the bill was passed and laid the motion on the table.

HOUSE BILL NO. 897—

BY REPRESENTATIVE JETSON

AN ACT

To enact R.S. 47:332.2, relative to the state sales tax upon the occupancy of hotel rooms in East Baton Rouge Parish; to provide for the disposition of the proceeds of said tax; to provide for the use of the proceeds of said tax for the Riverside Centroplex; to create and provide with respect to the East Baton Rouge Parish Riverside Centroplex Fund; and to provide for related matters.

The bill was read by title. Senator Bankston moved the final passage of the bill.

ROLL CALL

The roll was called with the following result:

YEAS

Mr. President	Bagert	Bagneris
Bajoie	Bankston	Bares
Campbell	Chabert	Cox
Crain	Cross	Decuir
Ensminger	Fields	Foster
Hainkel	Hinton	Hollis
Johnson	Jumonville	Kelly
Landry	Lauricella	McPherson
Neeson	Nelson	Osterberger
Picard	Poston	Rayburn
Saunders	Sevario	Tarver
Thompson	Ullo	Windhorst

Total—36

NAYS

Total—0

ABSENT

Brinkhaus	Ewing
-----------	-------

Total—2

The Chair declared the bill was passed. The title was read and adopted. Senator Bankston moved to reconsider the vote by which the bill was passed and laid the motion on the table.

HOUSE BILL NO. 1286—

BY REPRESENTATIVES ELLINGTON, ALARIO, DOWNER, HAND, MCCLEARY, ME-LANCON, AND TRAVIS

AN ACT

To amend and reenact R.S. 22:212(5), relative to health and ac-



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Called from Calendar

Senator Lauricella asked that House Bill No. 603 be called from the Calendar at this time for its final passage.

HOUSE BILL NO. 603— BY REPRESENTATIVE DASTUGUE

AN ACT

To authorize the Louisiana Stadium and Exposition District under the authority of Article XIV, Section 47 of the Louisiana Constitution of 1921 continued as a statute by Article XIV, Section 16(A)(10) of the Louisiana Constitution of 1974 to issue revenue bonds; to provide for the use of the proceeds of such issuance; and to provide for related matters.

Motion

Senator Nelson moved to table the bill.

Senator Lauricella objected.

ROLL CALL

The roll was called with the following result:

YEAS

Mr. President	Bagneris	Bajoie
Bares	Brinkhaus	Campbell
Cox	Crain	Cross
Ewing	Fields	Foster
Hinton	Johnson	Jumonville
Kelly	McPherson	Nelson
Osterberger	Picard	Rayburn
Thompson		
Total—22		

NAYS

Bagert	Bankston	Decuir
Ensminger	Hollis	Landry
Lauricella	Saunders	Ullo
Total—9		

ABSENT

Chabert	Hainkel	Neeson
Poston	Sevario	Tarver
Windhorst		
Total—7		

The Chair declared that the bill was tabled.

APPOINTMENT OF CONFERENCE COMMITTEE ON HOUSE BILL NO. 1957

The President of the Senate appointed on the Conference Committee on House Bill No. 1957 the following members of the Senate: Senators Jumonville, McPherson, and Sevario.

APPOINTMENT OF CONFERENCE COMMITTEE ON HOUSE BILL NO. 1930

The President of the Senate appointed on the Conference Committee on House Bill No. 1930 the following members of the Senate: Senators Bankston, Jumonville, and Landry.

APPOINTMENT OF CONFERENCE COMMITTEE ON HOUSE BILL NO. 1192

The President of the Senate appointed on the Conference Committee on House Bill No. 1192 the following members of the Senate: Senators Jumonville, Bankston, and Foster.

Regular Order of the Day, Resumed

House Bills and Joint Resolutions on Third Reading and Final Passage, ✓ Subject to Call, Resumed

The following House Bills and Joint Resolutions on third reading and final passage, subject to call, were taken up and acted upon as follows:

Called from Calendar

Senator Ewing asked that House Bill No. 2014 be called from the Calendar at this time for its final passage.

HOUSE BILL NO. 2014—

BY REPRESENTATIVE SOUR (SUBSTITUTE FOR HOUSE BILL NO. 1891 BY REPRESENTATIVE SOUR)

AN ACT

To amend and reenact R.S. 12:137(introductory paragraph), and to enact R.S. 12:130, 130.1, and 130.2, relative to Louisiana business corporations; to provide with respect to definitions, mergers, consolidations, and changes in majority voting ownership, intentional misconduct, standard of care and review, injunctive relief, civil penalties, and reporting; to provide for an effective date; and to provide for related matters.

The bill was read by title. Senator Ewing moved the final passage of the bill.

ROLL CALL

The roll was called with the following result:

YEAS

Mr. President	Bagert	Bajoie
Bankston	Bares	Brinkhaus
Campbell	Cox	Crain
Cross	Decuir	Ensminger
Ewing	Fields	Foster
Hinton	Hollis	Johnson
Jumonville	Kelly	Landry
Lauricella	McPherson	Nelson
Osterberger	Picard	Rayburn
Thompson	Ullo	
Total—29		

Total—0

NAYS

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47th Day's Proceedings—July 8, 1991

ABSENT

Bagneris	Chabert	Hainkel
Neeson	Poston	Saunders
Sevario	Tarver	Windhorst
Total—9		

The Chair declared the bill was passed. The title was read and adopted. Senator Ewing moved to reconsider the vote by which the bill was passed and laid the motion on the table.

Called from Calendar

Senator Brinkhaus asked that House Bill No. 1253 be called from the Calendar at this time for its final passage.

HOUSE BILL NO. 1253— BY REPRESENTATIVES CASTILLE, HERRING, LALONDE, AND SITTIG AN ACT

To enact R.S. 46:939 relative to programs for the elderly, to provide for a formula for distribution of certain state funding for meals programs for the elderly; and to provide for related matters.

Motion

Senator Landry moved to indefinitely postpone the bill.

As a substitute motion, Senator Ewing moved to table the bill.

Senator Brinkhaus objected.

ROLL CALL

The roll was called on the substitute motion with the following result:

YEAS

Mr. President	Bankston	Campbell
Crain	Cross	Decuir
Ensminger	Ewing	Fields
Foster	Hollis	Jumonville
Kelly	Osterberger	Picard
Rayburn	Saunders	Thompson
Ullo		
Total—19		

NAYS

Bagert	Bagneris	Bajoie
Bares	Brinkhaus	Cox
Hinton	Johnson	Landry
Lauricella	McPherson	Nelson
Total—12		

ABSENT

Chabert	Hainkel	Neeson
Poston	Sevario	Tarver
Windhorst		
Total—7		

The Chair declared that the bill was tabled.

Called from Calendar

Senator Ensminger asked that House Bill No. 776 be called from the Calendar at this time for its final passage.

HOUSE BILL NO. 776— BY REPRESENTATIVES DIMOS AND THOMPSON AN ACT

To enact R.S. 22:695, relative to fire insurance policies; to provide for valued policy clauses in fire insurance policies; to require the payment of the total amount for which the property is insured in case of total destruction; to provide for the reduction of insurance and liability of the insurer under certain conditions in case of partial destruction; and to provide for related matters.

The bill was read by title. Senator Ensminger moved the final passage of the bill.

ROLL CALL

The roll was called with the following result:

YEAS

Mr. President	Bagert	Bajoie
Bankston	Bares	Brinkhaus
Campbell	Cox	Crain
Cross	Decuir	Ensminger
Ewing	Fields	Foster
Hinton	Hollis	Johnson
Jumonville	Kelly	Landry
Lauricella	McPherson	Nelson
Osterberger	Picard	Rayburn
Thompson	Ullo	
Total—29		

NAYS

Total—0

ABSENT

Bagneris	Chabert	Hainkel
Neeson	Poston	Saunders
Sevario	Tarver	Windhorst
Total—9		

The Chair declared the bill was passed. The title was read and adopted. Senator Ensminger moved to reconsider the vote by which the bill was passed and laid the motion on the table.

Called from Calendar

Senator Hollis asked that House Bill No. 1151 be called from the Calendar at this time for its final passage.

HOUSE BILL NO. 1151— BY REPRESENTATIVE DONELON AN ACT

To amend and reenact R.S. 23:101(4) and (8), 106(A)(2), 110(A), and 111(C)(3), to enact R.S. 23:102(E), and to repeal R.S. 23:101(2)(b) and (9) and 111(D), relative to private employment agencies; to delete employer-fee-paid employment services from certain statutory requirements; to provide for exceptions; and to provide for related matters.

The bill was read by title. Senator Hollis moved the final passage of the bill.

ROLL CALL

The roll was called with the following result:

YEAS

Mr. President	Bagert	Bagneris
Bankston	Bares	Brinkhaus
Campbell	Cox	Crain
Cross	Decuir	Ensminger
Ewing	Fields	Foster
Hollis	Johnson	Kelly
Landry	Lauricella	McPherson

WEST'S
LOUISIANA STATUTES
ANNOTATED

REVISED STATUTES

Official Classification

Sections 22:691 to 22:1400

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Greeson v. Acceptance Ins. Co., App. 2 Cir.1999, 32,159 (La.App. 2 Cir. 8/18/99), 738 So.2d 1201.

161. Sufficiency of evidence—In general

Fire insurer did not waive policy requirement to sue within one year after the loss; even though claims examiner sent letters requesting a completed proof of loss and rescinding the policy after expiration of the prescriptive period, the letters contained no promise to honor the claim, the insurer never admitted liability or made a payment, and the insured did not withhold suit in reliance on the insurer or adjuster. *Greeson v. Acceptance Ins. Co.*, App. 2 Cir.1999, 32,159 (La.App. 2 Cir. 8/18/99), 738 So.2d 1201.

162. — Arson, sufficiency of evidence

Headrick v. Pennsylvania Millers Mut. Ins. Co., App. 3 Cir.1970, 232 So.2d 319, [main volume] writ issued 256 La. 245, 236 So.2d 28, affirmed 257 La. 1101, 245 So.2d 324.

163. — Cause of loss, sufficiency of evidence

Hayward v. Carolina Ins. Co., App. 1 Cir.1951, 51 So.2d 405, [main volume] rehearing denied 52 So.2d 468.

174. Review

Headrick v. Pennsylvania Millers Mut. Ins. Co., App. 3 Cir.1970, 232 So.2d 319, [main volume] writ issued 256 La. 245, 236 So.2d 28, affirmed 257 La. 1101, 245 So.2d 324.

§ 692. Breach of warranties and conditions of fire policies and applications therefor

Notes of Decisions

I. IN GENERAL

5. Proof of loss

St. Paul Fire & Marine Ins. Co. v. St. Clair, App. 1 Cir.1966, 193 So.2d 821, [main volume] writ refused 250 La. 375, 196 So.2d 646.

§ 694. Co-insurance clauses; prohibited in certain cases

American Law Reports

Insurance agents' and brokers' professional liability insurance, 55 ALR5th 681.

§ 695. Valued policy clause; exceptions

A. Under any fire insurance policy insuring inanimate, immovable property in this state, if the insurer places a valuation upon the covered property and uses such valuation for purposes of determining the premium charge to be made under the policy, in the case of total loss the insurer shall compute and indemnify or compensate any covered loss of, or damage to, such property which occurs during the term of the policy at such valuation without deduction or offset, unless a different method is to be used in the computation of loss, in which latter case the policy, and any application therefor, shall set forth in type of equal size, the actual method of such loss computation by the insurer. Coverage may be voided under said contract in the event of criminal fault on the part of the insured or the assigns of the insured.

B. Any clause, condition, or provision of a policy of fire insurance contrary to the provisions of this Section shall be null and void, and have no legal effect. Nothing contained herein shall be construed to prevent any insurer from cancelling or reducing, as provided by law, the insurance on any property prior to damage or destruction.

C. The liability of the insurer of a policy of fire insurance, in the event of total or partial loss, shall not exceed the insurable interest of the insured in the property unless otherwise provided for by law. Nothing in this Section shall be construed as to preclude the insurer from questioning or contesting the insurable interest of the insured.

D. This Section shall only apply to policies issued or renewed after January 1, 1992, and shall not apply to a loss covered by a blanket-form policy of insurance nor to a loss covered by a builders risk policy of insurance.

Amended by Acts 1995, No. 737, § 1. ←

Historical and Statutory Notes

The 1995 amendment, in subsec. D, added ", and shall not apply to loss covered by a blanket-form policy of insurance nor to a loss covered by a builders risk policy of insurance" at the end.

In 1995, pursuant to the statutory revision authority of the Louisiana State Law Institute, "a" was inserted before "loss covered by a blanket-form policy" in subsec. D.

Notes of Decisions

1. Construction and application

Where valued policy law was clear and unambiguous, and its application did not lead to absurd consequences, law would be applied as written to insured mortgagee's policy, notwithstanding insurer's contention that legislature could not have intended to apply law to mortgagee's insurance. *Farmers-Merchants Bank & Trust Co. v. St. Katherine Ins. Co.*, App. 3 Cir.1997, 96-1138 (La.App. 3 Cir. 4/30/97), 693 So.2d 876, rehearing denied, writ denied 97-1867 (La. 10/31/97), 703 So.2d 25.

Public policy behind valued policy law is very strong and statute is intended to be interpreted liberally in favor of insured. *Farmers-Merchants Bank & Trust Co. v. St. Katherine Ins. Co.*, App. 3 Cir.1997, 96-1138 (La.App. 3 Cir. 4/30/97), 693 So.2d 876, rehearing denied, writ denied 97-1867 (La. 10/31/97), 703 So.2d 25.

5. Statute as part of policy

Southern Produce Co. v. American Ins. Co. of Newark, N. J., App. 4 Cir.1964, 166 So.2d 59, [main volume] writ refused 246 La. 863, 167 So.2d 675.

20. — Total loss, extent of loss and liability of insurer

Valued policy law requires insurers issuing fire policies to pay, in cases involving total losses, face amount of policy provided insured is not found criminally at fault. *Farmers-Merchants Bank & Trust Co. v. St. Katherine Ins. Co.*, App. 3 Cir. 1997, 96-1138 (La.App. 3 Cir. 4/30/97), 693 So.2d 876, rehearing denied, writ denied 97-1867 (La. 10/31/97), 703 So.2d 25.

Mortgagee's property insurance policy provided primary and not excess coverage when restaurant was destroyed by fire where excess clause purporting to make policy excess would have defeated mandatory provisions of valued policy law requiring payment of full insured amount in event of total destruction of property. *Farmers-Merchants Bank & Trust Co. v. St. Katherine Ins. Co.*, App. 3 Cir.1997, 96-1138 (La.App. 3 Cir. 4/30/97), 693 So.2d 876, rehearing denied, writ denied 97-1867 (La. 10/31/97), 703 So.2d 25.

21. — Partial loss, generally, extent of loss and liability of insurer

Louisiana statute mandating that, in case of partial loss, fire insurance policy must provide coverage based on replacement value of property which was subject of loss did not mandate such coverage, in case of commercial property policy which provided substantial coverage against perils other than fire loss, except to the extent that the insured's loss resulted from fire; property-valuation provisions of statute would be read only into fire coverage of policy, and not into policy's coverage for theft and vandalism. *In re Consolidated Companies, Inc.*, E.D.La.1995, 185 B.R. 223, affirmed 106 F.3d 396.

24. — Value of property destroyed, extent of loss and liability of insurer

Fact that insureds bought building for less than half policy limits one month before hurricane and that they allegedly would receive windfall if paid policy limits for total loss was irrelevant to valuation of property; insurance company's own formulation ultimately set policy amount, and determinative value under Louisiana valued policy law was value placed on property by insurance company. *Real Asset Management, Inc. v. Lloyd's of London*, C.A.5 (La.)1995, 61 F.3d 1223.

Under blanket policy of insurance, actual cash value of property at time of loss is amount insurer must pay rather than total face amount of the policy as required by valued policy law. *Farmers-Merchants Bank & Trust Co. v. St. Katherine Ins. Co.*, App. 3 Cir.1997, 96-1138 (La.App. 3 Cir. 4/30/97), 693 So.2d 876, rehearing denied, writ denied 97-1867 (La. 10/31/97), 703 So.2d 25.

30. Bonds

J. M. Brown Const. Co. v. D & M Mechanical Contractors, Inc., App. 1 Cir.1972, 258 So.2d 594, [main volume] writ issued 261 La. 525, 260 So.2d 315, reversed 275 So.2d 401.

38. — Value of property destroyed, evidence

Under Louisiana's valued policy law, determinative value in event of total loss is value placed on property by insurance company. *Real Asset Management, Inc. v. Lloyd's of London*, C.A.5 (La.)1995, 61 F.3d 1223.

PART XVI. REHABILITATION, LIQUIDATION, CONSERVATION,
DISSOLUTION, AND ADMINISTRATIVE SUPERVISION

Section

- 731. Repealed.
- 732. Scope of Part.
- 732.3. Venue.
- 734. Injunction.

Section

- 737.2. Unearned premium; limitation of claims by insolvent insurers.
- 746. Priority of claims.

**TAYLOR, PORTER,
BROOKS & PHILLIPS**

L.L.P._____

MEMORANDUM

DATE: September 9, 2005
TO: Whom it may concern
FROM: Shelby McKenzie
RE: Property Insurance Issues Following Hurricane Katrina

-
- A. **Purpose.** This memorandum will give an overview of property insurance coverage issues arising out of Hurricane Katrina affecting mortgagees with a security interest in the insured property. This memorandum will not discuss other coverages afforded by insurance policies for the protection of the owner, such as coverage for personal property, additional living expenses and business interruption.
- B. **Hurricane Katrina.** Louisiana and other states suffered massive property damage to personal dwellings and commercial buildings from Hurricane Katrina. That damage was caused by wind, storm waves, flooding from levee breaks in New Orleans, vandalism and a few fires.
- C. **Insurance Policies.** Basically, there are two types of insurance policies that may provide coverage for property damaged or destroyed by Katrina:
1. **Standard Policies.** Generally, the insurance industry offers protection for personal dwellings through homeowner's insurance policies and for business property through commercial property insurance policies. Under Louisiana law, insurers are not required to use uniform policy forms, but generally the coverage available for dwellings and commercial buildings are substantially similar, with many companies using forms made available through Insurance Services Offices ("ISO"). These property insurance policies issued by insurance companies will be referred to as "standard policies."
 2. **Flood Policies.** Flood insurance policies are issued by the federal government acting through the Federal Emergency Management Agency ("FEMA") under the National Flood Insurance Program ("NFIP"). By regulation, FEMA issues the



“Standard Flood Insurance Policy” in three forms: (1) the dwelling form, (2) the general property form and (3) the residential condominium building association policy. See 44 CFR Pt. 61, App. A(1), (2) and (3). Although commercial insurers may act as agent for FEMA, the insurance coverage is an obligation of the federal government.

Generally, standard policies exclude coverage for flood damages while flood policies provide coverage only for flood damages. Property owners with both standard and flood policies should be protected up to their policy limits regardless of the cause of their Katrina damages. An owner with only a standard policy may face a large uninsured exposure for flood loss. Displaced owners will have incentive to pursue coverage under standard policies because flood policies do not provide coverage for additional living expenses.

D. Standard Policies. Generally, standard insurance policies broadly cover direct loss to property, but exclude from that coverage certain described perils. The ISO homeowner’s form widely used in Louisiana excludes “water damage” defined to include the following:

“1. We do not insure for loss caused directly or indirectly by any of the following. Such loss is excluded regardless of any other cause or event contributing concurrently or in any sequence to the loss. * * *

c. Water Damage, meaning:

(1) Flood, surface water, waves, tidal water, overflow of a body of water, or spray from any of these, whether or not driven by wind; . . .”

The policy also excludes loss to property caused by “weather conditions,” but only if weather conditions contribute to “water damage” or another excluded peril. Property damage caused by wind is covered under standard policies. Therefore, the claims adjustment for Katrina losses will involve factual issues as to whether, and to what extent, the property was damaged by windstorm or by water. In coastal areas, most of the total destruction of buildings probably resulted from the storm surge and excluded from coverage as “water damage.” Further inland, the damage may largely be from the effects of wind, including falling trees, which would be damage covered by standard policies. Also, water damage that ensues from wind damage is covered under standard policies. For example, if rain leaks through a wind damaged roof, that water damage is covered. In some cases, it will be evident that the structure was damaged both by rising water and wind, and the loss will have to be apportioned to the two perils. From aerial news videos, it appears that much of the property damage in New Orleans is water damage.



- E. **Flood Policies.** Federal flood policies provide coverage for “direct physical loss by or from flood to your insured property.” The definition of “flood” includes the “overflow of inland or tidal waters” and the “unusual and rapid accumulation or runoff of surface waters from any source.” In addition to the policy limits for the structure insured, flood policies may provide up to an additional \$30,000 of coverage for the increased cost of compliance with flood plain management laws affecting repair or replacement of a structure suffering flood damage.
- F. **Applicable Law.** Generally, the interpretation of standard insurance policies will be under the insurance laws of the state in which the property is located, and such policies will be liberally interpreted in favor of coverage. Federal flood policies, however, are governed by federal law, which requires that the policy be strictly construed. See *Gowland v. Aetna*, 143 F.3d 941 (5th Cir. 1998). Therefore, careful compliance with all requirements of a flood policy should be a priority.
- G. **Mortgage Clause.** The federal flood policy forms and generally standard insurance policies contain mortgage clauses that protect the security interest of the mortgagee, even when the insured owner is disqualified from coverage. The flood policy provides that any loss payable for the insured structure “will be paid to any mortgagee of whom we have actual notice, as well as any other mortgagee or loss payee determined to exist at the time of the loss, and you [the insured owner], as interests appear.” The mortgage clause in the ISO homeowner’s form expressly protects only a mortgagee named in the policy, but an unnamed mortgagee may have equitable rights of recovery under Louisiana law.
- H. **Insured’s Duties After Loss.** Both standard policies and flood policies impose duties on the insured to give notice of loss and to submit proofs of loss. Under Louisiana law, the failure to comply timely with notice requirements does not defeat coverage unless the insurer proves actual prejudice from the delay. Under the strict construction of federal flood policies, however, the insured may forfeit his rights of recovery by failing to comply timely with a notice requirement. See *Gowland, supra*. The mortgage clauses in federal flood policies also impose a duty directly on the mortgagee to file a “signed, sworn proof of loss within 60 days after receiving notice from us of your [the insured’s] failure to do so.”
- I. **Basis of Payment.** The ISO homeowner’s form and the federal flood dwelling policy form provide for recovery of replacement cost if the dwelling was insured for 80% or more of its full replacement cost. The federal flood general property form provides for recovery of the least of the policy limit, actual cash value or replacement cost. Standard policies on commercial property may provide for payment of replacement cost or actual cash value. Generally, payment of “actual cash value” permits deduction of depreciation. Louisiana law also permits co-insurance under which the amount of recovery is reduced if the property is not insured for at least a specified percentage of its total value or replacement cost. Also, most policies will have a specified deductible.



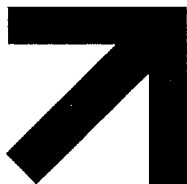
- J. **Valued Policy Law.** Louisiana has a valued policy law (“VPL”), La. R.S. 22:695, which provides that “if the insurer places a valuation upon covered property and uses such valuation for purposes of determining the premium charge to be made under the policy, in case of total loss the insurer shall compute and indemnify or compensate any covered loss of, or damage to, such property which occurs during the term of the policy at such valuation without deduction or offset, unless a different method is to be used in the computation of loss, in which latter case, the policy, and any application therefore, shall set forth in type of equal size, the actual method of such computation by the insurer.” In other words, the insurer must pay the policy limits for a total loss unless a different method of computation was clearly set forth in the application and policy. Louisiana’s VPL probably has no application to flood insurance which is governed by federal law.
- K. **The Mierzwa Case and Other Potential Litigation.** A tidal wave of insurance litigation is likely to follow in the wake of Katrina. The insurance industry will be concerned by a challenge based upon the Florida decision in *Mierzwa v. Florida Windstorm Underwriting Association*, 877 So.2d 774 (Fla. App. 4th Dist. 2004). Under Florida’s valued policy law, *Mierzwa* held that, if any portion of a total loss was caused by a covered peril under a standard policy, then the insurer was required to pay the face amount of the standard policy, even if the majority of the damage resulted from an excluded peril, such as water damage. The Louisiana VPL is not identical to the Florida VPL, and the *Mierzwa* decision is not binding on Louisiana courts. Also, the Florida legislature has amended its VPL to prospectively overrule *Mierzwa*. In the wake of Katrina, however, litigation testing the scope and limits of all potential insurance coverage can be anticipated.
- L. **Prescription.** Both standard and flood policies have one year limitations on the filing of suits asserting claims under the policy. Under the provision in most standard policies, suit must be filed within one year of the date of loss (the date Katrina struck). The federal flood policies provide: “If you do sue, you must start the suit within one year of the date of the written denial of all or part of the claim, and you must file suit in the United States District Court of the district in which the insured property was located at the time of the loss.”
- M. **Subrogation.** Both standard and flood policies contain subrogation clauses that prohibit the insureds from giving up any rights to recover from other entities who may be responsible for the loss. Impairment of an insurer’s subrogation rights discharges the insurer from any obligation to make payment under the policy. Whether there may be viable claims against other entities related to Katrina cannot be foreseen at this time. Owners and mortgagees should be careful not to sign releases that might impair the subrogation rights of their insurers.



- N. **Conclusion.** Mortgagees seeking to protect their security interests in property damaged by Katrina will face many insurance and other legal issues. Those issues will arise in varied factual contexts in which the nature, extent and cause of damage may be disputed issues. In working with owners and their insurers, an understanding of the available insurance policies and the potential coverage issues should be helpful.



Benfield Viewpoint

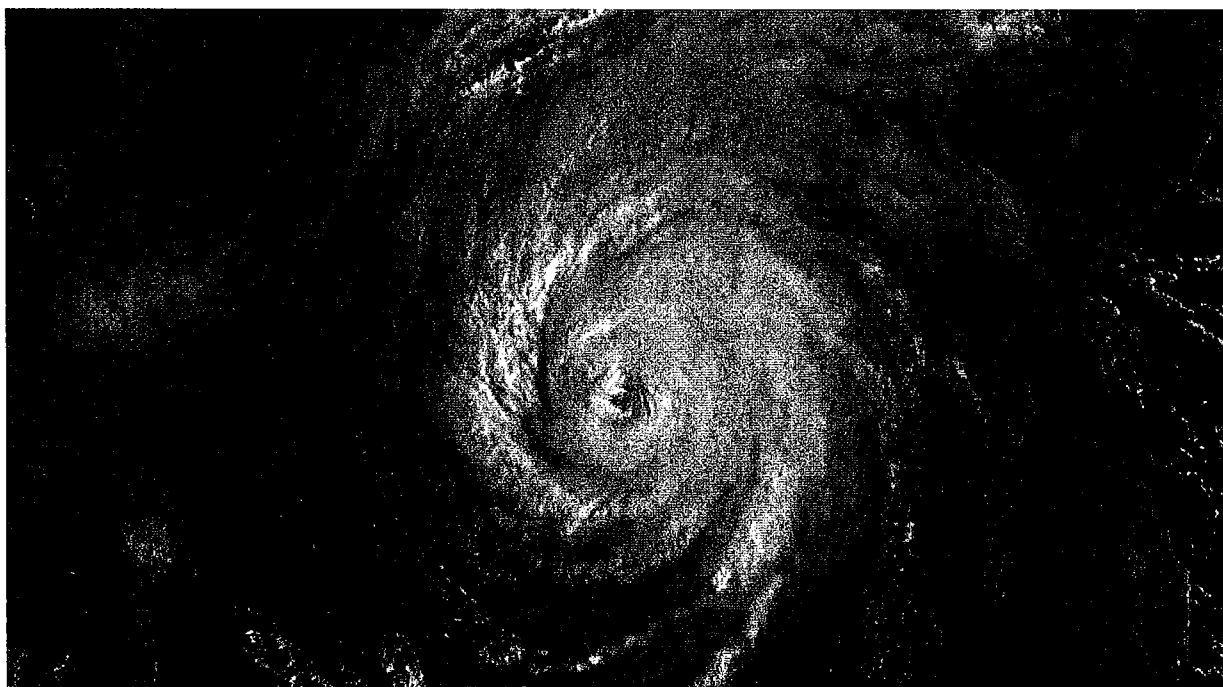


Hurricane Katrina — Yet Another Defining Event

September 15, 2005

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Hurricane Katrina - 29 August 2005. (Courtesy of NOAA Satellite and Information Service)

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LEGISLATIVE INTENT SERVICE



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Introduction

With the deadly combination of Category 4 hurricane winds and rain, a record 29-foot storm surge and breached levees in one of America's largest cities, Hurricane Katrina is turning out to be potentially the costliest natural disaster in US history. Lives, livelihoods and properties have been devastated throughout the coastal regions of Louisiana, Mississippi and Alabama.

The insurance industry stands ready to comply with its obligations, but there is no doubt that this confluence of extremes will create an unprecedented claim-settlement challenge. The purpose of this paper is to enumerate some of these challenges, with the ultimate aim of creating a productive dialog among key insurance constituencies, particularly primary insurers and reinsurers.

Much suffering continues today, with thousands of evacuees seeking shelter across the southern states, and awaiting possible relocation throughout the United States. Hundreds and potentially thousands have perished, unwilling or unable to heed initial evacuation warnings. Businesses are shuttered, widespread looting has occurred.

Insurance claims adjusters have begun the process of restoration for their claimants in homes and businesses that are reachable. But this event will be unique in that many adjusters will not be able to reach the damaged properties for weeks or even months. Even then, they may never be able to find the property owners. Furthermore, many properties were uninsured.

The industry has recent experience with such defining events. Four major hurricanes in Florida last year were preceded a few years earlier by the terrorist attacks of September 11. These incidents have stretched the financial resources of the insurance and reinsurance industries. Hurricane Katrina is sure to add to the outflow of billions of dollars.

Primary Insurance and Reinsurance Issues

Once the human survival issues abate and civil order is restored, primary insurers will take center stage in the media as claims are adjusted. The primary insurance industry's relationship with its customers is fundamentally grounded in the insurance contract. Similarly, the reinsurance industry's relationship with the primary insurance industry is fundamentally grounded in the reinsurance contract. These contracts prescribe the terms each will use to indemnify its claimants. The policy language, parts of which are steeped in years of case law and precedent, establishes the financial obligations of insurers and reinsurers when specific contingent events occur.

In an ideal world, all insurance and reinsurance contracts would be unambiguous under all circumstances. In the real world, however, Hurricane Katrina will put considerable stress on the interpretation of some of these contracts in light of the circumstances of this particular catastrophe. Furthermore, there could be significant pressure to pay losses outside of the contracts. In previous events similar pressures arose and were settled through some form of compromise or capitulation. We have



identified some of the key challenges that will undoubtedly arise. This will not be an exhaustive list. As claims are adjusted other unanticipated circumstances will arise which will also have to be evaluated.

Flood / Storm Surge versus Wind

Insurance contracts generally differentiate wind and wind-driven rain losses from flood. For example, the commonly used HO-3 policy specifically excludes Water Damage, which is defined as:

Flood, surface water, waves, tidal water, overflow of a body of water, or spray from any of these, whether or not driven by wind; and

Water or water-borne material which backs up through sewers or drains.

Direct loss by fire, explosion or theft resulting from water damage is covered.



Gulfport, Mississippi, September 6, 2005 (Courtesy of FEMA/Mark Wolfe)

Hurricane Katrina blurred this distinction in many ways. Pictures from coastal regions around Biloxi and Gulfport show acres and acres of leveled homes. Were these demolished by the 145 MPH winds or were they first wiped out by a tsunami-like storm surge? We may never know.

The Insurance Commissioner of Mississippi issued a Bulletin (No. 2005-6) to insurers on September 7, 2005 to instruct all companies "to fully inspect any damaged property before a coverage decision is



made.” He added that when insurers determine that damage was caused by water, “they must be able to clearly demonstrate the cause of the loss. I expect and believe that where there is any doubt, that doubt will be resolved in favor of finding coverage on behalf of the insured.”

Additional Living Expenses (ALE)

There are a variety of ALE issues that need to be considered. First, before the insurer even knows if the loss is caused by wind, flood or storm surge, the claimant may demand ALE funds. Technically, the claim may not be valid until it is established that a covered peril was the cause of loss. In this case, however, the cart comes before the horse. Policyholders are displaced and may be expending living expenses with the assumption that they will be reimbursed by their insurer despite the fact that the insurer cannot ascertain whether this is a valid claim.

A second issue is simply the length of ALE payments. Ordinarily the limit is 20% of Coverage A but also limited to a period of one year, though for some insurers there is only a time limit for the coverage. At the other extreme, policies provided by the coastal pools in Louisiana and Mississippi do not provide time element coverage.

Common policy language of an HO-3 policy which provides coverage for ALE is as follows:

If a covered loss makes part of the “residence premises” where you reside not fit to live in, we cover any necessary increase in living expenses incurred by you so that your household can maintain its normal standard of living.

Payment will be for the shortest time required to repair or replace the damage or, if you permanently relocate, the shortest time required for your household to settle elsewhere.

Yet it is likely that many policyholders will be displaced for an indefinite period. A strict interpretation of the policy arguably cuts it off, but will the human circumstances here create a need to extend that time limit? While these kinds of limitations are common in health insurance, they are a relatively new phenomenon for property insurance.

Business Interruption

Hurricane Katrina could become the single largest business interruption catastrophe in history. The length of time many businesses will be shuttered could be measured in months but many will be out for years and others will simply cease being in business.

Common language in small commercial lines policies defines business interruption coverage as follows:

We will pay for the actual loss of business income you sustain due to the necessary suspension of your “operations” during the “period of restoration”. The suspension must be caused by direct physical loss of or damage to property at the described premises.

We will only pay for loss of Business Income that you sustain during the “period of restoration” and that occurs within 12 consecutive months after the date of direct physical loss or damage. We will only pay for ordinary payroll expenses for 60 days following the



date of direct physical loss or damage, unless a greater number of days is shown in the Declarations.

Business Income means the net income (net profit or loss before income taxes) that would have been earned or incurred if no physical loss or damage had occurred, and continuing normal operating expenses incurred, including payroll.

Hence, it is similar to the time element coverage found in a homeowners policy in that there is both a dollar limit and a time limit for incurred losses.

Insurance-to-Value / Demand Surge

The scale of property destruction in this event is enormous. Undoubtedly there will be upward pressure on building supply costs and labor. The insurance industry has referred to this as "demand surge." It is simply the economic reality when the supply of materials and labor trails demand, driving up costs. The commonly applied insurance-to-value tools cannot take this into account, leaving some "total loss" recoveries insufficient to pay for the home to be rebuilt. Sadly, the insurance-to-value tools pegged at ordinary rebuilding costs—not tuned to reconstruction after catastrophic loss—will likely come up short in an environment of rampant demand surge.

Some companies have anticipated this and offered options to insure to 125% or 150% of replacement cost. In these cases when policyholders had the option to buy up and chose not to do so, there may be a good argument that this demand surge risk was already explained.

Adjudication of Claims between Private Coverage and Federal Flood Insurance

The following data from the National Flood Insurance Program (NFIP) indicates the policies in force, insurance in force and written premium as of 12/31/04 for areas most affected by Katrina in Louisiana and Mississippi:

Louisiana:

<u>Community Name</u>	<u>Policies In-Force</u>	<u>Insurance In-Force</u>	<u>Written Premium In-Force</u>
Covington	1,201	\$232.1M	\$.5M
Grand Isle	1,091	\$102.8M	\$1.0M
Jefferson Parish	88,075	\$13,368.0M	\$41.0M
New Orleans/Orleans Parish	83,990	\$11,981.4M	\$43.5M
Plaquemine	75	\$13.5M	\$.03M
Plaquemines Parish	5,050	\$748.3M	\$2.2M
Slidell	6,902	\$989.6M	\$3.4M
St. Bernard Parish	15,831	\$2,091.7M	\$6.3M
St. Charles Parish	9,488	\$1,605.9M	\$3.9M
St. Tammany Parish	25,048	\$4,907.9M	\$9.9M



Mississippi:

<u>Community Name</u>	<u>Policies In-Force</u>	<u>Insurance In-Force</u>	<u>Written Premium In-Force</u>
Bay St. Louis	886	\$140.0M	\$0.40M
Biloxi	2,015	\$297.9M	\$0.86M
Gautier	512	\$82.0M	\$0.20M
Hancock County	3,233	\$378.1M	\$1.31M
Harrison County	2,211	\$319.1M	\$0.93M
Jackson County	2,551	\$351.7M	\$1.12M
Moss Point	290	\$30.6M	\$0.12M
Ocean Springs	790	\$145.4M	\$0.28M
Pascagoula	1,508	\$216.2M	\$0.78M
Pass Christian	2,105	\$304.6M	\$0.82M
Waveland	1,184	\$165.9M	\$0.42M

As discussed above, in many cases, especially where structures have been entirely obliterated, it may be impossible to determine how much damage was caused by each peril – wind and flood. The allocation of loss between private insurers and the federal government through the National Flood Insurance Program could become problematic. NFIP flood insurance is capped at \$250,000 for building and \$100,000 for personal property. Coverage is only provided at actual cash value. Oftentimes, excess flood insurance is not offered in coastal regions by the private market. Hence, flood coverage may be inadequate to fully indemnify an insured.

In cases when an insured has obtained coverage for both wind and flood, careful coordination will be required between the two policies and those adjusting them so as to determine the liability of each for the loss.



Levee Break at Surekote Road, East New Orleans (Courtesy of NASA)



Valued Policy Clause in Louisiana Law

During Hurricane Irene in 1999, Zenon Mierzwa, a homeowner in Ft. Lauderdale, Florida, incurred damage to his home from both wind and flood. The home was found to be a total loss. The wind insurer thought it should only pay for the portion of the damage caused by wind. Florida's Fourth District Court of Appeals, however, ruled that due to the state's Valued Policy Law, if the insurer has any liability to the property owner of a building deemed to be a total loss, then the liability is for the face amount of the policy.

Louisiana, like Florida, also has a Valued Policy Law. (See the Louisiana Revised Statutes 22:695, available at <http://www.legis.state.la.us/lss/lss.asp?doc=83160>, for the complete text.) Louisiana's law was re-enacted in 1992. Since then, Louisiana courts have not reported any decisions that interpret its language (BestWire, September 1, 2005).

While Florida law does not govern Louisiana, the questions behind the *Mierzwa* decision are sure to surface as claims involving damage from both wind and flood are adjudicated over the coming years, and it is possible the Louisiana courts could follow the *Mierzwa* precedent.

As a footnote, in 2005 the Florida legislature passed legislation meant to clarify that application of its Valued Policy Law is intended for loss due to covered perils. Hence, on a going-forward basis, when a total loss is due to the combination of covered and excluded perils in Florida, the insurer's liability is limited to the amount of loss caused by the covered peril.

Solvency of Wind Pools

As of June 30, 2005, the Louisiana Citizens Property Insurance Corporation – the coastal pool – had \$6.3 billion of insurance in force. As of July 31, 2005, the Mississippi Windstorm Underwriting Association (MWUA) pool had \$1.8 billion of insurance in force, providing coverage to properties in the three Tier 1 (or coastal) counties. In an interview with Best's Insurance News (September 9, 2005), the assistant manager of the MWUA stated "All I can say, at this point, is we have 16,000 policies and we are proceeding with the intention that we are going to have 16,000 claims." He went on to say that it is not at all clear how many of those losses would be total or partial, and what will be attributed to wind.

Given the magnitude of Hurricane Katrina and the proximity of these policies to the Gulf, we can assume that losses to these entities will be very significant. According to Don Griffin of the Property Casualty Insurers Association of America, Louisiana Citizens has about \$100 million in cash and reinsurance of \$340 million in excess of a \$35 million retention available to pay claims. The MWUA has \$2.1 million in cash and reinsurance of \$175 million in excess of a \$10 million retention (BestWire, August 31, 2005).

Louisiana Citizens supplements its claims paying capacity through two forms of assessments. It has the ability to levy Regular Assessments against Assessable Insurers – those admitted insurers who are authorized to write one or more subject lines of business (fire, allied lines, homeowners multiperil, and the property portion of commercial multiperil policies) in the state. These assessments can be recouped by insurers from their voluntary policyholders. If Regular Assessments are insufficient to recoup a Plan



deficit, then Emergency Assessments can be made against policyholders. These are to be collected by insurers. Complete details on the assessment process can be found in Louisiana Citizens' Plan of Operation (available at <http://www.lacitizens.com/>).

The MWUA funds shortfalls in its claims-paying capacity through assessment of its membership. On September 1 it made its initial assessment of \$10 million on insurers. Section IX of its Plan of Operation provides information on how participation percentages are calculated. This document is available at their Web site (<http://www.msplans.com/MWUA/Index.htm>). For Hurricane Katrina participation percentages, look on the same webpage in the section entitled "Financial Reports."

Mold

The kinds of water damage that will emerge from Hurricane Katrina likely will lead to mold damage and the need for cleanup. This will further drive up the costs of partial losses or create the need to raze the house, causing a potential total loss claim if the contractors are unable to remediate. Mold coverage is often sub-limited, which could add to the need to apportion loss to peril. Again, the enormous scale of this loss will make it extremely difficult to find the resources necessary for mold remediation, escalating losses further.



Mold Remediation (Courtesy of the EPA)

Lengthy Claim Settlement Process

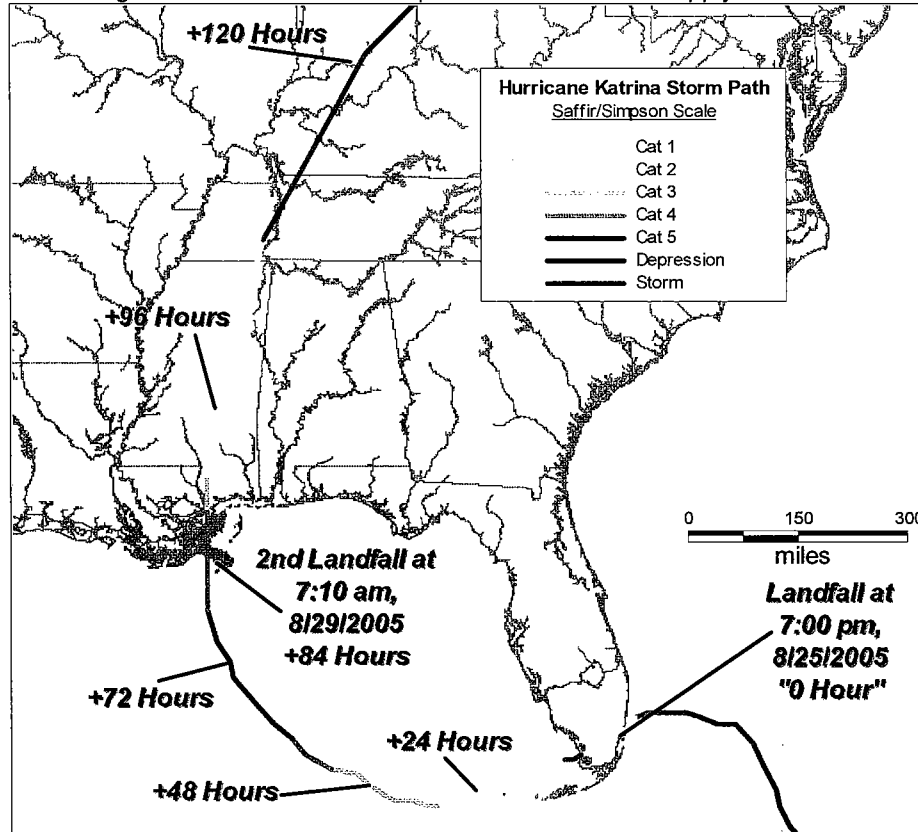
As a result of the demand surge phenomenon discussed above, initial estimates of reconstruction costs may prove to be insufficient. Hence, it is reasonable to expect that claims presumably closed will have to be repeatedly reopened as properties are rebuilt. Also, with the inability to reach claimants and the shortage of building supplies and labor, the entire rebuilding process will extend far longer than the insurance industry has experienced in other large catastrophes. It will be difficult to converge on an accurate loss reserve figure, as the tail on this will extend for years to come and there is no precedent for an event of this type.

Duration of the Storm

Hurricane Katrina's first landfall in Florida occurred at about 7:00 PM EDT on Thursday, August 25. It made a second landfall near 7 AM EDT on Monday, August 29 – approximately 84 hours after its first landfall. Ninety-six hours after the first landfall in Florida, Katrina was centered just northwest of Meridian, Mississippi. The extensive flooding of New Orleans began Monday and waters continued to rise for several days. Damage in the northern half of Mississippi and to states further north would presumably have occurred August 30 or even later. The storm was persistent, causing damage over quite a long time period.



The timing of this storm could be important when insurers apply losses to their excess of loss per risk and



property catastrophe covers. These contracts typically have an "hours clause" (72- or 96- hours for hurricanes) that limits the period of time during which losses can be aggregated and considered subject to the contract.

While insurers usually have the freedom to "start the clock" by defining the beginning of this time period, the end is pre-determined by contract language. If an insurer is able to apply for two limits of coverage from this storm, then it must

keep two separate retentions. More often than not, however, excess of loss contracts do not allow for reinstatement of the contract's limit within the same event. In this case, an insurer would do best by identifying the single 72- or 96-hour period from which the most losses could be aggregated.

Likely Impact on Reinsurance Markets

While it is still too early to assess with any degree of certainty the full impact of Hurricane Katrina on reinsurance markets, clearly this will be a landmark event to the industry. When all losses are totaled it will certainly exceed the losses due to Hurricane Andrew, even on an inflation-adjusted basis, and is expected to reach or exceed the losses paid out from the tragedy of 9/11. Whereas the 2004 hurricane season emphasized the potential for frequency of losses, Hurricane Katrina reminds the industry that severity is still an issue. And in this regard, Katrina was not even "the big one."

Reinsurers will once again bear the brunt of the insured loss payments as many excess covers will be hit and some covers will be totaled. Any softening of property catastrophe reinsurance markets almost certainly will abate, with the distinct possibility of an abrupt shift into a hard market. We will probably not know the full impact of this event even as we move toward year-end renewals.

Re-capitalization will be needed as capital is surely to erode just as after 9/11; it is too early to know how much and where it will be needed precisely.



Today, some reinsurers find themselves in the position of being unable to provide back-up covers because they do not have a firm grasp of their Katrina losses. Others are opportunistically seeking to write additional business.

Litigation from insurance claim settlement disputes is virtually certain and will result in further delay of payments. How reinsurers react to these claim disputes will test relationships between insurers and reinsurers.

Reinsurance markets overall are able to handle an event of this magnitude. However, there is always the possibility of another major event at any time. Should that occur the markets could be financially shaken and rates could skyrocket.

Reinsurance security will receive more emphasis than ever. Rating agencies will be the wild card – S&P has already placed 10 insurance groups on Negative Watch and others are possible.

Catastrophe Modeling of Hurricane Katrina

Insurers should anticipate differences between results from catastrophe modeled footprints of Hurricane Katrina and their actual incurred losses. Many of the issues described above could lead to insurer payments that are not included in model estimates. In addition to these issues, there are other reasons to anticipate differences. We highlight some of these here.

- *Exceptional storm surge.* The storm surge from Hurricane Katrina was 7 feet higher than had ever been recorded before. Such exceptional storm surge would be at or beyond the extreme that would be predicted by the models. Thus, even more properties will be affected by the difficulty of adjusting claims potentially caused by both flood and wind.
- *Auto losses.* Whereas there might be issues regarding insurance coverage for flood in a homeowners or commercial policy, auto losses would presumably be covered under the auto physical damage of a standard auto policy. Auto losses are often not modeled.
- *Difficulties of modeling unusual constructions.* Catastrophe models do not do well with boats. Neither do they model floating casinos well. The exceptional storm surge just compounds these difficulties.
- *Accuracy of exposure data.* Were all insured properties as of the date(s) of the storm modeled? Were proper insurance to value assumptions made? Are constructions, deductibles, and time element coverage accurately reflected in the data?
- *Cause of loss.* Were losses due to wind, flood, looting, vandalism, fire, offsite power losses or mandatory evacuations? Which deductible should apply? Aside from wind and possibly surge, these causes of loss are not typically modeled.
- *Offshore pipelines.* Even when damage to the offshore platforms and rigs has been modeled, damage to pipelines is not included.



Latest Reported Estimates of Insured Loss

Industry estimates of insured loss

Source	Estimate	Comments
AIR-Worldwide	\$17 to \$25 billion	Includes \$15 to \$22 billion for wind and rain, and \$2 to \$3 billion for insured storm surge and flood. Excludes offshore platform losses, demand surge, and flood claims against the federal National Flood Insurance Program. Includes direct business interruption (BI) losses but excludes indirect BI claims—for example, those due to the mandatory evacuation, rather than due to property damage. Date of press release: August 30, 2005.
EQECat	\$15 to \$24 billion	This includes \$1 to \$2 billion of Florida losses from the first landfall. It does not include offshore or auto APD losses. Storm surge and flood losses are not directly included, but some such losses do appear in these totals due to the use of claims data to calibrate the model. The estimate does take into account extenuating factors associated with the severe and prolonged flooding in New Orleans, and includes elevated demand surge and prolonged business interruption, as well as factors such as pollution and mold remediation. Date of press release: September 2, 2005.
Risk Management Solutions	\$40 to \$60 billion	Anticipate \$15 to \$25 billion of insured loss due to the flooding of New Orleans. This estimate excludes NFIP losses and assumes no insurance payments for uninsured properties. These totals include demand surge and offshore energy losses (\$2 to \$5 billion). Total economic losses estimated as \$125 billion. Date of press release: September 9, 2005.
Swiss Re	\$40 billion	Press release dated September 12, 2005.
U.S. Geological Survey Budget Office	Excess of \$30 billion	Letter to Senate Majority Leader Bill Frist dated September 6, 2005.



Loss Estimates Reported by Insurers and Reinsurers as of September 15, 2005

Company	Date	Low Estimate USDmn	High Estimate USDmn	High Est. % of Surplus at 30 June 2005	Comments
Lloyd's of London*	14 Sept 05	\$2,550	\$2,550	11%	Net loss; initial assessment of managing agents provisional estimates
Swiss Re	12 Sept 05	\$1,200	\$1,200	7%	Pre-tax; increase from preliminary estimate of USD500mn on 1 Sept 2005
Allianz	8 Sept 05	\$585	\$585	1%	-
Munich Re	30 Aug 05	\$490	\$490	2%	Claims relating to hurricane will not change its 2005 earnings guidance; statement on 02/09/05 stated its estimate may exceed its original figure
Montpelier Re	12 Sept 05	\$450	\$675	46%	Net loss; estimate based on private industry estimates, including offshore energy losses, in the range of USD30-40bn
ACE	12 Sept 05	\$450	\$550	5%	After-tax
Endurance	13 Sept 05	\$375	\$450	23%	Net of reinsurance, reinstatement premiums and tax benefits
Hannover Re	2 Sept 05	\$310	\$310	9%	Net loss before tax
Transatlantic Re	14 Sept 05	\$270	\$270	10%	Pre-tax, net of reinsurance
PXRE	11 Sept 05	\$235	\$235	31%	After tax and recoveries from its inwards and outwards reinsurance program
AXA Re*	14 Sept 05	\$200	\$200	14%	Pre-tax, net of reinsurance and reinstatement premiums
Fairfax Financial Holdings	8 Sept 05	\$175	\$220	7%	Pre-tax and before minority interests; Odyssey Re USD80-100mn, Crum & Forster USD35-40mn, Group Re USD40-50mn, Northbridge USD20-30mn
Brit	6 Sept 05	\$150	\$150	11%	Brit internal RDS indicative US windstorm loss
Aspen	8 Sept 05	\$150	\$150	9%	After tax and recoveries from its outwards reinsurance program
White Mountains Group	9 Sept 05	\$150	\$300	7%	Pre-tax, net of all reinstatement premiums
Catlin	12 Sept 05	\$125	\$125	12%	Net of reinsurance
Alfa Corporation	1 Sept 05	\$125	\$125	17%	Net loss, preliminary estimate
Amlin	5 Sept 05	\$110	\$110	11%	Provisional estimate
Hiscox	12 Sept 05	\$100	\$100	13%	Net loss



Company	Date	Low Estimate USDmn	High Estimate USDmn	High Est. % of Surplus at 30 June 2005	Comments
Wellington	6 Sept 05	\$75	\$75	9%	Net loss attributable to shareholders; group net loss of USD120mn
Chaucer*	7 Sept 05	\$65	\$65	20%	Pre-tax, net of reinsurance recoveries and reinstatement premiums
Advent	13 Sept 05	\$60	\$60	35%	Net loss
Kiln	13 Sept 05	\$55	\$65	21%	Loss to Kiln's plc shareholders; group loss of USD185mn
HCC Insurance Holdings	14 Sept 05	\$50	\$50	3%	Pre-tax, net of reinsurance and reinstatement premiums
Royal & Sun Alliance	6 Sept 05	\$45	\$45	1%	Net of reinsurance recoverable
SVB*	9 Sept 05	\$45	\$45	19%	Net of reinsurance and reinstatement premiums
Beazley	8 Sept 05	\$35	\$35	6%	Impact on Group's profits
Cincinnati Financial	9 Sept 05	\$34	\$34	1%	Pre-tax, net of reinsurance
SCOR	1 Sept 05	\$30	\$45	2%	-
Mapfre*	8 Sept 05	\$30	\$30	5%	-
Atrium*	14 Sept 05	\$30	\$30	18%	Net of reinsurance and reinstatement premiums
Goshawk	6 Sept 05	\$25	\$30	18%	Losses relating to both Property and Marine. Rosemont Re, Bermuda is main operating subsidiary
W.R. Berkley	6 Sept 05	\$25	\$25	1%	Pre-tax, net of reinsurance recoveries
Alea	1 Sept 05	\$20	\$30	4%	Net retained
American National	2 Sept 05	\$17	\$17	1%	Pre-tax, net of reinsurance
Converium	1 Sept 05	\$15	\$30	2%	-
EMC Insurance Group	6 Sept 05	\$4	\$5	2%	Reinstatement premiums expected to be in range of USD0.8-1.4mn. Losses in reinsurance segment capped at USD1.5mn occurrence limit
Republic Companies Group	13 Sept 05	\$3	\$3	2%	After tax, net of reinsurance recoveries
Direct General	9 Sept 05	\$3	\$3	1%	Net of reinsurance recoveries
James River Group	6 Sept 05	\$2	\$3	n.a.	Net of reinsurance recoverable and including reinstatements
21st Century Insurance	15 Sept 05	\$2	\$2	0%	After tax

* Surplus at 31 Dec 2004 Source: Benfield IAR

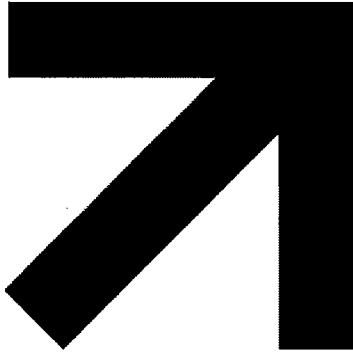


Conclusion

There is no doubt that the aftermath of Hurricane Katrina will affect the lives of victims and impact governmental policy for many years to come. The insurance industry will also be dealing with the ramifications of this event for years. Benfield stands ready to assist clients in the complexities of the reinsurance claim settlement process. Our relationship managers will provide or seek answers to each and every reinsurance question that arises in your organization.

We will continue to track developments on insurance and reinsurance issues regarding Hurricane Katrina for our customers. In the meantime, our thoughts and prayers go to the victims who have seen their lives and families devastated. While insurance and financial considerations are our business, we grieve for the human suffering that has occurred.





 BENFIELD LIMITED

 26 September 2005

2005 Catastrophe Losses

Katrina: Post Monte Carlo Market Review

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Introduction

Hurricane Katrina dominated conversations at the 2005 Monte Carlo Rendez-vous and the outlook for capacity and pricing seemed far from clear. The arrival of Hurricane Rita but ten days later served to underline this uncertainty and was a pertinent reminder that the active US hurricane season lasts for at least another month.

The 2005 Monte Carlo Rendezvous earlier this month was dominated by speculation about the likely effect of Hurricane Katrina on reinsurance capacity and pricing. However, those hoping to gain a clear preview of forthcoming renewals were disappointed as the only consensus to emerge from the conference was that it was too early to assess Katrina's impact. Even now there remains considerable uncertainty as to the eventual extent of insured losses although Katrina is likely to be the most costly insured event ever recorded. Further uncertainty has been generated at the time of writing by the possible impact of Hurricane Rita.

At Monte Carlo Katrina was seen as likely to be an earnings rather than a capital event for the reinsurance industry. As losses have begun to crystallise it has become apparent that for some reinsurers at least Katrina has eroded significant capital, although the speed at which some companies have been able to re-capitalise suggest that so far, at least, the capital markets retain their appetite for reinsurance investments.

Prior to the emergence of hurricane Rita, most observers foresaw the Katrina loss having a generally stabilising effect on the reinsurance market or encouraging a modest upward trend, alongside significant rate increases expected in loss affected areas. In Benfield's experience this appears to be borne out by 1/10 renewals where, in general, anticipated modest reductions have been replaced by flat pricing. In some cases even with pricing flat, renewals are taking longer to complete as underwriters seek to raise terms.

The loss from Hurricane Rita, while much less than feared, was still a significant event that cannot be ignored. It is likely to ratchet up the effect of Katrina on capital and pricing, with a disproportionate impact on the marine, energy and retrocession markets and likely capital erosion. As well as the immediate effect of this on rates, recalibration of commercial and proprietary windstorm models to include these losses is likely to exert upward pressure on technical pricing in all regions, not just the US.

Capital and Pricing

Similar past events give some insight into how the market may react after these losses. Sharp post-event hikes in pricing are usual after an event of this magnitude, but the amount and duration of rate increases directly reflect the degree to which capital is impaired. Capital in the reinsurance market prior to hurricane Andrew was at a relatively low level due to soft market conditions and there was limited appetite in the capital markets for reinsurance investment. After Andrew in 1992 there was an acute shortage of capacity for around two years which was only eased with the creation of several new reinsurers. This relatively long period of severe capacity shortage was reflected in the very sharp increases in reinsurance pricing in the two years following Andrew. In 2001, prior to 9/11, the industry had been through several years of very soft market conditions, and balance sheets were further weakened by reserve shortfalls and poor investment markets.



However, after the 9/11 loss, capital rapidly flowed into the market with more than USD8.5bn¹ of new capital committed to Bermudian start-ups, most of which were operational within three months of the event. Lloyd's listed vehicles also raised approximately USD1.5bn² during 2002 through the equity market. While reinsurance pricing spiked upward after 9/11, the speed with which new capacity was created meant that the correction was much less marked than after hurricane Andrew.

The capital position of the reinsurance industry is better in 2005 than the state of the market before 9/11. The flow of new capital post-9/11 and reserve strengthening on a massive scale, combined with several years of profitable underwriting, has left most major (re)insurers with healthy balance sheets well able to withstand a significant loss. Indeed most discussion in the last twelve months had centred on how capital should be prudently managed given evident surplus capacity in many lines. Share buy backs and exceptional dividends have been a common feature of company announcements over the past twelve months.

The ease with which the industry raised capital after 9/11 and the evident continued appetite of the capital markets (especially hedge funds) for reinsurance risk, encouraged the general view at Monte Carlo that a prolonged shortfall in reinsurance capacity was unlikely post-Katrina. However it remains to be seen how robust the capital markets' appetite for reinsurance will remain as the consequences of Rita – both actual and feared – are assessed.

Uncertainty over the overall Katrina and Rita losses means that it is too soon to gauge the likely impact on reinsurance pricing. While it is clear that pricing will increase substantially in loss affected classes such as energy and marine, and for US wind cover, the knock-on effect on the market overall is unclear. At the time of the Monte Carlo Rendez-vous it was difficult to envisage pricing corrections beyond those seen after 9/11, which would mean a return to rating levels seen in 2002/2003 for loss affected sectors. However, if the Katrina loss proves significantly larger than current estimates, or if Rita produces a further large hurricane loss, there could be substantial capital erosion in those areas of the market most affected such as retrocession, property catastrophe and specialty lines (i.e. energy, marine, cargo, business interruption). Insofar as this creates a mismatch between supply and demand this could generate a more extreme pricing reaction. Several factors will be key:

- the ultimate size of natural catastrophe losses in 2005 and the degree to which they cause capital erosion (e.g. through exceeding reinsurance and retrocession programmes)
- the likely severe impact on the retrocession and specialty markets
- increased demand for catastrophe coverage as buyers review their exposures and respond to rating agency and regulatory pressures
- the degree to which reinsurer technical pricing is affected by changes to windstorm and other peril models
- any exits from the reinsurance market, voluntary or otherwise
- the extent to which balance sheets are replenished with fresh capital, and the speed of this process.

¹ Benfield IAR - The Big Squeeze, January 2003

² Benfield IAR - The Big Squeeze, January 2003



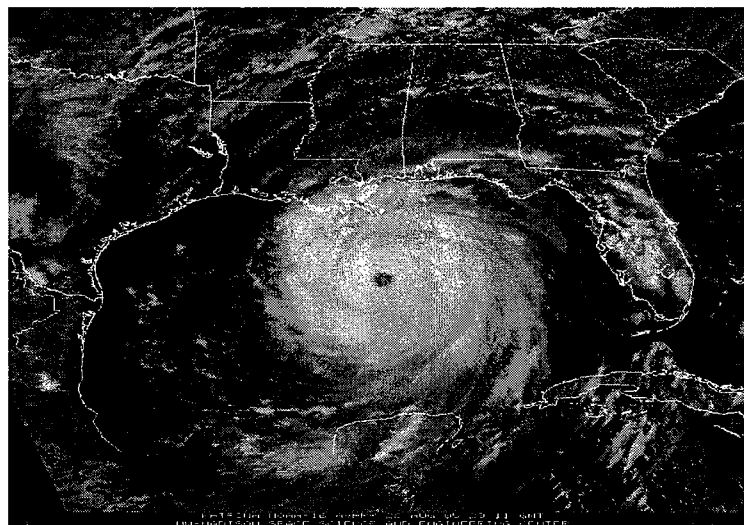
Katrina: largest ever insured natural catastrophe loss

Hurricane Katrina, a category 4 hurricane, made second landfall onto the U.S. Gulf Coast on 29 August, destroying beachfront towns in Mississippi and Louisiana. Widespread damage was caused by wind, rain and storm surge and the subsequent breach of two levees in New Orleans caused extensive flooding across a wide area.

Chart 1

Katrina 28 August 2005 20:11 GMT

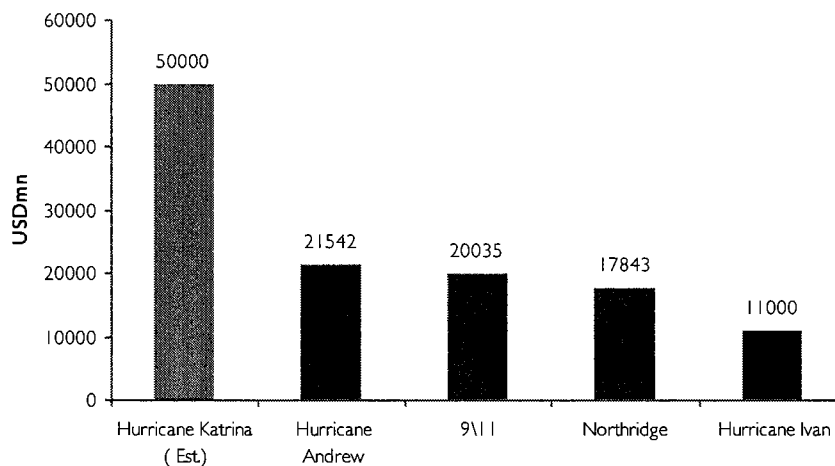
US Madison Space Science and Engineering Centre



The full impact of hurricane Katrina has yet to be assessed and current estimates of the economic and insured losses are uncertain. There is still a wide range but with estimates up to USD60bn, it can be put into context of other large insured losses. Property and business interruption losses were USD21.5bn for Hurricane Andrew and USD20bn for 9/11³ as shown in Chart 2.

Chart 2

Most costly insured losses and Katrina loss estimate compared
sigma 1/2005, Benfield IAR



³ Swiss Re sigma 1/2005 Insured losses indexed to 2004

Originally it was feared that Hurricane Rita, which had been described as a category 5 storm with its eye trained on Houston would cause even more damage than Katrina. In the event when it made landfall in the relatively unpopulated area of Louisiana on 24 September it had been downgraded to a category 3 storm. Early post land fall estimates include USD3-6bn insured losses from wind damage (EQECAT) and USD 2.5bn-5bn (AIR).

Chart 3

Top ten most costly US hurricanes- USD at end 2004
Insurance Information Institute

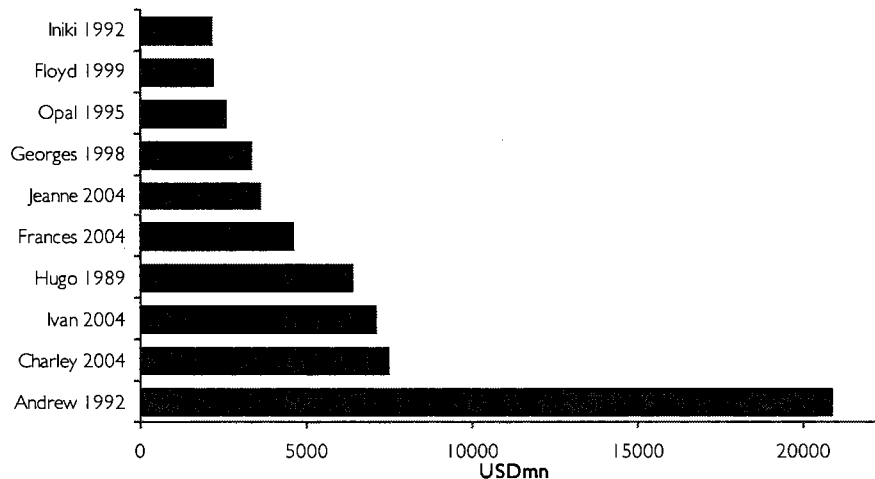


Chart 3 shows the ten most costly US hurricanes as at the end of 2004. Hurricane Andrew towers above the rest as a single loss, although this is exceeded by the combined cost of Charley, Ivan, Frances and Jeanne in 2004 of some USD26bn.

Coverage issues

The uncertainty as to the proximate cause of Katrina-related losses (windstorm or flood), is likely to put considerable stress on the interpretation of some insurance contracts. In addition there could be significant political pressure to pay losses not strictly covered by these contracts. Benfield⁴ has identified a number of issues including:

- Flood / storm surge versus wind
- Additional living expenses (ALE)
- Business interruption
- Insurance-to-value / demand surge
- Adjudication of claims between private coverage and federal flood insurance
- Valued policy clause in Louisiana law
- Mould
- Lengthy claim settlement process
- Duration of the storm
- Catastrophe modelling of Hurricane Katrina

These are discussed in more detail in Appendix I. The list is by no means exhaustive and further issues may well emerge as the claims process develops. Attribution of loss between windstorm

⁴ Benfield Viewpoint, Hurricane Katrina - Yet Another Defining Event, 15 September 2005



and flood will be a crucial issue as flood is commonly excluded from domestic homeowners' policies and instead covered by the voluntary government flood insurance scheme. However, low take-up means that many individuals are uninsured and property insurers are likely to come under political pressure to meet policyholders' losses even when they are caused by an excluded peril. For example the Mississippi Attorney General has now filed a lawsuit against a group of insurers declaring that policyholders bought insurance with the reasonable expectation that flood and water damage would be covered. Similar actions are being brought by individual lawyers. While attention is currently focused on property claims, there is considerable scope for losses in casualty claims. For example, environmental pollution and clean-up costs are likely to be a contentious issue.

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Estimated costs

The complexity of the loss, particularly the flooding from both storm surge and breaches of the levees, has prompted coverage debate. The experience of 2004 suggests that initial estimates for many will be the subject of revision. Initial estimates suggest that balance sheets for most, but by no means all, have emerged relatively unscathed. Capital raising exercises have been swiftly executed by a few.

Commercial modelling agency estimates

The range of insured loss estimates suggested by the three main catastrophe modelling agencies is substantial. Table 1 summarises these estimates and highlights the much larger figures provided by RMS. The range of estimates reflects different approaches to the various aspects of the loss. For instance, RMS is the only agency that includes estimated losses directly relating to the so called Great New Orleans Flood (USD15-25bn at 9 September 2005), whereas the AIR and EQECAT models are less able to assess the impact of the flooding. RMS also has the ability to model offshore losses.

Table 1

Model agency estimates

Benfield IAR

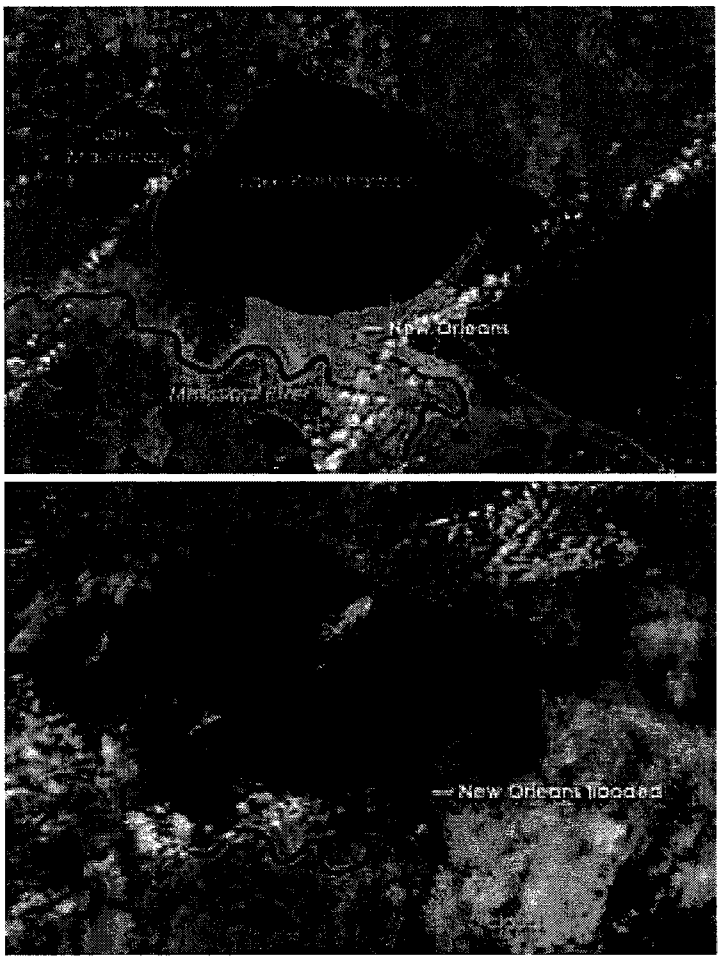
	Announcement date	Low	Mid	High	Comment
		USD bn			
RMS	09 Sept 2005	40	50	60	Figures including USD15-25bn relating to the Great New Orleans Flood. Initial model results indicate that total economic losses from Hurricane Katrina and Great New Orleans Flood are likely to exceed USD125bn. Update from 29 Aug 2005 (USD10 - 25bn) and 05 Sept 2005 (USD 10-25bn)
AIR	30 Aug 2005	17	20	25	Update from 29 Aug 2005 (USD20 - 35bn)
EQECAT*	22 Sept 2005	14	18	22	Unchanged from 2 Sept. Estimate relates to wind storm losses only. Updated from 29 Aug 2005 – (USD15 - 30bn); 22 Sept 2005 -insured loss to offshore oil and gas industry, private auto and marine insurance as well as commercial insured flood damage to be in the range of USD11 - 19bn.

*EQECAT estimated flood damage insured loss of USD11-19bn

The complexity of the loss scenario, particularly the flooding from both storm surge and the Mississippi River bursting through the levees has created uncertainty over which elements will fall within wind and flood coverage, and flood damage is more difficult to model than wind. In addition, the modelling agencies are less able to estimate insured losses for classes such as business interruption and general liability business claims.



Chart 4
New Orleans flooding
Photo Courtesy Jeff
Schmaltz/NASA Earth
Observatory



Complexity of loss

Table 2 shows the insured loss estimates of the modelling agencies for the four hurricanes which hit Florida in 2004 and contrasts these with those published later by Swiss Re's sigma. Here the similar tracks of hurricanes Jeanne and Frances made loss forecasting more difficult. The mismatch between the modelled loss estimates and the sigma report for hurricane Ivan may be partly attributed to the size of offshore energy related losses. This may have implications for the ultimate Katrina loss, given the much greater damage caused to energy infrastructure both on and offshore.

Table 2
Modelling agency estimates

USDbn	Sigma	RMS	EQECAT
Hurricane Ivan	11	4.5	7
Hurricane Charley	8	7	8
Hurricane Frances	5	4.5	4.5
Hurricane Jeanne	4	6	7

* Insured loss for property and business interruption **Mid point loss estimate

Company losses

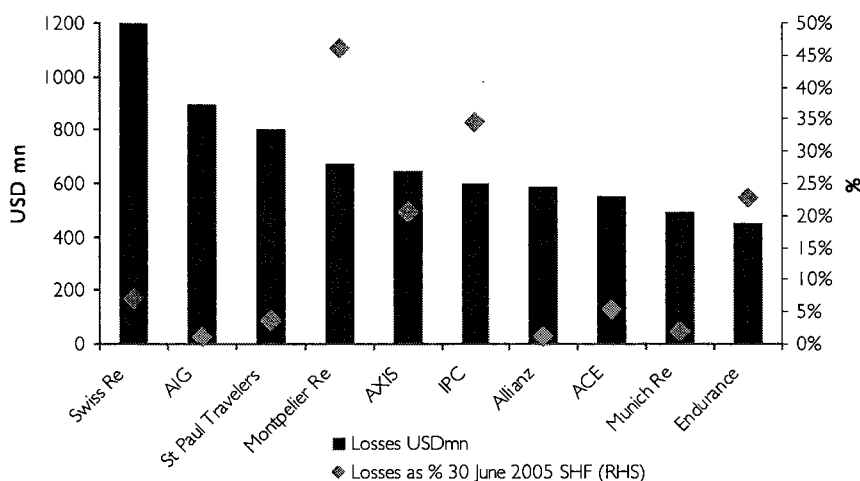
The loss adjustment process for Hurricane Katrina is expected to be protracted due to the complexity of the event and the size of the area affected. Appendix 2 lists company losses announced to date. The limited number of claims so far filed and the potential legal and regulatory issues mean that estimates are generally qualified. Loss development of previous major catastrophe scenarios such as last year's four Florida hurricanes would suggest that many estimates will increase. A number of companies have preferred to estimate potential losses relative to the overall industry loss, rather than dollar amounts. These announcements are also listed in Appendix 2.

There are a number of important omissions from the Appendix tables including Allstate and State Farm which are expected to have a significant share of the overall insured loss but have yet to publish their own estimates. Chart 5 shows the top 10 quantified losses announced.

Chart 5

Top ten USD loss estimates

Company announcements,
Benfield IAR



Announced as at 26 September 2005 Excludes USD2.4bn Lloyd's of London total

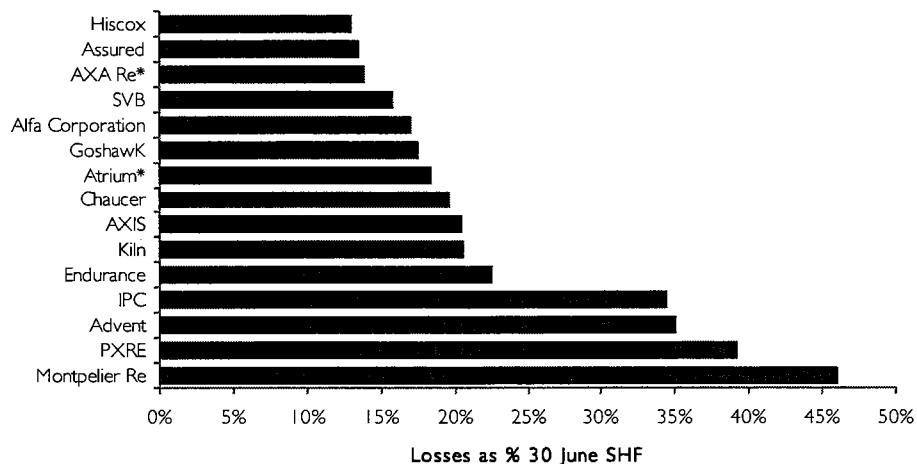
Chart 6 shows announced losses in relation to June 2005 balance sheets. Montpelier Re has since raised USD621 million of new capital. PXRE has filed plans with the SEC to raise up to USD300 million through capital instruments and Platinum now has raised approximately USD162mn through a share placing.



Chart 6

Top fifteen losses as % 30 June SHF

Company announcements
Benfield IAR



Announced as at 26 September 2005

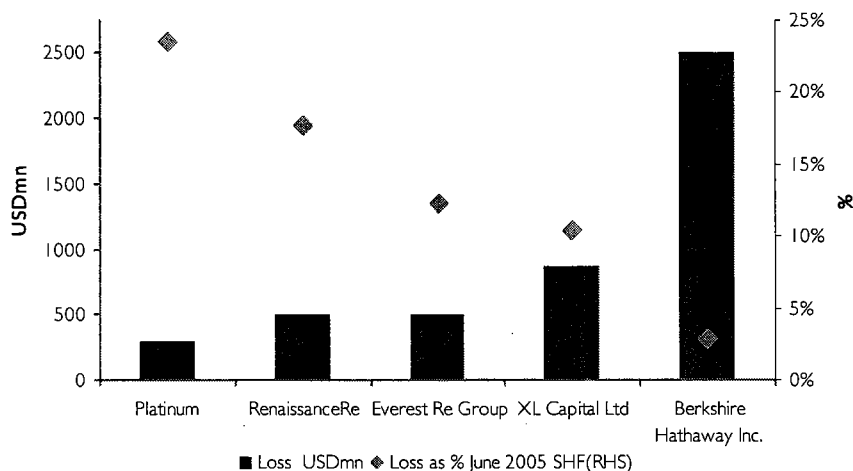
*SHF as at 31 December 2004

Chart 7 shows estimated losses for companies on the basis of their indications of percentage share of the loss, assuming an USD50bn loss, which is the mid point of the RMS range.

Chart 7

Estimated losses on the basis of an insured industry loss of USD50mn

Company announcements,
Benfield IAR



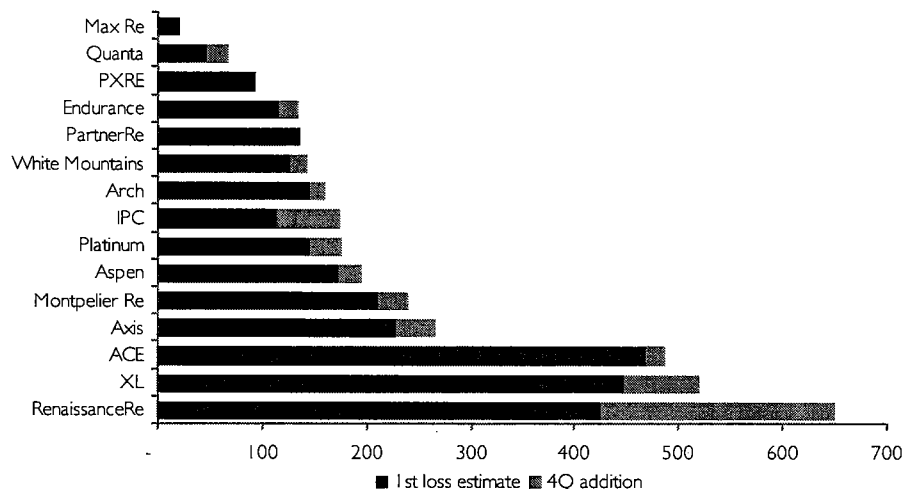
Using higher end of Platinum (0.5%-0.6%) and Berkshire Hathaway (3-5%) estimates



Chart 8

Increases in US Quartet losses

Company announcements,
Benfield IAR



Loss development

It is normal with large and complex loss events that initial estimates tend to increase as the extent of the loss becomes apparent. Claims in certain classes particularly business interruption and casualty lines have lengthy development and even short tail lines are dependent on access to affected areas and sufficient loss adjusting resource for adequate loss assessment. As an illustration of this process Chart 8 shows how the Bermudian reinsurers' initial loss estimates increased for last year's US 'Quartet' of hurricanes. The Quartet made landfall between 13 August and 25 September. Overall, 4Q additions caused a 17% increase in the loss borne by this group of companies. For certain companies the increase on original estimates was more than 50%.

Since the 2004 year end a number of companies have made further adjustments, some representing 14 percentage points on the 2004 combined ratio.

Lloyd's of London

Lloyd's of London is a franchise market that comprises 62 separate syndicates. In terms of 2005 capacity, UK listed vehicles accounted for 37% of the total, with trade capital providers accounting for a further 35%⁵.

Syndicates have been required by Lloyd's since 1995 to use Realistic Disaster Scenarios (RDS) to evaluate catastrophe exposure. These scenarios are also used to assess aggregate exposure at market level. The Katrina and Rita events closely resemble two of them. A USD60bn insured windstorm loss is one of the ten generic scenarios and a more specific scenario envisages a Gulf of Mexico windstorm based on a category 5 Hurricane travelling west by north-west across the offshore oilfields in the gulf before making landfall in Galveston and impacting Houston.

Lloyd's provisional net loss estimate for the market overall is GBP1.4bn (USD2.55bn). This represents 11% of Lloyd's pro forma 2004 capital and reserves. This estimate is not only consistent

⁵ Close-Up, Lloyds Review 2005

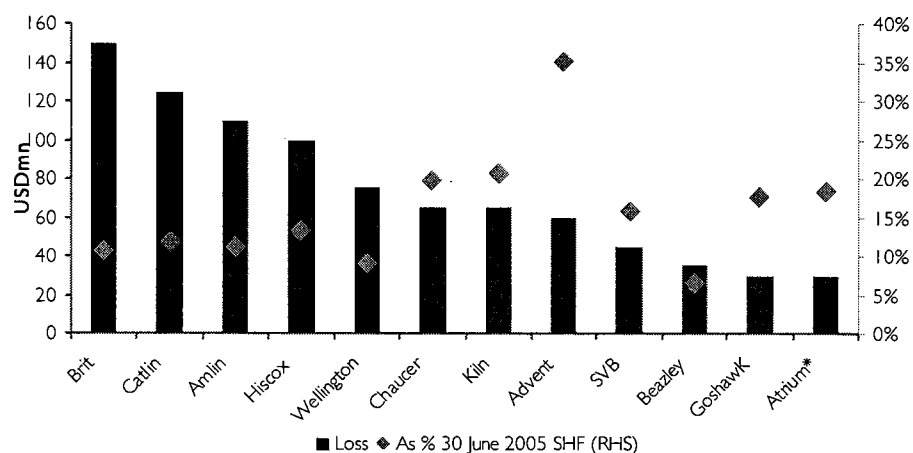


with the RDS model but comparable with the US windstorm quartet in 2004 which resulted in a net loss of GBP1.3bn (USD 2.37bn). A number of UK listed vehicles have announced losses which are included in the Lloyd's market total and these are shown in Chart 9. Some companies have declared estimated losses for the relevant Syndicate as well as the financial impact on the group based on the percentage of capacity actually owned by the group. The latter figure is shown where possible in the Chart.

Chart 9

USD losses and as % of 30 June 2005 SHF

Company announcements, Benfield IAR



*Atrium SHF as at 31 December 2005

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Market issues

Apportionment of Katrina losses looks set to be shared more equally between primary insurers and reinsurers. For those insurers and reinsurers bearing the brunt of the losses it seems likely that some will exhaust their reinsurance protection and suffer a higher retained loss as a result. Response to Katrina from the three main agencies has held a common theme with no expression of concern on the ability of the industry as a whole or individual entities to meet their losses in full.

Apportionment

As a general rule, losses for a large catastrophe fall roughly 40% with the primary insurers and 60% with reinsurers. The situation was reversed for the four US/Caribbean hurricanes in the third quarter of 2004, where aggregate losses fell approximately 60% with the primary insurers and only 40% with reinsurers. This was because reinsurance programmes are mostly designed to respond to one severe loss rather than several smaller losses. While each hurricane was a substantial event, for many cedants each individual loss was too small to impact reinsurance coverage to any great extent. This meant that a proportionately higher amount of the total was retained in the primary market.

Although it is still too early to be definitive, insured losses from Katrina look set to be shared more equally between primary insurers and reinsurers. In addition a substantial proportion of energy related losses will be borne by industry mutuals and there will be a degree of self-retention amongst many other commercial entities. For those insurers and reinsurers bearing the brunt of insured losses it seems likely that some will exhaust their reinsurance protection, and suffer a higher retained loss as a result.

Rating actions

The response of the rating agencies to Katrina is summarised below and individual changes to company ratings are shown in Appendix 3. An important common theme to note is that, to date, none of the three main agencies has expressed concerns on the ability of the industry as a whole or individual entities to meet their losses in full. At the time of writing no rating agency had responded to loss estimates for Hurricane Rita.

Standard & Poor's

S&P was the first of the major credit rating agencies to take action in the aftermath of Katrina. On 9 September, it placed the financial strength ratings of ten interactively rated insurance and reinsurance groups on CreditWatch with negative implications. The groups affected were: ACE, Allmerica, Allstate, Lloyd's, Montpelier Re, Oil Casualty Insurance, PXRE, State Farm, Swiss Re, and United Fire. However, S&P commented that the affected groups "have sufficient risk-management and risk-mitigation skills, capital, and liquidity to accommodate the losses they are likely to incur". The agency noted the use of models as the basis for loss estimates but expressed concern that the models "might not have captured all of the related risks now in play". Commenting on individual groups, S&P noted the uncertainty surrounding the ultimate losses, and their effect on earnings. Capitalisation, even after considering Katrina losses, was of lesser concern.⁶ XL was added to the CreditWatch negative on 20 September. Montpelier, subsequent to its capital raising exercise, has

⁶ Standard & Poor's press release 9 September 2005



now been removed from CreditWatch negative and had its rating affirmed at A-, albeit with a negative outlook.

Fitch Ratings

Fitch followed with more limited rating action on 13 September, when it placed the ratings of five insurance and reinsurance organisations on Rating Watch Negative. The affected groups were Allstate, Horace Mann Educators, Montpelier Re, PXRE and State Farm. At the same time, Fitch commented that it did not believe that the exposure of equity capital of any of the major global reinsurers to Katrina-related losses would warrant a Rating Watch action, noting that "Katrina losses will likely be absorbed by current one-year earnings".⁷

Later, Fitch commented further on the effects of Katrina on the US P&C insurers. The agency maintains a stable outlook on the sector, but noted several risks which could prompt a change in outlook to negative if matters develop adversely. Highlighted issues were:

- The reliability of catastrophe models used to support risk-adjusted capital analysis;
- Uncertainty over the resolution of flood-related losses, particularly in relation to flood exclusions in homeowners policies;
- Insurers' ultimate retained losses, and the degree to which catastrophe reinsurance protection is exhausted;
- The risk of a pricing squeeze between tightly controlled prices for primary insurance and reinsurance.

Commenting on the limitations of vendor catastrophe loss models, Fitch noted many sources of loss that fall outside the scope of, or are not fully captured by, the modelling analysis, including flood, long-term business interruption, looting and fires, as well as ancillary losses on general liability, directors & officers (D&O) or errors & omissions (E&O) policies.

In the same commentary, Fitch opined that "reinsurers are more distanced than primary companies from several of the noted risks, such as exposure to paying flood-related claims and regulatory constraints on pricing. This makes it less likely that Fitch would move its Outlook for reinsurance companies' ratings to Negative".⁸

A.M. Best

On 15 September, A.M. Best announced various rating actions resulting from the impact of Hurricane Katrina. Olympus Re was downgraded two notches to B+ from A-, and the ratings of 15 other (re)insurance groups placed under review with negative implications. The affected groups were: Allmerica, Balboa, DaVinci Re, Endurance Specialty, Florists Mutual, Imagine Insurance, IPCRe, Louisiana Farm Bureau Mutual, Mississippi Farm Bureau Mutual, Montpelier Re, Mutual Savings Fire, Odyssey Re, PartnerRe, PXRE, and XL Capital. Best commented that previous "under review" status of the ratings of four groups, Alea, American Re, Munich Re and Transatlantic Re, would be extended to include an assessment of the Katrina loss impact. Best stated it "expects all rated companies will be able to meet their current loss obligations despite the projected magnitude of the potential insured losses". As well as focusing on the financial impacts of Katrina-related losses (principally on capitalisation, but also on earnings) A.M. Best will also be

⁷ Fitch Ratings Press Release 13 September 2005

⁸ Fitch Ratings Press Release 19 September 2005



re-evaluating each company's risk management procedures, an essential component in the rating process. The agency commented that "therefore, the replenishment of capital alone may not be sufficient to sustain a company's previous rating".⁹

Changes to the Standard & Poor's Capital Model

On 27 June 2005 S&P announced significant changes to its rating criteria for property catastrophe reinsurance.¹⁰ The key points were as follows:

- S&P will no longer use net premium written (NPW) as a proxy for property catastrophe exposure in the C5 (underwriting risk) element of its capital adequacy ratio (CAR). Instead S&P will base capital requirements on an assessment of all active treaties exposed to catastrophe risk.
- S&P will use the reinsurer's own gross and net modelled exposures on a global basis based on the output of in-house or third-party vendor models.
- The S&P capital charge will be based on company-specific net expected losses at the 1/250 year level for property natural catastrophe losses. Previously, a 1/100 year charge was applied.
- The required capital needed at the "BBB" confidence level is the 1/250 year scenario.
- The capital charge includes five perils: hurricanes (wind), flood outside the USA, earthquake, tornadoes and hail. Other perils will be surveyed, but not explicitly charged.
- Catastrophe exposure will be analysed in 15 defined geographical zones, but the final capital charge will be based on the global aggregation.
- The S&P modelled loss will be net of retrocession, reinstatement premiums and the impact of catastrophe bonds. The modelled loss will also receive a credit to the value of 70% of the associated catastrophe NPW.
- Lines of credit contingent on catastrophe events with covenants attached will not receive capital relief.
- Qualitative factors will be considered, but will not affect the capital charge.

S&P will require reinsurers to complete a semi-annual survey form as at 1 January and 1 July as part of the rating review. S&P advises that it expects to apply similar criteria to primary insurers with catastrophe risk.

It is too early to assess the impact of the change to the S&P capital model, but as many companies use it as a benchmark for calculating capital requirements it may have an effect on underwriting and retrocession buying behaviour. The change from 1/100 to 1/250 year confidence levels could stimulate additional demand for retrocession if capital charges are increased, especially from companies with more highly-g geared balance sheets. Equally, any increased capital cost of writing catastrophe reinsurance could make this class of business unattractive for reinsurance underwriters that are not core components of their group. Questions also remain about S&P's approach to

⁹ A.M. Best Press Release 15 September 2005

¹⁰ Standard & Poor's press release 27 June 2005



assessing the output of vendor and in-house catastrophe models, which differ in their regional and peril coverage and assumptions and which, as Hurricane Katrina has shown, often produce widely varying results for the same apparent risk.



Appendix I

Extract from Hurricane Katrina – Yet Another Defining Event¹¹

Flood / Storm Surge versus Wind

Insurance contracts generally differentiate wind and wind-driven rain losses from flood. For example, the commonly used HO-3 policy specifically excludes Water Damage, which is defined as:

- Flood, surface water, waves, tidal water, overflow of a body of water, or spray from any of these, whether or not driven by wind; and
- Water or water-borne material which backs up through sewers or drains.
- Direct loss by fire, explosion or theft resulting from water damage is covered

Hurricane Katrina blurred this distinction in many ways. Pictures from coastal regions around Biloxi and Gulfport show acres and acres of leveled homes. Were these demolished by the 145 MPH winds or were they first wiped out by a tsunami-like storm surge? We may never know.

The Insurance Commissioner of Mississippi issued a Bulletin (No. 2005-6) to insurers on September 7, 2005 to instruct all companies “to fully inspect any damaged property before a coverage decision is made.” He added that when insurers determine that damage was caused by water, “they must be able to clearly demonstrate the cause of the loss. I expect and believe that where there is any doubt, that doubt will be resolved in favor of finding coverage on behalf of the insured.”

Additional Living Expenses (ALE)

There are a variety of ALE issues that need to be considered. First, before the insurer even knows if the loss is caused by wind, flood or storm surge, the claimant may demand ALE funds. Technically, the claim may not be valid until it is established that a covered peril was the cause of loss. In this case, however, the cart comes before the horse. Policyholders are displaced and may be expending living expenses with the assumption that they will be reimbursed by their insurer despite the fact that the insurer cannot ascertain whether this is a valid claim.

A second issue is simply the length of ALE payments. Ordinarily the limit is 20% of Coverage A but also limited to a period of one year, though for some insurers there is only a time limit for the coverage. At the other extreme, policies provided by the coastal pools in Louisiana and Mississippi do not provide time element coverage.

Common policy language of an HO-3 policy which provides coverage for ALE is as follows:

If a covered loss makes part of the “residence premises” where you reside not fit to live in, we cover any necessary increase in living expenses incurred by you so that your household can maintain its normal standard of living.

¹¹ Benfield Viewpoint, 15 September 2005



Payment will be for the shortest time required to repair or replace the damage or, if you permanently relocate, the shortest time required for your household to settle elsewhere.

Yet it is likely that many policyholders will be displaced for an indefinite period. A strict interpretation of the policy arguably cuts it off, but will the human circumstances here create a need to extend that time limit? While these kinds of limitations are common in health insurance, they are a relatively new phenomenon for property insurance.

Business Interruption

Hurricane Katrina could become the single largest business interruption catastrophe in history. The length of time many businesses will be shuttered could be measured in months but many will be out for years and others will simply cease being in business.

Common language in small commercial lines policies defines business interruption coverage as follows:

We will pay for the actual loss of business income you sustain due to the necessary suspension of your "operations" during the "period of restoration". The suspension must be caused by direct physical loss of or damage to property at the described premises.

We will only pay for loss of Business Income that you sustain during the "period of restoration" and that occurs within 12 consecutive months after the date of direct physical loss or damage. We will only pay for ordinary payroll expenses for 60 days following the date of direct physical loss or damage, unless a greater number of days is shown in the Declarations.

Business Income means the net income (net profit or loss before income taxes) that would have been earned or incurred if no physical loss or damage had occurred, and continuing normal operating expenses incurred, including payroll.

Hence, it is similar to the time element coverage found in a homeowners policy in that there is both a dollar limit and a time limit for incurred losses.

Insurance-to-Value / Demand Surge

The scale of property destruction in this event is enormous. Undoubtedly there will be upward pressure on building supply costs and labor. The insurance industry has referred to this as "demand surge." It is simply the economic reality when the supply of materials and labor trails demand, driving up costs. The commonly applied insurance-to-value tools cannot take this into account, leaving some "total loss" recoveries insufficient to pay for the home to be rebuilt. Sadly, the insurance-to-value tools pegged at ordinary rebuilding costs—not tuned to reconstruction after catastrophic loss—will likely come up short in an environment of rampant demand surge.

Some companies have anticipated this and offered options to insure to 125% or 150% of replacement cost. In these cases when policyholders had the option to buy up and chose not to do so, there may be a good argument that this demand surge risk was already explained.



Adjudication of Claims between Private Coverage and Federal Flood Insurance

The following data from the National Flood Insurance Program (NFIP) indicates the policies in force, insurance in force and written premium as of 12/31/04 for areas most affected by Katrina in Louisiana and Mississippi:

Louisiana:

Community Name	Policies In -Force	Insurance In -Force USD mn	Written Premium In-Force USDmn
Covington	1,201	232.1	0.5
Grand Isle	1,091	102.8	1.0
Jefferson Parish	88,075	13,368.0	41.0
New Orleans/Orleans Parish	83,990	1,1981.4	43.5
Plaquemine	75	13.5	0.03
Plaquemines Parish	5,050	748.3	2.2
Slidell	6,902	989.6	3.4
St. Bernard Parish	15,831	2,091.7	6.3
St. Charles Parish	9,488	1,605.9	3.9
St. Tammany Parish	25,048	4,907.9	9.9

Mississippi:

Community Name	Policies In -Force	Insurance In -Force USD mn	Written Premium In-Force USDmn
Bay St. Louis	886	140.0	0.40
Biloxi	2,015	297.9	0.86
Gautier	512	82.0	0.20
Hancock County	3,233	378.1	1.31
Harrison County	2,211	319.1	0.93
Jackson County	2,551	351.7	1.12
Moss Point	290	30.6	0.12
Ocean Springs	790	145.4	0.28
Pascagoula	1,508	216.2	0.78
Pass Christian	2,105	304.6	0.82
Waveland	1,184	165.9	0.42



As discussed above, in many cases, especially where structures have been entirely obliterated, it may be impossible to determine how much damage was caused by each peril – wind and flood. The allocation of loss between private insurers and the federal government through the National Flood Insurance Program could become problematic. NFIP flood insurance is capped at \$250,000 for building and \$100,000 for personal property. Coverage is only provided at actual cash value. Oftentimes, excess flood insurance is not offered in coastal regions by the private market. Hence, flood coverage may be inadequate to fully indemnify an insured.

Valued Policy Clause in Louisiana Law

During Hurricane Irene in 1999, Zenon Mierzwa, a homeowner in Ft. Lauderdale, Florida, incurred damage to his home from both wind and flood. The home was found to be a total loss. The wind insurer thought it should only pay for the portion of the damage caused by wind. Florida's Fourth District Court of Appeals, however, ruled that due to the state's Valued Policy Law, if the insurer has any liability to the property owner of a building deemed to be a total loss, then the liability is for the face amount of the policy.

Louisiana, like Florida, also has a Valued Policy Law. (See the Louisiana Revised Statutes 22:695, available at <http://www.legis.state.la.us/lss/lss.asp?doc=83160>, for the complete text.) Louisiana's law was re-enacted in 1992. Since then, Louisiana courts have not reported any decisions that interpret its language (BestWire, September 1, 2005).

While Florida law does not govern Louisiana, the questions behind the *Mierzwa* decision are sure to surface as claims involving damage from both wind and flood are adjudicated over the coming years, and it is possible the Louisiana courts could follow the *Mierzwa* precedent.

As a footnote, in 2005 the Florida legislature passed legislation meant to clarify that application of its Valued Policy Law is intended for loss due to covered perils. Hence, on a going-forward basis, when a total loss is due to the combination of covered and excluded perils in Florida, the insurer's liability is limited to the amount of loss caused by the covered peril.

Solvency of Wind Pools

As of June 30, 2005, the Louisiana Citizens Property Insurance Corporation – the coastal pool – had \$6.3 billion of insurance in force. As of July 31, 2005, the Mississippi Windstorm Underwriting Association (MWUA) pool had \$1.8 billion of insurance in force, providing coverage to properties in the three Tier 1 (or coastal) counties. In an interview with Best's Insurance News (September 9, 2005), the assistant manager of the MWUA stated "All I can say, at this point, is we have 16,000 policies and we are proceeding with the intention that we are going to have 16,000 claims." He went on to say that it is not at all clear how many of those losses would be total or partial, and what will be attributed to wind.

Given the magnitude of Hurricane Katrina and the proximity of these policies to the Gulf, we can assume that losses to these entities will be very significant. According to Don Griffin of the Property Casualty Insurers Association of America, Louisiana Citizens has about \$100 million in cash and reinsurance of \$340 million in excess of a \$35 million retention available to pay claims. The MWUA has \$2.1 million in cash and reinsurance of \$175 million in excess of a \$10 million retention (BestWire, August 31, 2005).



Louisiana Citizens supplements its claims paying capacity through two forms of assessments. It has the ability to levy Regular Assessments against Assessable Insurers – those admitted insurers who are authorized to write one or more subject lines of business (fire, allied lines, homeowners multiperil, and the property portion of commercial multiperil policies) in the state. These assessments can be recouped by insurers from their voluntary policyholders. If Regular Assessments are insufficient to recoup a Plan deficit, then Emergency Assessments can be made against policyholders. These are to be collected by insurers. Complete details on the assessment process can be found in Louisiana Citizens' Plan of Operation (available at <http://www.lacitizens.com/>).

The MWUA funds shortfalls in its claims-paying capacity through assessment of its membership. On September 1 it made its initial assessment of \$10 million on insurers. Section IX of its Plan of Operation provides information on how participation percentages are calculated. This document is available at their Web site (<http://www.msplans.com/MWUA/Index.htm>). For Hurricane Katrina participation percentages, look on the same webpage in the section entitled "Financial Reports."

Mold

The kinds of water damage that will emerge from Hurricane Katrina likely will lead to mold damage and the need for cleanup. This will further drive up the costs of partial losses or create the need to raze the house, causing a potential total loss claim if the contractors are unable to remediate. Mold coverage is often sub-limited, which could add to the need to apportion loss to peril. Again, the enormous scale of this loss will make it extremely difficult to find the resources necessary for mold remediation, escalating losses further.

Lengthy Claim Settlement Process

As a result of the demand surge phenomenon discussed above, initial estimates of reconstruction costs may prove to be insufficient. Hence, it is reasonable to expect that claims presumably closed will have to be repeatedly reopened as properties are rebuilt. Also, with the inability to reach claimants and the shortage of building supplies and labor, the entire rebuilding process will extend far longer than the insurance industry has experienced in other large catastrophes. It will be difficult to converge on an accurate loss reserve figure, as the tail on this will extend for years to come and there is no precedent for an event of this type.

Duration of the Storm

Hurricane Katrina's first landfall in Florida occurred at about 7:00 PM EDT on Thursday, August 25. It made a second landfall near 7 AM EDT on Monday, August 29 – approximately 84 hours after its first landfall. Ninety-six hours after the first landfall in Florida, Katrina was centered just northwest of Meridian, Mississippi. The extensive flooding of New Orleans began Monday and waters continued to rise for several days. Damage in the northern half of Mississippi and to states further north would presumably have occurred August 30 or even later. The storm was persistent, causing damage over quite a long time period.

The timing of this storm could be important when insurers apply losses to their excess of loss per risk and property catastrophe covers. These contracts typically have an "hours clause" (72- or 96-hours for hurricanes) that limits the period of time during which losses can be aggregated and considered subject to the contract.



While insurers usually have the freedom to “start the clock” by defining the beginning of this time period, the end is pre-determined by contract language. If an insurer is able to apply for two limits of coverage from this storm, then it must keep two separate retentions. More often than not, however, excess of loss contracts do not allow for reinstatement of the contract’s limit within the same event. In this case, an insurer would do best by identifying the single 72- or 96-hour period from which the most losses could be aggregated.

Catastrophe modelling of Hurricane Katrina

Insurers should anticipate differences between results from catastrophe modelled footprints of Hurricane Katrina and their actual incurred losses. Many of the issues described above could lead to insurer payments that are not included in model estimates. In addition to these issues, there are other reasons to anticipate differences. We highlight some of these here.

- *Exceptional storm surge.* The storm surge from Hurricane Katrina was 7 feet higher than had ever been recorded before. Such exceptional storm surge would be at or beyond the extreme that would be predicted by the models. Thus, even more properties will be affected by the difficulty of adjusting claims potentially caused by both flood and wind.
- *Auto losses.* Whereas there might be issues regarding insurance coverage for flood in a homeowners or commercial policy, auto losses would presumably be covered under the auto physical damage of a standard auto policy. Auto losses are often not modeled.
- *Difficulties of modeling unusual constructions.* Catastrophe models do not do well with boats. Neither do they model floating casinos well. The exceptional storm surge just compounds these difficulties.
- *Accuracy of exposure data.* Were all insured properties as of the date(s) of the storm modeled? Were proper insurance to value assumptions made? Are constructions, deductibles, and time element coverage accurately reflected in the data?
- *Cause of loss.* Were losses due to wind, flood, looting, vandalism, fire, offsite power losses or mandatory evacuations? Which deductible should apply? Aside from wind and possibly surge, these causes of loss are not typically modeled.
- *Offshore pipelines.* Even when damage to the offshore platforms and rigs has been modeled, damage to pipelines is not included.



Appendix 2



Company losses

Company	Domicile	Date	Low estimate USDmn	High estimate USDmn	High estimate % of SHF	SHF USDmn at 30 June 2005	Comments	Source
Lloyd's of London*	UK	14 Sept 05	2550	2550	11%	22470	Net loss; initial assessment of managing agents provisional estimates	Company press release
Swiss Re	Switzerland	12 Sept 05	1200	1200	7%	17139	Pre-tax; increase from preliminary estimate of USD500mn on 1 Sept 2005	Company press release
AIG	US	20 Sept 05	900	900	1%	88879	After-tax; net of reinsurance recoverable. AIG expects to record an after-tax charge of USD170mn for reinstatement premiums	Company press release
St Paul Travelers	US	23 Sept 05	800	800	4%	22369	After-tax; net of reinsurance and cost of reinstatement premiums	Company press release
Montpelier Re	Bermuda	16 Sept 05	450	675	46%	1463	Net loss; estimate based on private industry estimates, including offshore energy losses, in the range of USD30-40bn. On 16 Sept 2005, Montpelier Re Holdings sold 25.9mn common shares at USD24 per share.	Company press release
AXIS	Bermuda	21 Sept 05	500	650	21%	3167	Net loss; net losses estimate to be within current expectations of consolidated operating income for 2005	Company press release
IPC	Bermuda	22 Sept 05	350	600	34%	1743	Estimated range based on industry insured loss estimates, including marine and offshore energy losses, of USD30-40bn.	Company press release
Allianz	Germany	8 Sept 05	585	585	1%	54355	-	Company press release
ACE	Bermuda	12 Sept 05	450	550	5%	10496	After-tax	Company press release
Munich Re	Germany	30 Aug 05	490	490	2%	26615	Claims relating to hurricane will not change its 2005 earnings guidance; statement on 02/09/05 stated its estimate may exceed its original figure	Comment to news wires
Endurance	Bermuda	13 Sept 05	375	450	23%	1987	Net of reinsurance, reinstatement premiums and tax benefits	Company press release



Company	Domicile	Date	Low estimate USDmn	High estimate USDmn	High estimate as % of SHF	SHF USDmn at 30 June 2005	Comments	Source
Hannover Re	Germany	2 Sept 05	310	310	9%	3464	Net loss before tax	Company press release
PXRE	Bermuda	19 Sept 05	235	300	39%	763	After tax and recoveries from its inwards and outwards reinsurance programme. 15 Sept 2005 - PXRE announced that it has filed a shelf registration statement with the SEC to register the offer and sale of up to USD300mn of its debt securities, common shares, preferred shares, depository shares, warrants and trust preferred securities.	Company press release
White Mountains Group	Bermuda	9 Sept 05	150	300	7%	4091	Pre-tax, net of all reinstatement premiums	Company press release
FM Global	US	15 Sept 05	300	300	8%	3699	Pre-tax, net of reinsurance and reinstatement premiums	Company press release
Transatlantic Re	US	14 Sept 05	270	270	10%	2722	Pre-tax, net of reinsurance	Company press release
Fairfax Financial Holdings	US	8 Sept 05	175	220	7%	3164	Pre-tax and before minority interests; Odyssey Re USD80-100mn, Crum & Forster USD35-40mn, Group Re USD40-50mn, Northbridge USD20-30mn	Company press release
Assured Guaranty	Bermuda	20 Sept 05	220	220	14%	1620	Net par outstanding public finance exposure designated by FEMA	Company press release
AXA Re*	France	14 Sept 05	200	200	14%	1438	Pre-tax, net of reinsurance and reinstatement premiums	Comment to news wires
Manulife	Canada	19 Sept 05	165	165	1%	19657	-	Company press release
Arch	Bermuda	16 Sept 05	110	160	6%	2503	After tax, reflect expected reinstatement premiums	Company press release
Brit	UK	6 Sept 05	150	150	11%	1409	Brit internal RDS indicative US windstorm loss	Company IH 2005 earnings release
Aspen	Bermuda	8 Sept 05	150	150	9%	1608	After tax and recoveries from its outwards reinsurance programme	Company press release

Company	Domicile	Date	Low estimate USDmn	High estimate USDmn	High estimate as % of SHF	SHF USDmn at 30 June 2005	Comments	Source
Catlin	UK	12 Sept 05	125	125	12%	1057	Net of reinsurance	Company press release
Alfa Corporation	US	1 Sept 05	125	125	17%	732	Net loss, preliminary estimate	Company press release
Progressive Corp	US	16 Sept 05	120	120	2%	5591	-	Comment on news wires
Amlin	UK	5 Sept 05	110	110	11%	985	Provisional estimate	Company IH 2005 earnings release
Hiscox	UK	12 Sept 05	100	100	13%	761	Net loss	Company IH 2005 earnings release
Max Re	Bermuda	15 Sept 05	60	90	9%	1025	-	Company press release
Wellington	UK	6 Sept 05	75	75	9%	825	Net loss attributable to shareholders; group net loss of USD120mn	Company IH 2005 earnings release
Chaucer	UK	7 Sept 05	65	65	20%	329	Pre-tax, net of reinsurance recoveries and reinstatement premiums	Company press release
Kiln	UK	13 Sept 05	55	65	21%	315	Loss to Kiln's plc shareholders; group loss of USD185mn	Company press release
Advent	UK	16 Sept 05	60	60	35%	171	Net cost to Advent Capital	Company press release
HCC Insurance Holdings	US	14 Sept 05	50	50	3%	1480	Pre-tax, net of reinsurance and reinstatement premiums	Company press release
Royal & Sun Alliance	UK	6 Sept 05	45	45	1%	4364	Net of reinsurance recoverable	Company press release
SCOR	France	1 Sept 05	30	45	2%	2057	-	IH 2005 conference call
SVB	UK	16 Sept 05	45	45	16%	283	Net of reinsurance and reinstatement premiums	Company press release
Beazley	UK	8 Sept 05	35	35	6%	540	Impact on Group's profits	Company IH 2005 earnings release

Company	Domicile	Date	Low estimate USDmn	High estimate USDmn	High estimate % of SHF	SHF USDmn at 30 June 2005	Comments	Source
Millea Group	Japan	20 Sept 05	25	35	0%	21441	Millea anticipates it will add several billion yen for losses underwritten by Tokio Millennium Re (Bermuda), Tokio Marine Global Re (Dublin) and Tokio Marine Global (London) will be added to its preliminary estimate.	Company press release
Cincinnati Financial	US	9 Sept 05	34	34	1%	6132	Pre-tax, net of reinsurance	Company press release
Unitrin	US	14 Sept 05	32	32	1%	2186	Pre-tax, net of retentions	SEC 8-K filing
United Fire	US	20 Sept 05	15	31	5%	566	After-tax, net of reinsurance and reinstatement premiums	Company press release
Mapfre*	Spain	8 Sept 05	30	30	5%	655	-	Comment to news wires
Goshawk	UK	6 Sept 05	25	30	18%	171	Losses relating to both Property and Marine. Rosemont Re, Bermuda is main operating subsidiary	Company press release
Converium	Switzerland	1 Sept 05	15	30	2%	1648	-	Company press release
Alea	Bermuda	1 Sept 05	20	30	4%	718	Net retained	IH 2005 conference call
Atrium*	UK	14 Sept 05	30	30	18%	163	Net of reinsurance and reinstatement premiums	Company press release
W.R. Berkley	US	6 Sept 05	25	25	1%	2361	Pre-tax, net of reinsurance recoveries	Company press release
AGF	France	21 Sept 05	25	25	0%	10611	-	Comment on news wires
American Financial	US	19 Sept 05	20	20	1%	2558	After-tax, net of reinsurance	Company press release
RLI	US	22 Sept 05	15	19	3%	677	Pre-tax, net of reinsurance	Company press release
American National	US	2 Sept 05	17	17	1%	3382	Pre-tax, net of reinsurance	Company press release
Imagine Group*	Bermuda	16 Sept 05	17	17	3%	524	Net of reinstatement premiums and retrocessional recoveries	Company press release

Company	Domicile	Date	Low estimate USDmn	High estimate USDmn	High estimate as % of SHF	SHF USDmn at 30 June 2005	Comments	Source
Navigators	US	22 Sept 05	15	15	4%	352	After-tax; net loss	Company press release
Baldwin & Lyons	US	20 Sept 05	12	12	4%	336	Pre-tax; exposure to hurricane through ownership of Protective Insurance	Company press release
Total			11707	12922				

Losses reported in currencies other than USD have been converted at USD current exchange rates and rounded to the nearest USD5mn * Consolidated SHF as at 31 Dec 2004 ** Consolidated as at 31 Mar 2005 *** Total excludes Lloyd's Listed vehicles which are included in the Lloyd's of London estimate.

Qualitative comments

Company	Domicile	Date	Comment	Source
PartnerRe	Bermuda	8 Sept 2005	Based on the Company's analyses and modeling for these events to date, total shareholders' equity at September 30, 2005 should decline no more than 10 percent from the USD3.5bn reported at June 30, 2005, assuming no other large loss events and no significant movement in credit and equity markets for the remainder of the quarter. The Company expects to provide additional updates in early October.	Company press release
RenaissanceRe	Bermuda	9 Sept 2005	Due to the extremely limited claims data, as well as potential legal and regulatory developments related to potential losses, the Company noted that it is difficult to provide an estimate of the financial impact of this event on the Company. In looking at a broad range of possible outcomes, the Company estimated that the net negative impact on its financial results from Hurricane Katrina will be approximately 1% of the aggregate insurance industry losses arising from the hurricane. The estimates for the Company and the industry include losses arising in all sectors of insurance and reinsurance, including residential property, commercial property, marine, energy and any other affected classes and coverages, including business interruption and privately insured flood.	Company press release
XL Capital Ltd	Bermuda	12 Sept 2005	XL Capital Ltd announced, based on initial analyses performed by the Company and preliminary estimates to date, it estimates that XL's net losses (excluding net reinstatement premiums) relating to Hurricane Katrina will be in the range of approximately 1.75% of the industry loss. The Company expects the loss adjustment process for Hurricane Katrina to be protracted due to the complexity of the event.	Company press release

Company	Domicile	Date	Comment	Source
Everest Re Group	Bermuda	13 Sept 2005	Everest Re Group Ltd announced that its losses from Hurricane Katrina could amount to approximately 1% of the total insurance industry losses. The Company's view of its losses from Katrina is preliminary and based on a combination of modelled information, underwriter analysis, preliminary client discussions, and an early profile of exposed limits within the affected regions. The unprecedented nature and scale of the loss and the lack of credible data from ceding companies have hampered the estimating process and will introduce significant complexity, uncertainty and delay into the loss adjustment and settlement processes.	Company press release
Platinum	Bermuda	22 Sept 05	Platinum Underwriters Holdings, Ltd. announced that it estimated its losses, net of reinstatement premiums, tax benefits and retrocessional recoveries, from Hurricane Katrina will be approximately 0.5% to 0.6% of the total insurance industry losses arising from the hurricane. Due to the structure of its reinsurance contracts and the application of its retrocessional program, the Company expects that the larger the industry loss the lower its share of that loss. 22 Sept 2005 - Platinum announced it had sold 5.8mn of its common shares. The net proceeds are expected to be approximately USD162mn.	Company press release
Berkshire Hathaway Inc.	US	19 Sept 2005	Berkshire Hathaway has stated it expects its share of industry losses from Hurricane Katrina to be 3-5% of total industry losses.	Company press release

Appendix 3



Rating Agency Actions

The table lists the recent rating announcements associated with Hurricane Katrina. For further details please see Benfield IAR news

Company	S&P	AM Best	Fitch
ACE	'A+' CreditWatch negative (09 Sept 05)		
Alea*	Downgraded to 'BBB+' negative outlook (09 Sept 05)	'A-' placed under review with negative implications (15 Sept 05)	
Allmerica	'BBB+' CreditWatch Negative (09 Sept 05)	'A-' placed under review with negative implications (15 Sept 05)	
Allstate	'A++' CreditWatch negative (09 Sept 05)		'AA++' Rating watch negative (13 Sept 05)
American Re		'A' placed under review with negative implications (15 Sept 05)	
Balboa Insurance Group		'A' placed under review with negative implications (15 Sept 05)	
DaVinci Re		'A' placed under review with negative implications (15 Sept 05)	
Endurance		'A' placed under review with negative implications (15 Sept 05)	
European Re	'AA' CreditWatch Negative (09 Sept 05)		
Florists Mutual Group		'A-' placed under review with negative implications (15 Sept 05)	
Horace Mann			'A++' Rating watch negative (13 Sept 05)
Imagine Insurance		'A-' placed under review with negative implications (15 Sept 05)	
IPCR		'A+' placed under review with negative implications (15 Sept 05)	
Lloyd's of London	'A' CreditWatch negative (09 Sept 05)		



Company	S&P	AM Best	Fitch
Louisiana Farm Bureau Mutual		'A-' placed under review with negative implications (15 Sept 05)	'A' Rating affirmed (19 Sept 05)
Max Re			
Mississippi Farm Bureau Mutual		'A+' placed under review with negative implications (15 Sept 05)	
Montpelier Re	'A-' Negative outlook (20 Sept 05)	'A' placed under review with negative implications (15 Sept 05)	'A' Rating watch negative (13 Sept 05)
Munich Re		'A+' placed under review with negative implications (15 Sept 05)	
Mutual Savings Fire Insurance		'B-' placed under review with negative implications (15 Sept 05)	
Odyssey Re		'A' placed under review with negative implications (15 Sept 05)	
Oil Insurance Company Olympus Re	'A++' CreditWatch negative (09 Sept 05)	Downgraded from 'A-' to 'B++' (15 Sept 05)	
PartnerRe		'A+' placed under review with negative implications (15 Sept 05)	
PXRE	'A' CreditWatch Negative (09 Sept 05)	'A' placed under review with negative implications (15 Sept 05)	'A-' Rating watch negative (13 Sept 05)
RenaissanceRe Rosemont Re	'AA-' CreditWatch Negative (25 July 05)	'A+' outlook negative (26 July 2005)	'A+' Rating watch negative (26 July 2005)
State Farm Insurance Swiss Re	'AA-' CreditWatch Negative (09 Sept 05) 'AA' CreditWatch Negative (09 Sept 05)	'A-' placed under review with negative implications (08 Sept 05)	'AA++' Rating watch negative (13 Sept 05)
Top Layer Re Transatlantic Re	'AA-' CreditWatch Negative (09 Sept 05)	'A+' placed under review with negative implications (15 Sept 05)	
United Fire	'A' CreditWatch negative (09 Sept 05)		
Westchester Surplus Lines	'A+' CreditWatch negative (09 Sept 05)		
XL	'A' CreditWatch negative (20 Sept 05)	'A+' placed under review with negative implications (15 Sept 05)	

* Rating actions for Alea linked to poor operating performance prior to Hurricane Katrina

Appendix 4

Most costly insured losses at 2004 prices

Table 3

Most costly insured losses at
2004 prices

Swiss Re Sigma 1/2005

Date	Event	Country	Insured Loss in USDmn indexed to 2004
1992	Hurricane Andrew	US, Bahamas	21,542
2001	Terrorist attack on WTC, Pentagon and other buildings	US	20,035
1994	Northridge earthquake (M 6.6)	US	17,843
2004	Hurricane Ivan; damage to oil rigs	US, Caribbean	11,000
2004	Hurricane Charley	US, Caribbean: Cuba, Jamaica et al	8,000
1991	Typhoon Mireille/No 19	Japan	7,831
1990	Winter storm Daria	France, UK et al	6,639
1999	Winter storm Lothar over Western Europe	France, Switz. et al	6,578
1989	Hurricane Hugo	Puerto Rico, US et al	6,393
2004	Hurricane Frances	US, Bahamas	5,000
2004	Seaquake (Mw 9.0), tsunamis in Indian Ocean	Indonesia, Thailand et al	5,000
1987	Storm and floods in Europe	France, UK et al	4,988
1990	Windstorm Vivian	Western/Central Europe	4,613
1999	Typhoon Bart/No 18	Japan	4,582
1998	Hurricane Georges	US, Caribbean	4,091
2004	Hurricane Jeanne; floods, landslides	US, Caribbean: Haiti et al	4,000
2004	Typhoon Songda/No 18	Japan, South Korea	3,585
2001	Tropical storm Allison; rains, flooding	US	3,361
2003	Thunderstorms, tornadoes, hail	US	3,292
1988	Explosion on platform Piper Alpha	UK	3,195
1995	Great Hanshin earthquake (M 7.2) in Kobe	Japan	3,065
1999	Winterstorm Martin	Spain, France, Switzerland	2,722



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MEDIATION AND ARBITRATION PROFESSIONALS SYSTEMS, INC.
("MAPS")

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LEGISLATIVE INTENT SERVICE (800) 666-1917



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HURRICANE POLICY, COVERAGE & FEMA ISSUES

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FOR
MEDIATION AND ARBITRATION PROFESSIONALS SYSTEMS, INC.
("MAPS")

I. PROPERTY DAMAGE CLAIMS

Insurance contracts generally differentiate between wind and wind-driven rain losses from flood. The commonly used "HO-3" policy² specifically excludes water damage, which is defined as

Flood, surface water, waves, tidal water, overflow of a body of water, or spray from any of these, whether or not driven by wind;
and

Water or water-borne material which backs up through the sewers
or drains.

Hurricane Katrina blurred the distinction between wind and water damage, as it would be difficult to determine if a house demolished by Hurricane Katrina was damaged by the 145 mile per hour winds or storm surge. However, litigation can certainly be anticipated over questions relating to what damage was "directly caused" by wind storm.³ Set forth below is a brief synopsis of a variety of Louisiana cases that have addressed weather-related claims:

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² A copy of this form policy is attached as Appendix 1.

³ See, e.g., HO-3 at Appendix 1 (page 9), which provides:

This peril does not include loss to the property contained in a building caused by rain, snow, sleet, sand or dust unless the **direct force** of wind or hail damages the building causing an opening in a roof or wall and the rain, snow, sleet, sand or dust enters through this opening.





A. *Lorio v. Aetna Insurance Company*, 232 So.2d 490 (La. 1970).

Plaintiff owned a quarter horse that ate himself to death. Four days prior to his death, a hurricane had severely damaged the barn in which he was customarily housed. He was moved to a stall much nearer to some large stocks of feed. Loose boards on the stall were not detected after the hurricane, and the horse died as a result of an eating binge. Plaintiff requested recovery under the wind storm coverage of his policy, arguing that the wind storm caused the damage, which in turn permitted the horse to get access to the food that killed him. The court held that the wind storm was at most an indirect or remote cause of the animal's death, and plaintiff's request for recovery was denied.

B. *Smith v. Westchester Fire Ins. Co. of New York*, 80 So.2d 418 (La. 1955).

In September of 1947 a hurricane or windstorm struck the City of New Orleans. Plaintiff, who owned a windstorm and hail policy, alleged her premises were damaged as a result of the storm. The property involved contained eight apartments made up of a two and one-half story wood frame building and a two story wood frame building, both joined together as one structure. The trial court awarded the plaintiff damages in the amount of \$851.00 with legal interest from judicial demand, and for all costs. On appeal, the Louisiana Supreme Court noted that "an examination of the premises made five or six months after the hurricane disclosed that there was a sinkage, broken pipes, partial roof destruction, leaking, cracking of the chimney, and a unresting apart of the two buildings." Finding no manifest error in the trial judge's analysis of the evidence, the court determined that the majority of the damage was due to soil subsidence. Accordingly, the court affirmed the damage award.

C. *Allen v. Simon*, 2004-4 (La. App. 3 Cir. 12/8/04); 888 So.2d 1140.

During Hurricane Lili, a tree belonging to defendant fell on adjoining property, landing on plaintiff's greenhouse, roof and swimming pool. The plaintiff hired an arborist to remove that portion of the tree that had fallen onto his property, and he sued the defendant and the defendant's homeowner's insurer, seeking reimbursement for removal expenses. Defendants asserted an affirmative defense of "act of God." The trial judge granted defendants' motion for summary judgment, asserting that the act of God defense absolved them of any liability to plaintiff. The Third Circuit reversed.

D. *Urrate v. Argonaut Great Central Insurance Company*, 04-256 (La. App. 5 Cir. 8/31/04); 881 So.2d 787.

This lawsuit concerned damage to Bruning's Seafood Restaurant in connection with Hurricane Georges. At the time of the hurricane, Bruning's was insured by a flood policy issued by Omaha Property and Casualty and a commercial policy with property coverage issued by Argonaut. The two policies complemented each other, providing full coverage to Bruning's, but not overlapping coverage. Omaha covered damages from flooding and tidal waves. Argonaut excluded damage from flooding and tidal waves. Argonaut's adjuster concluded that the major part of the damage to Brunings was caused by flooding and wave action, which was not covered by the Argonaut policy. Bruning's sued

Argonaut for amounts it claimed were covered under its policy. On appeal, the Louisiana Fifth Circuit Court of Appeal held that:

1. Evidence supported conclusion that glass breakage at the restaurant was due to wind force that was covered by commercial property policy, not flood insurance policy;
2. Evidence supported finding that business income loss from hurricane was 25% attributable to wind, rather than flooding, in year of storm, and 15% attributed to wind in the year after the storm;
3. Evidence supported finding of the insurer's bad faith failure to pay, entitling insured to penalties, but said penalties were limited to \$5,000.00 for each breach, as opposed to double the amount due under the policy.

E. *Leonards v. Traveler's Ins. Co.*, 506 So.2d 509 (La. App. 3 Cir. 1986), writ denied, 507 So.2d 228 (La. 1987).

Mr. Leonards owned a building which operated as a restaurant and lounge in Lake Charles, Louisiana. In May, 1978 a weather cell passed through the Lake Charles area, producing winds in excess of 60 miles per hour, with gusts up to 100 miles per hour. The high winds were accompanied by heavy rainfall for a short period of time, in amounts of up to two inches per hour. The roof of the lounge collapsed during the thunderstorm, resulting in extensive damage to the building. Plaintiff filed suit against its insurer, seeking compensation under a wind storm policy. The trial court denied recovery, holding that the damages were caused by excessive water on the roof, and not by wind. After reviewing the record, the Third Circuit held that "the wind, though not the sole contributing cause, was the proximate or efficient cause of the damages suffered by the building. The loss is covered by the insurance policy in this case."

F. *Dumond v. Mobile Ins. Co.*, 309 So.2d 776 (La. App. 3 Cir. 3/19/75).

On September 16, 1971, Hurricane Edith pushed the plaintiff's mobile home off its blocks, causing damage to the home. Plaintiff filed suit claiming that his mobile home was lost as a result of the hurricane, and he alleged that the defendant arbitrarily refused to pay for the loss. Defendant answered plaintiff's petition claiming that the plaintiff was entitled to no more than the cost of repair. The district court granted judgment in favor of the plaintiff and the defendant appealed. The Third Circuit explained that the "test for determining whether damaged property is a total loss is whether the cost of repairs exceeds the value of the property." Finding that the record supported the trial judge's award, the appellate court affirmed the decision. The court also affirmed the trial court's award of penalties and attorney's fees because the defendant failed to tender to the plaintiff the amount of the defendant's damage estimate.

G. *Perrette v. Emmco Ins. Co.*, 252 So.2d 547 (La. App. 4 Cir. 1971).

Plaintiffs sued their insurer to recover the value of their car, which was damaged by flood water in Hurricane Betsy. The district court entered judgment for the plaintiffs and the



insurance company appealed. The issue on appeal was whether the defendant was liable for total loss of the car. The salvaged value of the car was \$780, while the average retail value was \$1,475. The Fourth Circuit found the complete repair would have amounted to replacement cost, or \$1,475, and the district court's judgment was affirmed.

H. *Prejean v. Trinity Universal Insurance Company*, 210 So.2d 395 (La. App. 3 Cir. 1968), writ ref'd, 211 So.2d 344 (La. 1968).

Plaintiff sued his insurance company on homeowner's policy, alleging damage due to Hurricane Betsy. Testimony from plaintiff and his witnesses suggested no noticeable damage or defect in either the inside or the outside of the house prior to the hurricane, and damage to the walls, ceilings and moldings in house, as well as cracks in the brick work, after the hurricane. The court noted that plaintiff's evidence sufficed to show coverage under the insurance contract, holding that it was incumbent upon defendant to prove by a preponderance of the evidence that the damage asserted by plaintiff resulted from settlement or earth movement. Although it reduced the amount of the award to plaintiff based on the damages evidence, the Third Circuit affirmed a judgment of penalties against the insurer because the adjuster did not begin his investigation until more than four months after the damage was sustained.

I. *United States Rubber Company v. Cox*, 207 So.2d 814 (La. App. 4 Cir. 1968).

Plaintiff sued defendant for the balance due on merchandise sold and delivered shortly prior to Hurricane Betsy. The defendant contended that the merchandise was lost or destroyed as a result of the hurricane and that, under the provisions of the consignment-franchise agreement, defendant was not liable therefor. In response, plaintiff contended that the loss was due to flood, not wind storm. The court held:

It is highly improbable that a wind reaching a velocity of 130 miles per hour, which blew off part of the building's roof, blew out all of its glass, frames and doors, and blew two heavy machines across a street would fail to blow out of the building the tires on display in a showcase. We are satisfied from the record that, after the glass of the showcase was blown out, the tires were blown out of the building by the hurricane winds. Of importance is the fact that the flooding water did not begin to rise until after the wind had subsided from its maximum velocity. Insofar as this contest between the present litigants is concerned, we are in agreement with the conclusion reached by the trial court, *i.e.*, that the loss of the tires was occasioned directly by windstorm.

Id. at 816 (citation omitted).

J. *Caldwell v. Let the Good Times Roll Festival*, 30,800 (La. App. 2 Cir. 8/25/98); 717 So.2d 1263.

The plaintiffs contended that the defendants, co-sponsors of an outdoor festival, were negligent in failing to warn of an impending thunderstorm. Employing Louisiana's duty-



risk analysis, the court found that “a cause in fact of injury to those who are under a tent in the midst of a thunderstorm in progress cannot be the tent custodian’s failure to warn that the thunderstorm may escalate or worsen.” The court concluded that any duty owed by the defendants responsible for organizing and operating the festival is not a specific, but only a general duty to use reasonable care to avoid creating an unreasonable risk of harm to those who attend the public festival. “Policy reasons excuse the failure of any appellant to warn against such an extraordinary and unforeseeable risk.”

K. *Finkelstein v. American Ins. Co. of Newark, N.J.*, 66 So.2d 383 (La. App. 1 Cir. 1953).

In September of 1947 a tropical storm or hurricane struck the Town of Amite and damaged plaintiff’s building. Plaintiff filed suit and the court awarded the plaintiff \$800.00 plus 12% as penalties and 20% for attorney’s fees. After reviewing the record, the First Circuit affirmed the \$800.00 damage award, but reversed the trial court’s award of the 12% penalty and 20% attorney’s fee. The court found that the statute relied on by the trial court pertained to “loss or damage ... suffered ... from fire ... and does not provide penalties in the case of damage suffered from other causes.”

II. LOUISIANA’S VALUED POLICY LAW

In 1992, the Louisiana Legislature enacted La. Rev. Stat. Ann. 22:695, which states:

§ 695. Valued policy clause; exceptions

A. Under any fire insurance policy insuring inanimate, immovable property in this state, if the insurer places a valuation upon the covered property and uses such valuation for purposes of determining the premium charge to be made under the policy, in the case of total loss the insurer shall compute and indemnify or compensate any covered loss of, or damage to, such property which occurs during the term of the policy at such valuation without deduction or offset, unless a different method is to be used in the computation of loss, in which latter case, the policy, and any application therefore, shall set forth in type of equal size, the actual method of such loss computation by the insurer. Coverage may be voided under said contract in the event of criminal fault on the part of the insured or the assigns of the insured.

B. Any clause, condition, or provision of a policy of fire insurance contrary to the provisions of this Section shall be null and void, and have no legal effect. Nothing contained herein shall be construed to prevent any insurer from canceling or reducing, as provided by law, the insurance on any property prior to damage or destruction.

C. The liability of the insurer of a policy of fire insurance, in the event of total or partial loss, shall not exceed the insurable interest of the insured in the property unless otherwise provided for by law. Nothing in this Section shall be construed as to preclude the insurer from questioning or contesting the insurable interest of the insured.



D. This Section shall only apply to policies issued or renewed after January 1, 1992, and shall not apply to a loss covered by a blanket-form policy of insurance nor to a loss covered by a builders risk policy of insurance.

Although the statute, by its terms, applies to fire insurance policies, there is jurisprudence in other contexts that homeowners' policies can be considered "fire insurance" because they afford fire insurance in addition to other coverages. *Miller v. Underwriters at Lloyds*, 398 So.2d 654 (La. App. 1 Cir. 1981) (reading 60-day vacancy clause of statutory Standard Fire Insurance Policy into homeowners policy).

Few cases have been decided construing the language contained in the foregoing legislation. No doubt, Louisiana courts will consult the jurisprudence of other jurisdictions to interpret the Valued Policy Law in connection with Katrina-related claims. To this end, *Mierzwa v. Florida Wind Storm Underwriting Association*, 877 So. 2d 774 (La. App. 4th Dist. 2004) is instructive. In 1999, Mr. Mierzwa, a homeowner in Ft. Lauderdale, Florida, incurred damage to his home from both wind and flood. The home was found to be a total loss. The wind insurer alleged that it should be required to pay only that portion of the damage caused by wind. The court disagreed, holding that under Florida's Valued Policy Law, the insurer owed the insured the face amount of the policy if it had any liability to the property owner of a building deemed to be a total loss.⁴

Regardless of how Louisiana courts interpret an insurance company's liability under the Valued Policy Law, it is clear that application of Section 22-659(A) will require a plaintiff to show that:

- (1) The value placed on the property was set by the insurer;
- (2) Such value was used as a basis for calculating the premium;
- (3) The property was a total loss; and
- (4) No different method of computation of such loss set forth in the policy.

III. EXTRA LIVING EXPENSE COVERAGE

The Extra Living Expense coverage in the HO-3 form (Appendix 1) is found in Coverage D – Loss of Use. The Extra Living Expense coverage (also called Additional Living Expense) provides:

1. If a loss covered under this Section makes that part of the 'residence premises' where you reside not fit to live in, we cover, at your choice, either of the following. However, if the 'residence premises' is not your principal place of residence, we will not provide the option under paragraph b. below.

⁴ In 2005, the Florida Legislature passed legislation clarifying that the Valued Policy Law is intended to apply only to "covered perils." Presumably, on a going-forward basis, when a total loss is due to the combination of covered and excluded perils in Florida, the insurer's liability will be limited to the amount of loss caused by the covered peril.



- a. **Additional Living Expense**, meaning any necessary increase in living expenses incurred by you so that your household can maintain its normal standard of living; or
- b. **Fair Rental Value**, meaning the fair rental value of that part of the 'residence premises' where you reside less any expenses that do not continue while the premises of not fit to live in.

Payment under a. or b. will be for the shortest time required to repair or replace the damage or, if you permanently relocate, the shortest time required for your household to settle elsewhere.

There is not a great deal of jurisprudence on this coverage. However, it does seem clear that payment of additional living expenses is not required unless the insured has actually incurred additional expenses and can document them.⁵ In connection with Katrina, some large domestic insurers have been making advances against various coverages, in order to provide evacuees with cash for living expenses. There is nothing in the HO-3 policy wording that appears to require such an advance.

IV. NATIONAL FLOOD INSURANCE PROGRAM

In 1968, Congress created the National Flood Insurance Program ("NFIP") to make it easier for individuals who live in flood-prone areas to obtain flood insurance. The federal government subsidizes the program, and the Federal Emergency Management Agency ("FEMA") administers it. The flood insurance policies issued under the National Flood Insurance Act ("NFIA") are called standard flood insurance policies, or SFIPs. A copy of a standard flood insurance policy is attached hereto as Appendix 2.

Over the years, FEMA has promulgated regulations that enable it to use private insurers as intermediaries in providing flood insurance. 42 USC § 4071; 44 CFR § 61.13(f). These insurance companies are called Wright-Your-Own ("WYO") insurance companies. WYOs issue SFIPs in their own names, but they may not alter, vary, or waive the terms of the SFIPs. *Id.*; 44 CFR § 62.23(c). As explained by Judge Sarah Vance in *Corliss v. South Carolina Insurance Co.*, Civ. A. No. 03-2944, 2004 WL 2988497 (E.D. La. Dec. 14, 2004), WYOs keep the premiums that they collect on SFIPs in segregated accounts, from which they pay claims and refunds on SFIPs. If the funds in the account fall below a sufficient amount, the WYO pays claims by drawing on FEMA letters of credit. 44 CFR § 62, App. A. WYO insurers keep a portion of the premiums collected as reimbursement for operating expenses and receive commissions on payments of claims.

Set forth below is a list of important legal precepts of which a litigator should be mindful in bringing claims on flood insurance policies:

⁵ See *Eastin v. Tabor*, 491 So.2d 70 (La. App. 1st Cir. 1986) (burden on insured to prove additional living expenses actually incurred); *Carolyn v. Aetna Cas. & Sur. Co.*, 413 So.2d 1355 (La. App. 3d Cir. 1982).



A. Under FEMA regulations, a claimant must file a sworn proof of loss within 60 days after the loss, or within any extension authorized by FEMA listing, *inter alia* (1) the actual cash value of each damaged item of the insured's property and the amount of damages sustained; and (2) the amount claimed under the policy to cover loss. *Forman v. Federal Emergency Management Agency*, 138 F.3d 543, 545 (5th Cir. 1998). Failure to comply with this proof of loss requirement is essential, as "there can be no estoppel of the Proof of Loss requirement," because claims awarded under FEMA-issued flood insurance policies are a direct charge on the public treasury. *Id.* at 545-546. Proof of loss requirements are contained on pages 12-13 of the SFIP (App. 2).

B. Federal law controls the timeliness of actions brought against insurers under SFIP's. Under an SFIP, a claimant must file suit within 12 months from the date of denial of a claim or part of a claim. *Spence*, 996 F.2d at 794-95. However, the timeliness of state law actions (like fraud and misrepresentation claims) are governed by state law limitation periods. *Id.* at 796.

C. The NFIA grants federal courts original, exclusive jurisdiction over lawsuits against insurance companies for disallowing claims made by insureds under SFIPs. 42 USC § 4072. Thus, when an insured sues over the handling of his claim under the policy, that suit must be brought in federal court. *Id.*; *Spence v. Omaha Indemnity Insurance Co.*, 966 F.2d 793, 796 (5th Cir. 1993).

D. Because 42 USC § 4072 addresses itself solely to actions arising from partial or complete disallowance of flood insurance policy claims, the NFIA does not preempt state law tort claims that arise from policy procurement. *Spence*, 966 F.2d at 796. Such claims are not governed by federal law, but by state law, and provide no basis for federal question jurisdiction. *Id.*; *see also, Corliss*, at *3; *Elizabeth v. U.S. AA General Indemnity Co.*, Civ. A. No. 02-2021, 2002 WL 31886719 at *2 (E.D. La. Dec. 19, 2002); *Powers v. Autin-Gettys-Cohen Insurance Agency, Inc.*, Civ. A. No. 00-1821, 2000 WL 1593401 at *3-4 (E.D. La. Oct. 24, 2000).

E. According to 44 CFR pt. 61, App. A(1), Art. XI (2003), "all disputes arising from the *handling of any claim* under the policy are governed exclusively by the flood insurance regulations issued by FEMA, the National Flood Insurance Act of 1968 . . . and Federal law." (Emphasis added). Negligence actions against insurance agents are not considered to be disputes arising from the handling of a claim. *Corliss*, at *3.

F. A prevailing claimant in a suit on a flood insurance policy issued pursuant to the NFIA is not entitled to recover the statutory penalty and attorney's fees allowed by state insurance law for arbitrary denial of coverage. *West v. Harris*, 573 F.2d 873, 881 (5th Cir. 1978). A successful plaintiff is likewise not entitled to an award of prejudgment interest from the date of judicial demand based on Louisiana Civil Code Ann. art. 2924. However, prejudgment interest is allowed under federal law. *Id.* at 882. *See also, Hanover Building Materials, Inc., v. Guiffrida*, 748 F.2d 1011, 1015 (5th Cir. 1984) (entitlement to attorney's fees is an issue governed by federal law; the court found "[n]o basis in federal law . . . for the assessment of attorney's fees against the government."). *Compare, Estate of Lee v. National Flood Insurance Program*, 812 F.2d 253, 256-57 (5th Cir. 1987) (because the government's



position in the litigation “was not substantially justified,” plaintiff was entitled to attorney’s fees under the Equal Access to Justice Act in the statutorily-mandated amount of \$75.00 per hour).

G. The recovery of consequential damages (such as lost profits from apartment rentals) is not allowed under the SFIP. *Estate of Lee*, 812 F.2d at 257-58.

H. No provision of the SFIP may be altered, varied, or waived without the *express written consent* of the Federal Insurance Administrator. *Gowland v. Aetna*, 143 F.3d 951, 954 (5th Cir. 1998). This includes the proof of loss requirement. *Id.*

I. State and federal courts *do not* have concurrent jurisdiction over claims for recovery under SFIPs. *Webb v. Aetna Insurance Co.*, Civ. A. No. 97-0550, 1997 WL 433500 (E.D. La. July 31, 1997).

J. *Gallup v. Omaha Property & Casualty Insurance Co.*, Civ. A. No. 03-3476, 2004 WL 2392419 (E.D. La. Oct. 25, 2004) provides a thorough review of the NFIP in its consideration of a 2000 amendment to the SFIP which reads:

This policy and all disputes arising from the handling of any claim under the policy are governed exclusively by the flood insurance regulations issued by FEMA, the National Flood Insurance Act of 1968, as amended (42 USC 4001, *et seq.*), and federal common law.

Addressing the question of whether FEMA could properly preempt extra-contractual state law claims, Judge Duval held:

FEMA cannot preempt extra-contractual state law claims unless it becomes clear that it is Congress’ intent to do so. Thus, Article IX in the SFIP does not apply to this suit. Thus, in accordance with precedent and persuasive Fifth Circuit law, the plaintiff’s extra-contractual state law claim[s] under La. Civ. Code art. 1997, survives under Fed. Rule Civ. Proc. 12(b)(6)(c). Plaintiff’s claim under La. Rev. Stat. 22:1220 fails because the claim relates to coverage of the policy, which is governed by federal common law under 42 USC § 4072. *Stock v. State Farm Ins. Co.*, 1996 WL 571774 (E.D. La.). Finally, plaintiff’s federal common law claims for breach of good faith and fair dealing are dismissed, as federal common law claims are not applicable since the Court has held that plaintiffs’ claim under La. Civ. Code art. 1997 is not preempted.

V. BUSINESS INTERRUPTION INSURANCE ISSUES

Litigation over business interruption insurance will likely raise many of the same issues encountered in connection property damage claims. However, certain issues peculiar to law practices exist. A brief list of these issues include the following:



A. Many policies cover “business personal property.” If such property includes the property of others held in connection with the business, does it extend to attorney work product (the property of a lawyer’s client) and the re-creation of same if the client’s file is lost in a flood?

B. Some business interruption policies provide coverage for “valued papers and records,” defined as unique documents that cannot be duplicated without starting over from scratch. Litigation will no doubt result over coverage for title surveys, abstracts, deeds, blueprints, films, and mortgages for which no duplicate sets exist.

C. Certain business interruption policies provide coverage for loss to covered equipment caused by an accident (which is defined to include mechanical failures). In the context of business income coverage, this coverage is included to cover loss of income resulting from the accident causing direct physical loss to equipment that is owned by a utility, landlord or other supplier with whom the insured has a contract to provide electrical power, communications, waste disposal, etc. An argument can be made that mechanical failures interrupting power or communications should afford coverage for resulting lost income (assuming the proximate cause hurdle can be overcome).

D. How will courts construe the “governmental action” exclusion, which precludes recovery for loss of property by order of government authority and condemnation? If a lawyer was precluded from getting to his office by government action, would this exclusion apply to preclude recovery for business interruption losses?

E. Would a lawyer’s expenses associated with opening a satellite office because he was limited from using his primary office be covered under the “extra expenses” coverage associated with accelerating restoration of the property and business operations?

VI. FEMA AND SBA ASSISTANCE

A. FEMA Provides Several Forms Of Assistance To Individuals And Households.

1. Purpose: assistance to individuals and households who, as a direct result of a major disaster or emergency, have uninsured or under-insured, necessary expenses and serious needs and are unable to meet such expenses or needs through other means. 44 C.F.R. § 206.110(a).
2. Businesses are not eligible for FEMA assistance. 44 C.F.R. § 206.113(b)(9).
3. There are two basic types of assistance available, each described below:
 - a. Housing Assistance, and
 - b. “Other Needs” Assistance



4. General Rules

- a. Maximum total assistance to an individual or household is \$26,200.
- b. Assistance is available for up to 18 months. 44 C.F.R. § 206.110(e).

-- recipients are still expected to obtain permanent housing at the earliest possible time. 44 C.F.R. § 206.114(a). It is unclear how FEMA will handle the temporary closure of Jefferson/Orleans/etc. One can assume it will pay benefits until the parishes reopen and occupancy is possible.

- c. Duplication of benefits is not permissible.

-- 42 U.S.C. § 5155; 44 C.F.R. § 206.110(a).

-- you cannot receive benefits from FEMA that you are expected to receive from an insurance company, other governmental agency, or nonprofit agency

-- in some cases, FEMA will pay you monies you expect to recover from insurance or another source if you agree to reimburse or assign it those amounts

-- note: a. Flood Ins. does not cover temporary living expenses

b. Homeowners' Ins. sometimes covers temporary living expenses

B. Eligibility⁶

- 1. You are eligible if: 44 C.F.R. § 206.113(a).
 - a. You incurred a disaster-related necessary expense or serious need;
 - b. You have insurance for the loss, but your claim is denied;
 - c. You are under-insured for a loss;
 - d. You have insurance, but receipt of the benefits is significantly delayed;
 - e. Your home is inaccessible for safety reasons or because the local authorities have restricted movement to it or occupancy; or

⁶ There is literally a list of scenarios for eligibility and non-eligibility. This outline only contains the highlights.



- f. If a renter's primary residence is no longer available because of the disaster.
- 2. You are not eligible if: 44 C.F.R. § 206.113(b).
 - a. You have adequate rent-free housing in which to live;
 - b. You own a secondary or vacation home within reasonable commuting distance to the disaster area; or
 - c. You evacuated, but are “able to return to the residence immediately after the incident.”

C. FEMA Housing Assistance – there are three basic types: 42 U.S.C. § 5174

- 1. Temporary Housing Assistance 44 C.F.R. § 206.117.
 - a. Financial Assistance 44 C.F.R. § 206.117(b)(1)(i).
 - i. Reimbursement of short-term lodging expenses incurred in the immediate aftermath of the disaster.
 - ii. Payment of money to rent alternate housing.
 - utilities are paid by the applicant.
 - fair market value is the amount of the assistance.
 - applicant is responsible for deposit, but FEMA will loan it.
 - b. Direct Assistance 44 C.F.R. § 206.117(b)(1)(ii).
 - i. FEMA may purchase housing and permit applicants to reside in it.
 - ii. At the end of 18 months, units will be sold to occupants or public.
- 2. Repair Assistance 44 C.F.R. § 206.117(b)(2)).
 - a. Uninsured disaster-related damages are covered.
 - b. Goal is to return property to safe, sanitary, and functioning condition.
 - c. Money can also be used for hazard-mitigation issues.
 - d. Max of \$5,100 can be awarded for repairs.



3. Replacement Assistance 44 C.F.R. § 206.117(b)(3).
 - a. Eligible if your home has suffered more than \$10,200 in damage.
 - b. The \$10,200 must go towards replacing your home.

D. FEMA “Other Needs” Assistance. 42 U.S.C. § 5174(e)

1. Disaster-related necessary expenses or serious needs. 44 C.F.R. § 206.119(a).
2. To qualify for FEMA assistance (a grant): 44 C.F.R. § 206.119(a).
 - a. You must first apply for a Small Business Administration Loan; and
 - b. Be declined or show SBA will not cover your needs.
 - c. You are expected to obtain an SBA loan for “other needs” if possible.
3. There are two types of “other needs” assistance: 44 C.F.R. § 206.119(b).
 - a. Medical, Dental, and Funeral Expenses
 - b. Personal Property, Transportation, and other expenses such as:
 - i. clothing, furniture, school supplies, etc.
 - ii. repairing vehicles, public transportation, moving and storage expenses of property, etc.
 - iii. Flood Insurance on real estate.
4. FEMA also provides some forms of the following assistance:
 - a. Unemployment Assistance 44 C.F.R. § 206.141.
 - b. Legal Services for low income persons 44 C.F.R. § 206.164.
 - c. Crisis Counseling 44 C.F.R. § 206.171.

E. Small Business Administration Loans *for Individuals*. 15 U.S.C. § 636(b).

1. Provides loans to individuals to assist with two types of losses:
 - a. Personal Property:
 - i. Up to a \$40,000 loan to repair or replace personal property



ii. Such as furniture, clothing, automobiles, etc.

iii. Rate is 5.375%.

b. Real Property:

i. Up to a \$200,000 loan to repair or restore one's primary home.

-- no improvements can be made unless for mitigation

ii. Loan amount can increase up to 20% to protect against future loss

iii. Renters can only get the personal property loan.

iv. Not available for second homes or vacation homes.

v. Other limits apply – such as the type of work to be done on real estate, antiques, collections, etc.

vi. Rate is 5.375%.

2. The actual amount of the loan is determined by the actual loss you suffer.

3. Term of the loan is determined by the ability to repay, but no more than 30 years.

4. You must attempt to obtain credit elsewhere to obtain an SBA loan.

-- you do not have to be *denied* elsewhere.

5. In some cases, SBA will refinance an existing mortgage with a new SBA loan.

6. If the loan is for more than \$10,000, it will have to be secured with collateral.

F. FEMA – The Application Process:

1. One application per household.

2. Deadline is October 28, 2005.

3. Do not wait for insurance claims adjudication.

4. Call 1-800-621-3362 or go to: <https://disasteraid.fema.gov/>

-- have your Social Security number, description of your losses, financial information, and directions to the property



5. You will be contacted to set up an inspection of the property.
6. You should receive a housing assistance check within 7-10 days.
7. SAVE ALL RECEIPTS OF ANY KIND.
-- You will likely have to substantiate all amounts received.
8. FEMA will send you an SBA application for a loan for “other needs.”

G. The Application Process – SBA:

1. Deadline is October 28, 2005.
2. Do not wait for insurance claims adjudication.
 - a. Loan amounts sought can be amended later.
 - b. Do not wait until insurance is finalized or you will miss the deadline.
3. You will receive a copy of this application from FEMA or we can provide it now.

VII. UPDATE FROM INSURANCE COMMISSIONER’S OFFICE

Katrina-Related Emergency Orders Promulgated by Louisiana Department of Insurance

SEE APPENDIX 8



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Wind Versus Water: Why ‘Proximate Cause’ Should Help, Not Hurt, Policyholders Who Seek Coverage for Hurricane Claims

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Wind Versus Water: Why ‘Proximate Cause’ Should Help, Not Hurt, Policyholders Who Seek Coverage for Hurricane Claims

Abstract

“Wind Versus Water: Why ‘Proximate Cause’ Should Help, Not Hurt, Policyholders Who Seek Coverage for Hurricane Claims” examines the clash between the “efficient proximate cause” doctrine of insurance law, which holds that coverage exists if the dominant cause of a loss is a covered peril, with the now-ubiquitous “anti-concurrent causation clauses” added to homeowners’ and business insurance policies, which exclude coverage for damages caused by a named event (such as flood) “regardless of any other cause or event that contributes concurrently or in any sequence to the loss.” The article reviews various state laws and court rulings that have placed some restraint on insurance companies’ drive to evade coverage for disasters by multiplying exclusions and construing those exclusions as broadly as possible.



**WIND VERSUS WATER:
WHY “PROXIMATE CAUSE” SHOULD HELP, NOT HURT,
POLICYHOLDERS WHO SEEK COVERAGE FOR HURRICANE CLAIMS**

By: Rhonda D. Orin¹

When Hurricanes Katrina and Rita swept along the Gulf Coast, each one looked on television news like a cohesive whole. The swirling shape, with an eye in the center, was a single event – what most of us recognized as simply a hurricane.

But not so for the insurance industry. Insurance companies saw each hurricane as a series of wholly separate and unrelated events. One event was wind. Another was rain. Still others were high water, waves, storm surges, and so on.

The same is true for the consequences. To the “untrained” eye, the flooding of New Orleans, the power failures that rendered businesses inoperative, the evacuation orders that closed down entire communities, and the looting and thefts that followed the physical devastation all arose from single events: the hurricanes.

Here again, the insurance industry disagreed. It viewed each of the above as a separate event, rather than a collective consequence of the hurricanes.

There is a reason for the insurance industry to draw such distinctions. By parsing the hurricanes into the smallest possible parts, the insurance industry increases

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its chances of finding grounds for denying coverage. Sometimes, this approach enables insurance companies to deny coverage for the entirety of a claim. Other times, this approach enables them to deny coverage for various parts of a claim – after first placing the burden on policyholders to prove which parts are covered.

This entire system is fundamentally unfair to policyholders. When policyholders buy insurance policies that cover hurricanes, they think that they are buying coverage for, well, hurricanes. They think that if a hurricane roars through their area and leaves physical and economic devastation in its wake, the damages that result from that hurricane will be covered.

Another reason why this system is unfair is that the insurance policies are drafted solely by the insurance companies. The insurance companies get to define the key terms, such as “flood.” The insurance companies get to draft the exclusions, even including draconian language that purports to exclude coverage whenever an excluded peril is among many causes of alleged harm. Finally, the insurance companies get the first crack at interpreting the provisions that they drafted, leaving the already-beleaguered policyholders to choose among costly legal alternatives if they disagree.

Certainly, there are checks and balances in this system. One of them is the role played by state insurance departments, which typically are empowered to review and approve the policy forms that the insurance companies propose to sell in their states. Another is the role played by state attorney generals and the courts in reviewing the insurance company denials.

In this regard, the responses of state insurance departments, state attorney generals and the courts to Hurricanes Katrina and Rita have been informative. Many of



these entities have made clear, through public statements and actions, that the parse-and-deny approach of the insurance industry is not going to work here.

The Texas Department of Insurance ("TDI") and the Texas attorney general, for example, have made clear that they are not going to allow insurance companies to deny insurance coverage to Texas residents who have been deprived of access to their property due to power failures. They have sought and obtained a court order against Allstate Insurance Company, providing this relief.²

The Mississippi Attorney General's office has made clear that it believes that insurance coverage provisions that attempt to exclude damage caused by water are unenforceable. On September 15, Attorney General Jim Hood filed a lawsuit in Hinds County, Mississippi, First Judicial District, alleging that insurance companies are interpreting their policies in an overly restrictive manner; that they are taking advantage of policyholders who do not understand their rights; and also that they are selling insurance policies that are so difficult to understand as to be unconscionable and therefore void.³

A related situation has arisen in Louisiana, where some 160,000 property and business owners have filed a class action lawsuit against the Commissioner of Insurance, Robert Wooley, and a number of insurance companies.⁴ There, the plaintiffs are asking the court for an order requiring the insurance commissioner to nullify the exclusions for damage caused by rising water. They take the position that the flooding

² http://www.consumeraffairs.com/news04/2005/tx_rita_allstate.html.

³ <http://www.ago.state.ms.us/insurance.pdf>.

⁴ While this class action is the largest one filed thus far, other class action lawsuits have been filed in Louisiana and Mississippi and more such filings are anticipated.



in New Orleans was caused by negligence in the construction and maintenance of the levees, rather than an excluded “Act of God.” Accordingly, they contend that the high water exclusions were not intended to apply to the flooding.⁵

Against this backdrop of current events, the following is a brief review of the standard policy language on wind, water and hurricanes and the legal issues about causation under these policies. It is followed by a review of important court decisions on causation-related issues in the states most affected by Hurricanes Katrina and Rita, namely Texas, Louisiana and Mississippi.⁶

I. STANDARD-FORM POLICY LANGUAGE

Insurance for losses caused by hurricanes typically is provided under property policies, which are available to businesses as part of comprehensive or package policies, and to residents in such forms as homeowners’ policies and renters’ policies.

Commercial property insurance policies generally fall into two types. The first type covers losses caused by “all risks of direct physical loss or damage,” except risks that are specifically excluded in the policy. In these broad policies, known as “all risk” policies, once an insured proves that it has suffered a loss, the insurance company has the burden of proving that the loss is not covered.⁷

⁵ http://www.consumeraffairs.com/news04/2005/katrina_scruggs.html.

⁶ The attached list of cases obviously is not exhaustive. There are many important decisions regarding hurricane losses in all three of these jurisdictions. Because this area of law is fact-intensive, any policyholder facing a coverage question should find search for the legal precedent that is factually apposite to its own situation.

⁷ 13A George J. Couch, Couch on Insurance 2d § 48:142 (2d ed. revised 1982).



The other type of commercial property policy takes the opposite approach. It covers property damage or loss caused by listed perils, such as: fire, wind, hail or vandalism. Known as a “named perils” policy, it typically contains a wide variety of exclusions, including exclusions for many different types of weather conditions. The policyholder typically is found to have the burden of overcoming these exclusions, in accordance with basic principles of insurance law.⁸

Both types of property insurance policies contain provisions insuring personal property. This coverage usually provides coverage for specified types of personal property contained within the covered premises. Often the coverage extends to property found within a certain distance from the covered premises.

Useful examples of this policy language can be found in the standard commercial policy of the Texas Windstorm Insurance Association (“T.W.I.A.”).⁹ With regard to buildings, labeled “Coverage A,” the policy expressly states that it covers:

1. Building or structure, meaning everything which is legally part of the building or structure described in the Declarations. However, we do not cover machinery which is not used solely in the service of the building.
2. Personal property owned by you that is used for the service of and located on the described location

Next, with regard to personal property, labeled “Coverage B,” the policy expressly states that it covers:

⁸ Id.

⁹ See T.W.I.A. Commercial Policy/Windstorm and Hail, available from the Texas Windstorm Insurance Association, 5700 South MoPac Expressway, Building C, Suite 300, Austin, Texas 78749. Comparable language can be in the T.W.I.A. Dwelling Policy/Windstorm and Hail, available from the same association.



Business personal property located in or on the building described in the Declarations, or in the open on the described location, or in a vehicle or railroad car located within 100 feet of the described building, . . .”

These coverage agreements are followed by sections that delineate what types of personal property are and are not covered. Then comes a section called “Covered Causes of Loss,” in which the policy specifies:

We insure for direct physical loss to the covered property caused by windstorm or hail unless the loss is excluded in the Exclusions.

The next section – and the most important one, for purposes of this article – includes, but is not limited to, the following exclusions:

The following exclusions apply to loss to covered property:

1. Flood.

We will not pay for loss or damage caused by or resulting from flood, surface water, waves, tidal water of tidal waves, overflow of streams or other bodies of water or spray from any of these whether or not driven by wind.¹⁰

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5. Power Failure.

We will not pay for loss or damage resulting from the failure of power or other utility service supplied to the described premises, if the failure occurs away from the described premises. However, we will pay for loss resulting from physical damage to power, heating or cooling equipment located on the described premises if caused by windstorm or hail.

¹⁰ There are many other standard-form flood exclusions. For example, the standard form published by the Insurance Services office has one subsection similar to the exclusion above, then includes other subsections pertaining to sewer back-up and below-ground seepage.



6. Rain.

We will not pay for loss or damage caused by or resulting from rain, whether driven by wind or not unless wind or hail first makes an opening in the walls or roof of the described building. Then we will only pay for loss to the interior of the building, or the insured property within, caused immediately by rain entering through such openings.

The structure of this policy places causation directly into question. The problem is that, while some events are covered and others are not, damages often arise after a series of events take place. Hurricane Katrina is a perfect example. It involved a wide variety of perils, including wind, wind-driven water, flooding, levee breaches, sewage overflows, power failures, court-ordered evacuations, fire, looting, pollution and mold.

The courts have developed various tests for determining whether there is coverage when a covered peril and an excluded peril combine in some proportion to cause a loss. Most prominent among them is the doctrine of “efficient proximate cause.” This doctrine provides for coverage if the covered cause is the efficient and dominant cause: the one that sets the loss into motion.¹¹

The highest courts of two of the states most affected by Hurricanes Katrina and Rita – Louisiana and Mississippi – have adopted the doctrine of efficient proximate cause.¹² The Texas Supreme Court has no clear authority on this question.¹³

¹¹ See Sidney I. Simon, Proximate Cause in Insurance, 10 Am. Bus. L.J. 33, 37 (1972).

¹² See Louisiana and Mississippi cases cited in Section III, infra.

¹³ The Texas Supreme Court came close to addressing this question when it decided Hardware Dealers Mut. Ins. Co. v. Berglund, 393 S.W.2d 309 (Tex. 1965), but made clear that its decision did not resolve the issue. *Id.* at 314 (“Cases in which an insurer has been held liable for a loss proximately caused by a peril insured against, although a hazard not covered by the policy was also involved, are not apposite here”).



The “efficient proximate cause” generally is defined as the “dominant” cause. If the dominant cause of the loss is a covered peril, there is coverage; if the dominant cause of the loss is an excluded peril, there is no coverage or, in some instances, reduced coverage. Although the “efficient proximate cause” doctrine most commonly has been applied where a loss was caused in part by a covered peril and in part by an excluded or non-covered peril, it is equally applicable where, as here, different limits of liability and deductibles may apply depending on what is determined to be the cause of the loss.

The “efficient proximate cause” doctrine sounds simple on paper. In practice, though, it is complicated to apply. One helpful explanation of “efficient proximate cause” offered in a respected treatise on insurance, and followed by many courts, is that it is the “risk [that] set[s] the other causes in motion which, in an unbroken sequence, produced the result for which recovery is sought.”¹⁴

This definition of “efficient proximate cause” may be helpful in arguing that the damages at issue with respect to Hurricanes Katrina and Rita were caused by wind, and not by flood, since it was the hurricanes that set in motion all the other events that led to the property damage at issue. Policyholders will argue (and insurance companies no doubt will disagree) that all subsequent events, including the breaches of the levees in New Orleans, were set in motion, in an unbroken sequence, by the hurricanes.

The insurance company’s response to this coverage-friendly doctrine seems to be the addition of language designed to defeat coverage. Although not used by the

¹⁴ 7 Lee R. Russ & Thomas F. Segalla, Couch on Insurance 3d § 101:57 (3d ed. 1997) (footnotes omitted).



T.W.I.A. in the sample policy highlighted above, many insurance policies contain a prefatory clause to the exclusions section, generally known as the “anti-concurrent causation” provision.

As published by the Insurance Services Offices (“ISO”), a typical anti-concurrent causation lead-in provision states as follows: “We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.”¹⁵

This provision is significant because, if enforceable, it has the capacity to alter substantially the scope of coverage under a policy. Accordingly, many challenges have been raised to its enforceability. The lawsuit filed in September by Mississippi’s Attorney General is one example.

Mississippi business owners and homeowners can take heart in the knowledge that the issues raised in that lawsuit have prevailed in other courts. The highest court in Washington State, for example, has held that as a matter of public policy, insurance companies may not use such provisions to avoid the efficient proximate cause doctrine.¹⁶ West Virginia’s highest court has held that anti-concurrent causation clauses

¹⁵ See ISO’s current Causes of Loss – Special Form (CP 10 30 04 02), accompanying ISO’s Building and Personal Property Coverage Form (CP 00 10 04 02), cited in Unraveling Insurance Coverage for Hurricane Katrina: No Big Easy Task at 2, The National Underwriter (October 2005), <http://cms.nationalunderwriter.com/cms/fcsbulletins/product%20content/Account%20and%20Risk%20Management/Miscellaneous%20Discussions/Claims%20Management/Hurricane%20Katrina%20coded>.

¹⁶ Safeco Ins. Co. of Am. v. Hirschmann, 773 P.2d 413, 414-16 (Wash. 1989) (en banc).



are ambiguous and that it offends the reasonable expectations of a policyholder to read them as precluding coverage for damage proximately caused by a covered peril.¹⁷

On the other hand, this favorable response has not been universal. The highest court of Utah held that provisions like the anti-concurrent causation provision are enforceable, as insurance companies are entitled to contract around any applicable causation rule.¹⁸

Notably, there is no state law yet in Texas, Louisiana and Mississippi as to the enforceability of this provision, as the highest courts of these states have not had occasion to examine it.¹⁹

II. APPLICABLE DOCTRINES AND STATUTES

Historically, the courts have considered a number of additional matters when called upon to decide insurance coverage disputes.

Principal among these is the doctrine of *contra proferentem*.²⁰ This doctrine requires ambiguities in insurance policies to be interpreted against the insurance companies that drafted the policies, and in favor of coverage.²¹

¹⁷ Murray v. State Farm Fire & Cas. Co., 509 S.E. 2d 1, 14 (W. Va. 1998).

¹⁸ Alf v. State Farm Fire & Cas. Co., 850 P.2d 1272, 1277 (Utah 1993).

¹⁹ One federal court in Mississippi, while attempting to apply Mississippi law, applied an anti-concurrent causation clause to exclude coverage for a loss involving earth movement. But this decision was based on the erroneous determination that Mississippi had not adopted the doctrine of "efficient proximate cause." Rhoden v. State Farm Fire & Cas. Co., 32 F. Supp. 907, 912 (S.D. Miss. 1998). The Mississippi Supreme Court had adopted that doctrine back in 1972, in Grace v. Lititz Mut. Ins. Co., 257 So.2d 217 (Miss. 1972). Because bad rulings make bad precedent, a state court in Mississippi recently relied on the erroneous decision in Rhoden to find that the anti-concurrent causation clause barred coverage for property damage to a home. Boteler v. State Farm Casualty Ins. Co., 876 So. 2d 1067 (Miss. Ct. App. 2004). But Boteler is a lower court decision and accordingly does not set forth the law of Mississippi.



Courts typically agree that ambiguities are proved when courts adopt different interpretations of the same provision.²² Thus, the mere existence of a dispute over the meaning of the flood, rain and water exclusions, and the citation of supportive – yet contrary – authority by both policyholder and insurance company, should be sufficient to prove ambiguity, and tip the scales in favor of coverage.

Another important resource for the courts has been state statutes, which often are policyholder-friendly. For example, all three of the states being studied here – Texas, Louisiana and Mississippi – have statutes designed to protect policyholders against bad faith practices by insurance companies, particularly including unfair settlement practices and late payment practices.²³ As shown in Section III, these statutes have been used affirmatively in protecting hurricane victims from insurance company attempts to shortchange them. These statutes are likely to prove useful and important in the battlefields over Hurricanes Katrina and Rita.

²⁰ 1 George J. Couch, Couch on Insurance 2d § 7:11 (2d ed. revised 1982).

²¹ McMaster v. N.Y. Life Ins. Co., 183 U.S. 25, 40, 22 S. Ct. 10, 16 (1901) (“the rule is that if policies of insurance contain inconsistent provisions, or are so framed as to be fairly open to construction, that view should be adopted, if possible, which will sustain rather than forfeit the contract”).

²² See, e.g., Murray, 509 S.E.2d at 9, n. 5 (“[a] provision in an insurance policy may be deemed to be ambiguous if courts in other jurisdictions have interpreted the provision in different ways. This rule is based on the understanding that one cannot expect a mere layman to understand the meaning of a clause respecting the meaning of which fine judicial minds are at variance”).

²³ E.g., LA. REV. STAT. ANN. § 22:658 (2005) (payment and adjustment of claims); LA. REV. STAT. ANN. § 22:1214 (2005) (unfair or deceptive insurance practices); LA. REV. STAT. ANN. § 22:1220 (2005) (bad faith claims settlement practices); TEX. INS. CODE ANN. §§ 541.001 and 542.001 (2005) superseding TEX. INS. CODE ANN. art. 21.21 (1951) (unfair trade practices) and TEX. INS. CODE ANN. art. 21.55 (1951) (unfair claims payment practices); TEX. BUS. & COM. CODE ANN. § 17.46 (deceptive trade practices); MISS. CODE ANN. §§ 83-5-29, 83-5-33, 83-5-51 (2005) (unfair methods of competition and deceptive practices in the business of insurance).



Another particularly important state statute, in the context of hurricane losses, is the Louisiana Valued Policy Law, LA. REV. STAT. ANN. § 22:695(A). This statute essentially provides that when there is a total loss, the insurance company must pay to the policyholder the actual cash value of the policy, namely the policy limits.²⁴

Mississippi also has a Valued Policy Law, which provides:

... When buildings and structures are insured against loss by fire and, situated within this state, are totally destroyed by fire, the company shall not be permitted to deny that the buildings or structures insured were worth at the time of the issuance of the policy the full value upon which the insurance is calculated, and the measure of damages shall be the amount for which buildings or structures were insured.²⁵

Texas, while lacking an equivalent statute, comes close, through the existence of Texas Insurance Commissioner's Bulletin No. B-0045-98.²⁶ That bulletin addresses the calculation of actual cash value under the Texas Standard Homeowners' Policy. It was directed to all property and casualty insurance companies doing business in Texas, and holds as follows:

The Department has concluded that an insurer providing property coverage under replacement cost residential policies that allow for the adjustment of covered losses to structures on an actual cash value basis may not calculate actual cash value on the basis of replacement cost with proper deduction for depreciation, less contractor's overhead

²⁴ The exact language is: "Under any fire insurance policy, . . . on any inanimate property, immovable by nature or destination, situated within the state of Louisiana, the insurer shall pay to the insured, in case of total destruction, without criminal fault on the part of the insured or the insured's assigns the total amount for which the property is insured, at the time of such total destruction, in the policy of such insurer."

²⁵ MISS. CODE ANN. § 83-13-5.

²⁶ <http://www.tdi.state.tx.us/bulletins/b-0045-8.html>.



and profit, nor may the insurer deduct sales tax on building materials. Any insurer that determines actual cash value on this basis may be subject to disciplinary action for violations of the Texas Insurance Code, including unfair claims practices pursuant to Article 21.21 Section 4(10)(a) and Article 21.21-2.²⁷

But a celebration about the Louisiana statute and the Texas directive is not necessarily in order. For 106 years, Florida residents and business owners used to enjoy the benefits of a substantially similar statute, known as the “valued policy law.” That statute required insurance companies to pay the full amount of an insurance policy if a property is deemed a total loss.²⁸

In the aftermath of Hurricane Irene, an appellate court in Florida ordered insurance companies to pay their full claims, based on this statute. It overruled an argument by the insurance company that the statute must yield to contrary language in the policy’s anti-concurrent causation clause. In that case, the evidence showed that the loss was only partially caused by a covered peril, yet the court ordered full coverage regardless.²⁹

The insurance industry responded by lobbying the Florida state legislature to change the law. They threatened that rates would skyrocket and homeowners’ policies

²⁷ TEX. INS. CODE ANN. art. 21.21 and 21.21-2 have been repealed and superseded. See n.23, supra.

²⁸ The Valued Policy Law (“VPL”), set forth in FLA. STAT. § 627.702(1)(a), stated: “In the event of the total loss of any building . . . located in this state and insured by any insurer as to a covered peril . . . the insurer’s liability under the policy for such total loss, if caused by a covered peril, shall be in the amount of money for which such property was so insured as specified in the policy”

²⁹ Mierzwa v. Florida Windstorm Underwriting Ass’n, 877 So.2d 774, 778 (Fla. Dist. Ct. App. 2004), reh’g denied, (“If FWUA has any liability at all, even a fractional share of the total damage, under the VPL it is liable for the face amount”).



would become difficult to obtain without the change.³⁰ The Florida legislature gave in and changed the law just a few months ago, on the last day of the 2005 legislative session.³¹ The insurance industry perceives the new law as limiting their obligations to only a proportionate share of the loss.³²

III. RELEVANT STATE CASES

The following is a summary of relevant court decisions in the three states that are the subject of this article: Louisiana, Mississippi and Texas.

Louisiana:

Roach-Strayhan-Holland Post No. 20, Am. Legion Club, Inc. v. Cont'l Ins. Co. of N.Y., 112 So. 2d 680 (La. 1959). The Louisiana Supreme Court affirmed a lower court decision that interpreted the efficient proximate cause rule in a manner that allowed the policyholder to recover for hurricane-related losses. The Court found coverage because the evidence showed wind to be the efficient proximate cause of the damage, even though other factors had contributed to the loss. As stated: "[I]t is sufficient, in order to recover upon a windstorm insurance policy not otherwise limited or defined, that the wind was the proximate or efficient cause of the loss or damage, notwithstanding other factors contributing thereto." Id. at 683.

³⁰ Mark Hollis, Insurers Close to Payout Relief, S. Fla. Sun-Sentinel, Apr. 27, 2005.

³¹ <http://www.independentagent.com/VU/NonMember/DisasterFAQs.htm>. The revised statute is set forth at § 627.702(1)(b)).

³² Insurance Information Institute, Catastrophes: Insurance Issues, November 2005, available at <http://www.iii.org/media/hottopics/insurance>.



Lorio v. Aetna Ins. Co., 232 So. 2d 490 (La. 1970). The Louisiana Supreme Court addressed the efficient proximate cause rule in the context of Hurricane Betsy. There, the damages arose after the hurricane was over. That case involved the death of a champion racehorse, who had been put in a temporary stall after the storm. Because the wall of the stall was weakened, the horse was able to get unlimited access to horse feed, and died from overeating. The Court placed the burden of proof on the policyholder, finding that the policyholder would have been entitled to insurance if he had proved that the winds had been a proximate cause of the horse's death. The immediate cause of death, however, was overeating, so the policyholder failed to meet its burden.

Urrate v. Argonaut Great Cent. Ins. Co., 881 So. 2d 787 (La. Ct. App. 2004), writ denied, 891 So. 2d 686 (La. 2005). This Louisiana appellate court affirmed a ruling of a trial court that Hurricane Georges in 1998 had caused both wind and water damage to a restaurant. Under the property policy, the court apportioned the damages, awarding coverage for the property damage that it deemed attributable to the wind, and also for the business losses that it attributed to the wind for the remainder of 1998 and continuing into 1999. The appellate court also affirmed a ruling that the insurance company had lacked a good faith basis to deny coverage, giving rise to monetary penalties.

Southern Hotels Ltd. P'ship v. Lloyd's Underwriters at London Cos., No. Civ. A. 95-2739 (E.D. La.), 1997 WL 325972. This decision runs the gamut of policy analyses. When a Travelodge Hotel suffered losses from Hurricane Andrew in 1992, the district court awarded partial damages for the total replacement of its roof, on the reasoning



that the roof was old and the entire replacement cost could not be attributed to the hurricane. The court rejected a claim for replacement of furniture, reasoning that the damage to the furniture arose from an excluded peril (either flood or sewer back-up originating from an off-premises power outage). Finally, the court awarded coverage for 35% of a claim for interior structural repairs, acknowledging that “there is no mechanical rule which applies with exactitude.” Id. at 6.

LaHaye v. Allstate Ins. Co., 570 So. 2d 460 (La. Ct. App. 1991). The Louisiana appellate court reversed a lower court decision that failed to enforce Louisiana’s Valued Policy Law. The court held, “Finding Louisiana’s Valued Policy Law applicable, we pretermitted LaHaye’s argument and award him recovery to the extent of the policy limits established in the insurance contract.” Id. at 464. The Court also found that the policyholder was entitled to an award of penalties and attorneys’ fees under the Louisiana claims settlement practices statute, LA. REV. STAT. ANN. § 22:658, for late payment of undisputed portions of the claim.

Real Asset Mgmt., Inc. v. Lloyd’s of London, 61 F.3d 1223 (5th Cir. 1995). The Fifth Circuit affirmed a decision finding a violation of the Louisiana Valued Policy Law and also found that the violation was in bad faith, supporting an award of penalties and attorney’s fees under the Louisiana bad faith statute, LA. REV. STAT. ANN. § 22:1220.

Mississippi:

Grace v. Lititz Mut. Ins. Co., 257 So. 2d 217 (Miss. 1972). The Mississippi Supreme Court found that building owners could be entitled to coverage for complete loss of building under windstorm policy, even though policy excluded coverage for loss caused by tidal water. The Court held that “the entire question of proximate cause is



treated as one of fact independent of the explicit application of any rule of law. It is sufficient to show that wind was the proximate or efficient cause of the loss or damage notwithstanding other factors contributed to the loss.” Id. at 224.

Lititz Mut. Ins. Co. v. Boatner, 254 So. 2d 765 (Miss. 1971). The Mississippi Supreme Court affirmed a verdict in favor of the policyholder whose home had been destroyed by Hurricane Camille. Nothing was left except for the concrete slab on which the home once stood. The Court found that, while a tidal wave clearly covered the slab to a depth of more than seven feet, still the evidence showed that the house had been destroyed before the wave came ashore. In language eerily reminiscent of recent news stories about Hurricane Katrina, the Court stated:

The pictures showing the devastation of the hurricane called Camille stagger the imagination. The tidal wave that washed about the debris in this case could not have deposited the debris above the water level of the tidal wave, and there was no way for it to have gotten there except by the terrific force of the wind.

Id. at 766.

Glens Falls Ins. Co. of Glens Falls, N.Y. v. Linwood Elevator, 130 So. 2d 262 (Miss. 1961). The Mississippi Supreme Court rejected an insurance company’s argument that coverage should be denied because the damages resulted, at least in part, from a cause other than a covered fire. The Court held that even if “the nearest efficient cause of the loss [was] not a peril insured against,” there was coverage here because the fire was the direct proximate cause of the loss of the soybeans at issue.



Texas:

Hardware Dealers Mut. Ins. Co. v. Berglund, 393 S.W.2d 309 (Tex. 1965). The Texas Supreme court strictly construed exclusions in a homeowners' policy against the policyholder, but expressed discomfort while doing so. Id. at 314 ("it is our duty to construe and enforce contracts and not to make them"). The Court stated that it was bound by the express exclusionary language in the contract, and by precedent in a 1920 decision by the Commission of Appeals, Coyle v. Palatine Ins. Co., 222 S.W. 973 (Tex. Comm'n App. 1920). On rehearing, the Court appeared to leave a door open to revisiting the issue: "In deference to the motion it should be stated that we do not hold nor did we intend to infer that Rule 94 'binds this Court to freeze forever the burden of proof' relating to the exclusionary clauses of an insurance policy. . . . The question of the burden of proof has been settled by the holdings of this Court and must remain so until numerous prior decisions are overruled or otherwise abrogated."

McDonald v. N.Y. Cent. Mut. Fire Ins. Co., 380 S.W.2d 545 (Tex. 1964). The Texas Supreme Court affirmed a trial court judgment that a house had been destroyed by wind, rather than a tidal wave. The Court found that the first-hand testimony of a neighbor was sufficient to sustain a jury finding in favor of coverage.

Dean v. Quincy Mut. Fire Ins. Co., 392 S.W.2d 897 (Tex. Civ. App. 1965). The appellate court in Waco affirmed a judgment in favor of coverage, holding that there was sufficient evidence to show that 90 percent of the damage sustained by the homeowners had been caused by hurricane winds alone, as distinguished from damage caused by water.



Nat'l Union Fire Ins. Co. v. Cox, 393 S.W.2d 939 (Tex. Civ. App. 1965). The appellate court in Houston reversed a judgment for the policyholder, finding that the trial court erred by failing to instruct the jury that the burden was on the policyholder to prove that damage to their residence during a hurricane was not directly caused by excluded risks in a homeowners' policy.

IV. CONCLUSION

The principle of "buyer beware" extends all the way through the claims process. As shown above, policyholders must remain wary until their claims are fully and finally paid, in the correct amounts. There are many possible slips in recovering insurance coverage for Hurricanes Katrina and Rita. But, for policyholders who are vigilant about asserting their rights, and who have a clear sense of what their rights are, they ultimately should succeed in recovering their just due.



Facing the Aftermath: Wind and Flood Coverage Considerations in the Wake of Hurricane Katrina

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- Dauphin Island, Alabama (All pictures are courtesy of www.al.com and are randomly placed throughout for stylistic affect only)

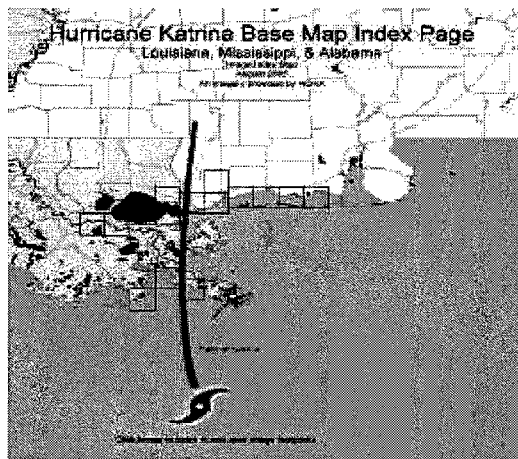
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Facing the Aftermath: Wind and Flood Coverage Considerations in the Wake of Hurricane Katrina

I. Introduction

From the broken homes and levies of New Orleans, Louisiana, along the wind scourged streets of Waveland, Mississippi, and to the dreaded storm surge that wiped out the beaches of Dauphin Island, AL, numerous homes and businesses were ravaged in the wake of Hurricane Katrina. The total loss and clean-up efforts could top \$100 billion, of which property insurers are expected to contribute up to \$35 billion.¹ Early estimates show that Katrina will be the costliest natural disaster ever to hit the United States. In reaction to the battle that will be brewing amongst property insurers and homeowners in light of the unprecedented devastation, one Louisiana lawyer recently commented, “The physical nightmare is hopefully over for many people, but the financial nightmare is about to begin.”²



Given the fact that States Attorneys General and individual homeowners are already bringing lawsuits to challenge policy exclusions and provisions,³ a quick study of applicable law is necessary for insurers and policy holders alike. This overview identifies potential legal flashpoints and the state of the law on those issues that will be considered by the Courts in this legal aftermath.

II. Alabama in the Wake of Katrina

A. Alabama's Beach Pool Plan

Those homeowners insured for wind along the Alabama gulf coast are likely to be insured through the Alabama Insurance Underwriting Association (“AIUA”), more commonly known as the “beach pool plan.” The AIUA is not an insurance company, but is a beach pool plan created by the Alabama Commissioner of Insurance in 1971 through Regulation 52. The AIUA is a mandatory association of property insurers required to share a portion of the pooled risk of insuring property owners in the state’s coastal region. The AIUA is governed by a Plan of Operation which sets forth the rules and procedures for issuing policies of property insurance.

¹ Statistics found at http://money.cnn.com/2005/09/05/news/fortune500/insurance_katrina.reut/

² “Louisiana set for an Epic Legal Fight,” http://news.ft.com/cms/s/f3301e74-22ff-11da-86cc-00000e2511c8.dwp_uuid=6ab6c2fa-1adf-11da-a117-00000e2511c8.html, September 11, 2005.

³ “Mississippi sues insurers to pay for all damages,” *Mobile Press Register*, p. 14A, 9/16/2005.



The AIUA beach pool plan, in its subject insurance policies and otherwise, provides for a multi-tiered administrative remedy for policyholders (known as "members") aggrieved by a decision of the AIUA. This includes an appeal to the Administrative Board of the AIUA, a further right of appeal directly to the Commissioner of Insurance and, if necessary, a review by the Circuit Court of Montgomery County, Alabama under the Alabama Administrative Procedure Act.⁴ Further information concerning the AIUA and Alabama's beach pool plan are available at www.alabamabeachpool.org.

B. A Note from the Department of Insurance

The Alabama Department of Insurance is the governing body that regulates insurance practices in Alabama. Post-Katrina, the Department will post various bulletins at its web site, www.aldoi.gov, clarifying the Department's plan of action for overseeing the claims process and the handling of coverage issues throughout the state.

As of September 16, 2005, regulations governing the adjustment and settlement of property and casualty claims will govern just as in the past. While these regulations are posted in their entirety on the web, some of the notable highlights are as follows:⁵

- Every insurer shall acknowledge receipt of a first party claim within fifteen (15) days.
- Claim forms and instructions shall be provided to a claimant within fifteen (15) days after the insurer receives first notice of a claim.
- The insurer shall reply within fifteen (15) days to any written communication from an insured which requests a response.
- After receiving a properly executed proof of loss, an insurer shall within thirty (30) days (or other time as specified in the policy) advise the claimant of the status of the acceptance or denial of a claim by the insurer.
- If an insurer needs more time to investigate before making a decision, the claimant shall be so notified within thirty (30) days after submission of proofs of loss, including the reasons why more time is needed.
- Every forty-five (45) days thereafter until a determination

⁴ See ALA.CODE §§ 27-2-29 through -32.

⁵ Ala. Ins. Reg. 482-1-125.



is made, the insurer must notify the claimant of the reasons why additional time is needed to investigate.

- If a written denial is requested, the insurer must mail a written denial within a reasonable time.
- Payment must be tendered by the insurer within thirty (30) days (or such other time as is stated in policy) after acceptance of liability, reaching agreement on the amount of the claim, and receipt of documents necessary to consummate the settlement.
- A denial must include a reference to the policy provision, exclusion or condition relied upon in denying the claim.
- If a written denial is requested, the insurer must mail a written denial within a reasonable time.

A special regulation also applies to fire policies on residential structures in Alabama.⁶ This regulation provides that an insurer issuing a fire policy providing for adjustment of losses on an actual cash value basis can determine this cash value in one of three ways: 1) the replacement cost of the property less depreciation; 2) the market value of the property; or 3) any other method provided for in the policy. If method 1) is utilized, the insurer shall provide upon request of the insured a copy of all claim file worksheets detailing any and all deductions for depreciation.

C. Wind versus Flood

A constant issue that will no doubt plague many insurers will be the difficulty in determining causation in a storm that caused wind damage or flood damage, as well as



both wind and flood damage concurrently. Most homeowners do not have flood insurance and are simply not aware that their homeowner-wind policy will exclude damages caused by flooding waters. This issue will be a topic of disagreement for many insurers in the Dauphin Island and Bayou La Batre areas of south Mobile County, Alabama where homes will be rendered total losses from both the storm surge and hurricane force winds.

⁶ See Ala. Ins. Reg. 482-1-125-.09.



1. Valued Policy Laws

Some states, like Florida, set up a statutory scheme that prevalues wind versus flood coverage.⁷ Alabama has no such valued policy law; therefore, we should look to the specific language of the contract and to the common law of Alabama to determine if coverage exists and the extent thereof.

2. Causation and the Enforcement of Policy Exclusions

Most policyholders are not aware that their homeowner's insurance details specific exclusions from coverage, including damage caused by flooding. Once it is shown that both wind and flood perils may have contributed to the loss, a policy holder will likely challenge either the validity of the exclusion, or argue that the cause of the loss under the facts was not attributable to the excluded peril.

The first question to answer, given these challenges, is how an Alabama court will determine which peril was the cause of the loss. When an action is brought claiming coverage for a specific peril, Alabama will apply the "efficient-proximate cause doctrine."⁸ In the premier case on the subject, *Western Assurance Co. v. Hann*, the Alabama Supreme Court reviewed a policy that covered losses related to fire but excluded any damages resulting from a falling wall or other structure onto adjoining property. By holding that a jury was the best body to judge whether a fire proximately caused the toppling of an unsound wall one year after the original fire incident, the issue of causation became an issue of fact to be argued between policyholder and insurer, with deference given to the policyholder.

In light of the holding in *Hann*, can an insurer contract around *Hann* so as to avoid unanticipated liability? Or, stated another way, is an exclusion that breaks the chain of causation by directly excluding certain losses enforceable, i.e. covering wind but not water damage? The short answer on its face is yes. Alabama has recently refined its holding in *Hann*, finding that a policy of insurance may unambiguously exclude certain "perils" that would normally be in the chain of events recognized under a pure proximate cause analysis.⁹



In *Koch v. State Farm Fire and Cas. Co.*, the Alabama Supreme Court held that an insurer's reliance on policy language excluding coverage for rotting and deterioration of a home's exterior walls was reasonable, even though the cause of the rot was "seepage" from continuous wind-blown water after repeated hurricanes.¹⁰ Wind-blown water from a hurricane was a covered peril, but the rotting in the walls was not. By affirming the lower court's

⁷ See § 627.702(1), Fla. Stat. (2003), amended June 2005.

⁸ See *Western Assurance Co. v. Hann*, 201 Ala. 376, 78 So. 232 (Ala. 1918).

⁹ See *State Farm Fire & Cas. Co. v. Slade*, 747 So. 2d 293 (Ala. 1999) (holding in part that the efficient proximate cause rule in *Hann* is not a statement of public policy that would act to invalidate an "earth-movement" exclusion); *Koch v. State Farm Fire & Cas. Co.*, 565 So. 2d 226 (Ala. 1990).

¹⁰ *Koch v. State Farm Fire & Cas. Co.*, 565 So. 2d 226 (Ala. 1990).



dismissal of plaintiff's bad faith denial claim, *Koch* recognized that the underlying contract provision excluding coverage was in fact enforceable.

But what about where two concurrent causes of damage, i.e. wind and flooding, occur simultaneously instead of over a long period of time? Insurers often place conditions called "anti-concurrent clauses" that restrict coverage when there is such a loss. Though no case deals specifically with the issue courts do recognize certain principles that would apply to a coverage determination.

- Anti-concurrent causation exclusions are valid and enforceable and will be treated like any other exclusion. *See State Farm Fire & Cas. Co. v. Slade*, 747 So. 2d 293 (Ala. 1999)(holding in part that an earth movement exclusion was valid despite evidence that a lightning strike contributed to or acted concurrently with the earth movement to cause a person's foundation to falter).
- Despite the fact that courts would uphold the policy language as enforceable, where there are two potential causes of a loss, the determination of coverage is a factual inquiry for the jury's determination. *See Allstate Ins. Co. v. Fitzsimmons*, 429 So. 2d 1059 (Ala. Civ. App. 1983)(whether water damage and buckling floors resulted from hurricane damage or from an air conditioner leak was a jury question).
- Issues of proximate cause from concurrent causes in the context of insurance coverage are no different than those in the law of negligence. *Slade*, 747 So. 2d at 313. Thus, concurrent insurance coverage issues will be treated the same as any concurrent tort-feasor liability scenario. (For a legal synopsis and summary of concurrent liability in Alabama see *Springer v. Jefferson County*, 595 So. 2d 1381, 1384 (Ala. 1992) citing *General Motors Corp. v. Edwards*, 482 So. 2d 1176, 1194 (Ala. 1985)(“an injury may have several concurrent proximate causes, including the actions of two or more tort-feasors, neither of whose action was sufficient in and of itself to produce the injury, who act, either together or independently, to produce it.”)).
- The determination of what damages are attributable to what cause is an issue for the jury to decide. *See M. C. West, Inc. v. Battaglia*, 386 So. 2d 443, 447 (Ala. Civ. App., 1980)(plaintiff presented evidence attributing the cause of the flooding to his property from the construction of a dam and he was allowed to recover whatever damages that were reasonably certain from the loss. *Citing E. C. Ernst, Inc. v. Manhattan Construction Co.*,



551 F.2d 1026 (5th Cir. 1977), *cert. den.* 434 U.S. 1067, 98 S.Ct. 1246, 55 L.Ed.2d 769 (1978)).

Therefore, facing these issues, Alabama will likely uphold *unambiguous* exclusions to coverage, such as flood exclusions or an anti-concurrent causation clause, even if the excluded peril is in the proximate or “foreseeable” chain of events of a covered loss. In other words, while Alabama follows the doctrine of efficient proximate cause, the parties may eliminate the doctrine by contracting around it. Alabama courts will use these guiding principles to determine the legal cause of action and enforceability of the contract, and will allow the jury to determine the cause of a loss and the damages attributable to each cause when there is *any* question of causation in the presence of disputed facts or an *ambiguous* exclusion.

3. Notable Cases on Policy Exclusions and Wind Storms

- *State Farm Fire & Cas. Co. v. Slade*, 747 So.2d 293 (Ala. 1999). The Alabama Supreme Court reviewed a policy providing coverage in case of a lightning strike, but excluding damages resulting from “earth movement.” A retaining wall attached to the insured’s dwelling was struck by lightning, causing extensive damage to the house and appurtenant areas. Several months after repairs to the wall were completed, the ground underneath the foundation linked to the retaining wall began to falter. Several cracks formed throughout the house. The insureds claimed that the settling of the home was a direct and proximate cause of the lightning strike that in turn caused the ground underneath the foundation to shift.



By affirming the policy exclusion, *Slade* stands for the proposition that when the terms of an exclusion are unambiguous, the efficient proximate cause doctrine will not invalidate the exclusion. The determination of whether the clause was ambiguous will be the role of the Court, not the jury.¹¹ Supporting its rationale, the Court stated “unless the terms of an exclusion so narrowly restrict coverage as to render the contract unconscionable, the Legislature, and not the Court, is the proper forum for correction of what some may deem to be an excessively broad exclusion.”¹²

- *ALFA Mut. Ins. Co. v. Thomas*, 738 So. 2d 815 (Ala. 1999)(adjuster’s poor investigation, missing obvious wind damage from Hurricane Opal to a

¹¹ See also *Universal Underwriters Ins. Co., v. Thompson*, 776 So. 2d 81 (Ala. 2000).

¹² *Slade*, 747 So. 2d at 314.



home's roof, siding, satellite dish, and antenna, could support bad faith claim).

- Reliance upon a single expert opinion without independent or substantiating evidence could create an issue of fact on whether wind caused damages to structure of home during Hurricane Opal. *Jones v. Alfa Mut. Ins. Co.*, 875 So. 2d 1189 (Ala. 2003).
- Affirming summary judgment where replacement cost provision of homeowner policy obliged insurer to pay only for replacement of shingles, not entire roof, when damaged in Hurricane Erin. *Padget v. State Farm Fire & Cas. Co.*, 714 So. 2d 302 (Ala. Civ. App. 1997).
- Whether water damage and buckling floors resulted from hurricane damage or from air conditioner leak was a jury question. *Allstate Ins. Co. v. Fitzsimmons*, 429 So. 2d 1059 (Ala. Civ. App. 1983).
- In trial over whether damage was caused by wind versus flood, counsel's failure to object to Court failing to instruct jury on flood exclusion in wind policy precluded him from arguing the issue on appeal. *Baldwin Mut. Ins. Co. v. Blume, Inc.*, 402 So. 2d 917 (Ala. 1981).

4. Enforcement of Claims and Extra-Contractual Remedies

Without detailed discussion, it is important to note that insurers and policyholders alike should be aware that the recovery in a coverage lawsuit may not be limited to the face amount of the policy. The breach of certain contracts of insurance, especially those that relate to a residence, may expose the insurer to liability for extra-contractual



damages such as those for mental anguish.¹³ Punitive damages may be recoverable for a bad faith denial of an insurance claim.¹⁴ Even without an outright denial, Alabama's common law recognizes that an unreasonable delay in decision-making on a submitted claim may constitute a constructive denial for purposes of a breach of contract or bad faith action brought by the insured.¹⁵ A bad faith denial can also be based upon a theory that an insurer intentionally

or recklessly failed to determine if it had a legitimate or arguable reason to refuse to pay the claim. Alabama does not, however, recognize a claim for the negligent or wanton handling of first-party insurance claims.¹⁶

¹³ See *Independent Fire Ins. Co. v. Lunsford*, 621 So. 2d 977 (Ala. 1993).

¹⁴ See ALA.CODE • 6-11-20 (1993).

¹⁵ See *Congress Life Ins. Co. v. Barstow*, 799 So. 2d 931 (Ala. 2001).

¹⁶ See *Kervin v. Southern Guaranty Ins. Co.*, 667 So. 2d 704 (Ala. 1995).



III. Mississippi in the Wake of Katrina

A. Mississippi Taking an Early Stand

The battle has already begun in Mississippi. On September 15, 2005, the Attorney General, Jim Hood, sued several major insurers seeking an injunction to “void provisions of policies that attempt to exclude from coverage losses or damages directly or indirectly cause by water, whether wind-driven or not.”¹⁷ In reaction, one company executive from Allstate stated “that flood insurance protection has been offered by the Federal Government for nearly four decades precisely because flood damage is not covered by private insurers....”¹⁸ Another insurer argued, “this would establish a dangerous precedent and expose insurance companies to potentially billions of dollars in claims costs for a risk in which not one dollar of premium was collected.”¹⁹ While we wait to see how Mississippi will treat these challenges, insurers and policyholders should be aware of the law that will be applied to the challenge.

B. Mississippi Department of Insurance

Unlike Alabama, the Mississippi Department of Insurance has not promulgated regulations mandating time frames in which insurers must respond to claims, and has not yet issued any such guidelines for responding to Hurricane Katrina. The Department has issued several bulletins on miscellaneous issues, the most significant of which is Bulletin No. 2005-6. This Bulletin requires adjusters to fully inspect damaged property before any coverage decision is made, stating:

My Office has been contacted by Mississippians who advise that their adjusters allegedly denied their homeowners claims without inspecting the damaged property. While there was significant water damage on the Mississippi Gulf Coast, and homeowners’ policies offered throughout the United States generally contain a water damage exclusion, an adjuster cannot summarily determine the cause of damage without inspecting the damaged property. Consequently, I am instructing all companies to be aware of these issues and to fully inspect any damaged property before a coverage determination is made.



¹⁷ “Mississippi sues insurers to pay for all damages,” Mobile Press Register, p. 14A, 9/16/2005.

¹⁸ *Id.*

¹⁹ *Id.*



In some situations, there is either very little or nothing left of the insured structure and it will be a fact issue whether the loss was caused by wind or water. In these situations, the insurance company must be able to clearly demonstrate the cause of the loss. I expect and believe that where there is any doubt, that doubt will be resolved in favor of finding coverage on behalf of the insured. In instances where the insurance company believes the damage was caused by water, I expect the insurance company to be able to prove to this office and the insured that the damage was caused by water and not by wind.²⁰

C. Valued Policy Law

Mississippi's valued policy law, set forth below, applies only to fire claims. Insurers would be well advised to anticipate the argument that Mississippi's valued policy law is a legislative statement of public policy and, while it facially applies directly only to fire losses, it may be imported by homeowners dissatisfied with adjustment of their total loss claims at below the actual cash value stated in the policy.

§ 83-13-5 Amount and terms of insurance

No insurance company shall knowingly issue any fire insurance policy upon property within this state for an amount which, together with any existing insurance thereon, exceeds a fair value of the property, nor for a longer term than five years. When buildings and structures are insured against loss by fire and, situated within this state, are totally destroyed by fire, the company shall not be permitted to deny that the buildings or structures insured were worth at the time of the issuance of the policy the full value upon which the insurance is calculated, and the measure of damages shall be the amount for which buildings or structures were insured. No insurance company or agent thereof shall be permitted to attach a three-quarter value clause to insurance of this kind . . .



D. Mississippi Hurricane Cases

Due to its history with hurricanes, Mississippi has numerous reported decisions discussing hurricane claims, several with the recurring “wind vs. flood” question. As in Alabama, these opinions focus on causation and are extremely fact-intensive. The legal standards rely heavily on determinations by the jury, which typically favors the insured as opposed to the insurer. As stated in one such case:

²⁰ Bulletin No. 2005-6.



The rule is well established in this state that where the question presented to the jury was whether the loss was due to windstorm or to water, the entire question of proximate cause is treated as one of fact independent of the explicit application of any rule of law. It is sufficient to show that wind was the proximate or efficient cause of the loss or damage notwithstanding other factors contributed to the loss.²¹

While fact-driven, the cases below arising from Hurricane Camille are instructive for the types of evidence used to support their respective coverage positions.

- *Grain Dealers Mut. Ins. Co. v. Belk*, 269 So. 2d 637 (Miss. 1972). Appeal from jury verdict in favor of insured. An insurance claim arose out of Hurricane Camille. The evidence presented consisted of a limb from an old oak tree having struck the roof and punctured it. In a later effort to remove the tree, the entire tree fell on the house. The insurer felt the loss was caused by negligence in the removal of the tree, not by the storm. The Court cited the general rule, now known as the doctrine of efficient proximate cause:

The causes of loss for which recovery may be had under a cyclone and tornado insurance policy are variously specified in the policies as cyclone, hurricane, storm, tornado, and windstorm. In order that there be recovery on the policy, the cause designated in the policy must have been the



proximate, and not a remote, cause of the loss, particularly where the policy requires it to be the 'direct' cause of the loss. If the windstorm or similar peril insured against is the proximate cause of the loss, it need not be the sole cause, and it is generally sufficient to authorize a recovery on the policy that the cause designated therein was the efficient cause

of the loss, although other causes contributed thereto, unless the contributing cause is expressly excluded within the terms of the policy. If the loss does not fall within the strict terms of an exclusion clause, insured may recover under the general provisions of his windstorm or tornado policy.²²

- *Lititz Mut. Ins. Co. v. Buckley*, 261 So. 2d 492 (Miss. 1972). The Court affirmed a jury verdict in the homeowner in a case arising from a wind claim in the aftermath of Hurricane Camille where the homeowner presented evidence from a witness,

²¹ *Grace v. Lititz Mut. Ins. Co.*, 257 So. 2d 217 (Miss. 1972).

²² *Belk*, 269 So. 2d 637, 640 citing 45 C.J.S. Insurance § 888, pp. 962-963 (1946).

located seven miles from property, who testified that five to seven tornadoes occurred in the area and that high winds occurred intermittently for eight hours before and after the eye of the storm passed over the area. Another neighbor, riding out the storm from 300 feet away, testified that the porch of the subject residence had blown away and that a great deal of damage occurred to the house even before the water rose. Holes in the roof of the subject home were found later. The insurer's only evince was that water in the insured premises rose to a height of 3.5 feet inside the structure.

- *Grace v. Lititz Mut. Ins. Co.*, 257 So. 2d 217 (Miss. 1972). An insurer denied a claim on the issue of wind versus flood, arguing that based upon high-water marks, the building had water 1.7 to 2.7 feet above the floor. A section of the ceiling of the insured structure was found on the roof of a nearby hotel, and could only have been placed there by wind. The policy holder showed that the structure as built could not withstand winds of more than 75 mph and the piers and front porch were more vulnerable to the wind. The front wall had large windows, and there was no diagonal bracing or trussing to roof rafters. One witness located north of the insured property testified as to very high winds on the night of the storm. Another witness located two houses away in a much better built structure than the insured structure testified that his own house "exploded" from winds well before floodwaters arrived. Despite professional expert testimony offered by the insurer, the jury verdict for the insured was affirmed.



- *Lititz Mut. Ins. Co. v. Boatner*, 254 So. 2d 765 (Miss. 1971). A house in Long Beach, Mississippi was totally destroyed during Hurricane Camille. The insurer claimed that the loss was from tidal wave, not by wind, as the evidence showed that the tidal wave covered the slab by more than seven feet. Contrary evidence was also presented that the house was already destroyed prior to the arrival of the floodwater, and that debris was scattered in trees and on buildings higher than the highest wave height. The Court stated:



Without sanctioning the argument that the burden of proof was upon the homeowners, not only to show that their property was damaged by windstorm, but to also show that it was in no respect damaged by tidal wave, we point out the general rule as expressed by the text writer in 46 C.J.S. Insurance § 1356 (1946):

Plaintiff is not bound to prove the loss or injury beyond a reasonable doubt; but it is sufficient to warrant a recovery if he show by a fair preponderance of the evidence that the loss or injury was one covered by the policy, that is, that it was brought about by a risk or cause insured against; and circumstantial evidence from which the jury might reasonably infer the fact of the loss or injury as being one covered by the policy may be sufficient for this purpose even though the policy provides that proof of the loss or injury shall be by direct and positive evidence.

The Court stated that “it is sufficient to show that wind was proximate or efficient cause of loss or damage notwithstanding other factors contributed to loss.”²³



- *Commercial Union v. Byrne*, 248 So. 2d 777 (Miss. 1971). This is an appeal from a judgment in favor of the insureds on a windstorm claim. Evidence was presented that during Hurricane Camille, the highest tide rose only after the highest winds. The subject home was surrounded by trees, with two trees blown across the house. The garage door was opened, allowing wind to penetrate. The roof also had punctures, allowing rain and water to enter the structure. The Court determined that there was enough evidence to sustain the verdict for the insured.

²³ See *Kemp v. American Universal Ins. Co.*, 391 F.2d 533 (5th Cir. 1968).

- *Firemen's Ins. Co. of Newark, New Jersey v. Schulte*, 200 So. 2d 440 (Miss. 1967). Witnesses during the storm, located 400-500 feet north, testified that before the water rose, mighty winds pounded the area, even driving pine needles into the trees. The roof of the subject house was found some distance north of the insured structure. Several witnesses testified in similar fashion, making the evidence sufficient for the jury to determine that the loss was due to wind, not by flood.

IV. Florida's Treatment of Wind v. Flood and Policy Exclusions

A. Valued Policy Law and *Mierzwa*

Florida has enacted a statute commonly known as the Valued Policy Law governing claims for a total loss to property.²⁴ This law only applies to a *total loss*, as defined by the "50% rule,"²⁵ (referring to the Florida Building Code requirement that any structure be "brought up to code" when repairs and alterations to the structure exceed 50% of the building's value).²⁶ It is hard to pin down Florida's future treatment of policy exclusions due to the resounding confusion around Florida after the publication of a 2004 Fourth District Court of Appeal decision known as *Mierzwa*,²⁷ a decision rapidly followed by statutory changes to the Valued Policy Law.



In *Mierzwa*, a residence covered by separate wind and flood carriers was destroyed by both wind and flood acting concurrently, triggering a dispute as to which

²⁴ See § 627.702(1), Fla. Stat. (2003), amended June 2005.

²⁵ *State Farm Fire & Cas. Co. v. Patrick*, 647 So.2d at 984 (Fla 3d DCA 1994) (A partial loss due to windstorm is not subject to the Valued Policy Law).

²⁶ FL. Bld. Code §3401.7.2.6

²⁷ *Mierzwa v. Florida Windstorm Underwriting Assn.*, 877 So.2d 774 (Fla. 4th DCA. 2004).



carrier would be liable for what part of the damage. The wind policy contained an anti-concurrent causation clause. All parties agreed that the residence was a total loss caused 57% by wind and 43% by flood action; however, the policyholder argued that the wind “carrier is liable to the owner for the face amount of the policy” because the structure was a total loss. Despite the fact that the face value of the policy far exceeded the dollar amount attributed to wind damage, the Court agreed with the policyholder, stating that the plain language of the Valued Policy Law directed the insurer to pay the entire face value of the policy.²⁸ The anti-concurrent clause was in all practical effect overridden by statute, creating a windfall for the policy holder.

Since the *Mierzwa* decision, the Florida Legislature revised the Valued Policy Law to correct this unexpected result.²⁹ The statute now states that the insurer’s liability will not exceed the amount of the *covered* loss. The statute in its entirety, as amended, reads as follows:

627.702. Valued policy law (June 2005 amendments in bold)

(1)(a) In the event of the total loss of any building, structure, mobile home as defined in s. 320.01(2), or manufactured building as defined in s. 553.36(12), located in this state and insured by any insurer as to a covered peril, in the absence of any change increasing the risk without the insurer’s consent and in the absence of fraudulent or criminal fault on the part of the insured or one acting in her or his behalf, the insurer’s liability, ~~if any,~~ under the policy for such total loss, **if caused by a covered peril**, shall be in the amount of money for which such property was so insured as specified in the policy and for which a premium has been charged and paid.

(b) **The intent of this subsection is not to deprive an insurer of any proper defense under the policy, to create new or additional coverage under the policy, or to require an insurer to pay for a loss caused by a peril other than the covered peril. In furtherance of such legislative intent, when a loss was caused in part by a covered peril and in part by a noncovered peril, paragraph (a) does not apply. In such circumstances, the insurer’s liability under this section shall be limited to the amount of the loss caused by the covered peril. However, if the covered perils alone would have caused the total loss, paragraph (a) shall apply. The insurer is never liable for more than the amount necessary to repair, rebuild, or replace the structure following the total loss, after considering all other benefits actually paid for the total loss.**

(c) **It is the intent of the Legislature that the amendment to this section shall not be applied retroactively and shall apply only to claims filed after effective date of such amendment.**



²⁸ Other decisions uphold this principle in the case of other kinds of total losses. See *Netherlands Ins. Co. v. Fowler*, 181 So.2d 1321 (Fla. 2nd DCA 1966) (where city ordered building demolished after fire but insurance company refused to pay face value company was directed to pay face value under the statute).

²⁹ Fla-Legis 2005-111 (June 1, 2005).



Though there are no decisions interpreting the amendment, the statute appears to allow the insurer to rely on the policy exclusions and the “proximate cause of the damage” analysis.³⁰ Perhaps the courts will follow the special concurrence in *Mierzwa* now that the legislature has made its intentions known:

I disagree with the majority's holding that "if the insurance carrier has *any* liability at all to the insured for a building damaged by a covered peril and deemed a total loss, that liability is for the face amount of the policy." The better rule is to require that a covered peril be the proximate cause of the total loss in order to trigger the valued policy law. *Citation omitted*. A proximate cause analysis does not change this case, since it is clear that but for the wind damage, the ordinance would not have been brought into play. . . .

Mierzwa v. Florida Windstorm Underwriting Ass'n 877 So.2d 774, 781 -782 (Fla. Dist. Ct. App. 2004)(J. Gross, concurring specially).

B. Florida Cases Applicable to Wind versus Flood

While we wait for the courts to interpret the new Valued Policy law, the following are a few illustrative cases on how Florida courts generally treat policy exclusions and causation questions in similar instances.



- Damage caused by wind-driven rain during Hurricane Irene was not covered where a policy exclusion specifically stated the insurer was not liable unless there was an opening or hole in the structure. The Court granted summary judgment for the insurer, refusing to hold the language contrary to public policy even though the insurer later changed the policy language a year after the loss. *Florida Windstorm Underwriting v. Gajwani*, 2005 WL 1109465 (Fla. Dist. Ct. App. 2005).
- A restaurant collapsed during hurricane when water broke apart a seawall. The insurance policy in question covered collapse of walls or structure, but specifically excluded damage occurring by wave or tidal action. The

³⁰ It should be noted that the statute is not retroactive. See § 627.702(1)(c). Therefore, damages from storms, such as Ivan, that hit the coast after the *Mierzwa* decision, but before the statutory change, will be adjudged by that decision, and wind carriers would pay the limits of their policy. See *Gore v. Harris*, 772 So.2d 1243 (Fla. 2000) (decisions of one district is binding on all other districts until overturned).



5th Circuit Court of Appeals affirmed the trial court's decision of no coverage. *Arjen Motor Hotel Corp. v. General Accident Fire & Life Assurance Corp.* 379 F.2d 265 (5th Cir. 1967).

- Policy language excluding damage caused by “surface waters” was upheld, reasoning that “although ambiguous exclusionary provisions in insurance policies are to be construed in favor of the insured, a court cannot rewrite an insurance contract to extend coverage beyond what is clearly set forth in the contractual language.” See *Florida Res. Prop. & Cas. Int. Underwriting Assn. v. Kron*, 721 So. 2d 825 (Fla. Dist. Ct. App. 1998).
- The concurrent cause doctrine applies when two *independent* events occur simultaneously to cause damages. In one case involving a dispute over the cause of damage to a sea wall, the fact that one of the causes (human neglect) was not covered did not bar the jury from finding coverage “even where the insured risk [is] not ... the prime or efficient cause of the accident.” *Wallach v. Rosenberg*, 527 So. 2d 1386, 1387 (Fla. Dist. Ct. App. 1988).
- Insurers are free to contract with insureds around the anti-concurrent causation doctrine. See *Paulucci v. Liberty Mutual Fire Ins. Co.*, 190 F.Supp.2d 1312 (M.D. Fla. 2002) citing *State Farm Fire & Cas. Co. v. Metropolitan Dade County*, 639 So. 2d 63 (Fla. Dist. Ct. App. 1994).
- When two *dependent* events occur to cause damage, the Courts will apply the efficient proximate cause doctrine. *Paulucci v. Liberty Mutual Fire Ins. Co.*, 190 F.Supp.2d 1312 (M.D. Fla. 2002) citing *Hartford Accident and Indemnity Co. v. Phelps*, 294 So. 2d 362, 364 (Fla. Dist. Ct. App. 1974).
- Policy exclusions that do not cover shrubs and trees damaged by hurricane are upheld. *State Farm Fire & Cas Co. v. Goldstein*, 674 So. 2d 880 (Fla. Dist. Ct. App. 1996).
- Court reviewed earth movement and surface water exclusions under commercial insurance policy and held that the exclusions did not apply where an insured's expert had defined the terms of the exclusions so narrow as to be inapplicable to the loss. *West American Ins. Co. v. Rauch*, 412 So. 2d 956 (Fla. Dist. Ct. App. 4th DCA 1982).



C. Florida Department of Insurance

There have been no specific declarations from the Florida Department of Insurance on Hurricane Katrina; however, the department issued several press releases in other hurricanes occurring in 2004. These can be found at the Florida Office of Insurance Regulation, a division of the Florida Department of Financial Affairs, at <http://www.fldfs.com/companies>.

V. Louisiana: Handling the Causation Question

A. Efficient Proximate Cause

The state of Louisiana also adheres, in the absence of contrary policy language, to the rule of efficient proximate cause. This is demonstrated by the case of *Roach-Strayhan-Holland Post No. 20, American Legion Club, Inc. v. Continental Ins. Co. of New York*.³¹ A building owned by the insured had collapsed and the insured filed a claim with the windstorm insurer. Several lay witnesses testified at trial to excessive winds in the area on the night of the collapse. The insurer countered in two ways. First, it presented evidence of the decayed state of the building in order to show an alternative cause of the collapse. Second, it also presented expert testimony as to the weather conditions in the area on the night of the storm, testimony that painted a far different picture than that of the lay witnesses. The Court held that to recover under a windstorm policy, the insured must show that the windstorm was the proximate or efficient cause of the damage, notwithstanding that other factors also contributed. The judgment of the trial court finding coverage under the windstorm policy was affirmed.

A more recent Louisiana case on causation between the loss and a covered peril is *Lorio v. Aetna Ins. Co.*³² In *Lorio*, a horse owner sued an insurer for the death of a horse in the aftermath of Hurricane Betsy. The horse's stall was damaged in the storm, but the horse was not injured. The horse was then housed in new quarters located next to the feed stall. Four days later, the horse broke into the feed stall and ate enough wheat to cause its demise. The question for the Court was whether the horse's death was proximately caused by the windstorm that had damaged its stall. The Court held that it was not, although it stated in dictum that had the feed stall been damaged in the storm and that damage allowed the horse to enter due to the weakened structural condition, the horse's death would have been a covered loss. Under the facts in evidence, the cause of the horse's death was simply the horse's propensity to eat wheat, even to fatal excess.

B. Language Employed in Insuring Agreement and Exclusions

Armed with the causation analysis employed in *Lorio*, the state's Court of Appeals for the Fourth Circuit considered another Hurricane Betsy claim in *Milton v. Main Mutual Ins. Co. of Illinois*.³³ In *Milton*, an insured made a claim for total loss of his automobile where a carport fell onto the auto during the storm, and the vehicle was

³¹237 La. 973, 112 So. 2d 680 (La. 1959).

³²255 La. 721, 232 So. 2d 490 (La. 1970).

³³261 So. 2d 723 (La. Ct. App. 1972).



thereafter inundated by flood waters. Flooding was excluded under the auto policy. The Court stated that language such as “directly resulting,” “direct loss,” and “direct result” used in windstorm policies have the same meaning as “proximate cause” in negligence cases. There was no evidence presented that the vehicle would not have sustained the same damage due to rising water even if the carport had fallen. The Court found it unlikely a homeowner would have ventured out in the middle of a hurricane to move the vehicle even if it had not been trapped by the fallen carport. While coverage did exist for the damage caused to the vehicle by the falling carport, it did not exist for the flooding thereafter as a windstorm was not the proximate cause of damage from rising water.

Louisiana courts have also commented upon specific language employed in exclusionary clauses and the breadth (or lack) thereof. In *Paul Foshee Dusting Company, Inc. v. Byron*,³⁴ an insured sought coverage under a policy claiming that the loss of a crop dusting plane which burned after striking the ground was not a “crash” or “collision” (which were excluded). Rather, the loss was simply a hard landing which had gone awry. While close to the ground in the midst of dusting operations, the plane had become caught in another plane’s propwash, struck the ground, nosed over, and caught fire. The policy excluded loss “caused by or resulting from collision or crash.” The Court found that the words “resulting from” added significantly to the meaning of the exclusion, and reversed the trial court’s finding of coverage. The Court also largely relied upon analogous case law from other states in coverage cases arising from aircraft losses.

C. Louisiana Valued Policy Law

In a case stemming from Hurricane Andrew, the Fifth Circuit Court of Appeals considered a case where a building was purchased for \$75,000.00 one month before the storm but was insured at the insurer’s insistence for \$160,000.00.³⁵ The building was rendered a total loss. Under Louisiana’s valued policy law, the Court determined that the loss was the face value of the policy, not the purchase price of the building.³⁶

D. Recent Hurricane Cases

Southern Hotels Limited Partnership v. Lloyd’s Underwriters at London Companies, 1997 WL 325972 (E.D. La. 1997). An insured operated a hotel in Harvey, Louisiana outside New Orleans near the Mississippi River. Hurricane Andrew struck in 1992, and the area experienced rainfall and winds of 54 mph. A windstorm policy excluded flooding, though the hotel maintained a separate flood policy. The largest issue arose over damage to the roof and corresponding water damage. The insured claimed that the leaking roof, damaged by wind in the storm, caused water damage on the first and second floors of the hotel. The insurers contended that the leaky condition of the roof pre-existed the hurricane, as evidenced by repair and maintenance records, and that the water damage was from the pre-existing leaks and, on the first floor, from flooding. The Court noted that plaintiff has the burden of proving both damage and the causal connection between the damage and the cause of loss, and that a mere possibility of

³⁴ 158 So. 2d 345 (La. Ct. App. 1963).

³⁵ *Real Asset Management, Inc. v. Lloyd’s of London*, 61 F.3d 1223 (5th Cir. 1995).

³⁶ LA. REV. STAT. ANN. § 22:695(A).



causation and damage are insufficient. The Court found that the hurricane had caused the roof to leak as prior leaks had been remedied pre-storm; however, it rejected both parties contentions on the damages, instead finding damages to the roof of approximately \$28,000.00, declining to award expenses of relocating furniture, and awarding some sums for exterior and interior repair. Exclusions in the policy for “wear and tear” and for “faulty, inadequate or defective maintenance” did not bar a recovery altogether, but the plaintiff can recover only that which will restore the property to its pre-loss condition. A fact-intensive opinion but useful for analyzing the types of evidence the Court will examine in determining wind vs. flood damage.

More recently, the state’s Fifth Circuit Court of Appeals considered a hurricane claim with flood and windstorm components arising from Hurricane Georges, which struck in 1998. In *Urrate v. Argonaut Great Central Ins. Co.*, 881 So. 2d 787 (La. Ct. App. 2004), a restaurant built on the shores of Lake Pontchartrain suffered damage. The Argonaut policy covered windstorm damage, but excluded damage from tidal waves. The restaurant maintained separate flood insurance. Both the windstorm insurer and the flood insurer determined that most damage was from wave and water action, but both also found at least some wind damage. The trial court found for the plaintiff, determining that the Argonaut policy had coverage for glass breakage and, therefore, covered the replacement of windows. Wind speeds were recorded in the area between 46 and 55 mph. The trial court also awarded additional amounts for business interruption coverage, as the back of the building was destroyed and the roof had sustained wind damage. An apportionment of the business interruption amounts was made between Argonaut and the flood carrier. These findings by the trial court were affirmed on appeal.

E. Other Louisiana Hurricane Decisions of Note

Loyola University v. Sun Underwriters Ins. Co. of New York, 93 F. Supp. 186 (E.D. La. 1950). Insured sued for damage to camp built on pilings as well as wharf attached thereto. Damage occurred in 1947 hurricane in St. Bernard Parish, Louisiana. Wind velocity in the area of the property was 100 mph, and water began to rise 2 hours after the hurricane force winds. The court determined that the structures were destroyed by wind.

Where an insured produces an eye witness whose testimony proves that the wind, and not the waves, destroyed the insured property, proof is made of damage or destruction coming within the coverage of the policy, but where a witness testifies only to seeing a part of the insured property destroyed by the wind, that is not full proof of destruction of the other property by the wind, but such testimony is evidence to be considered with the other evidence in the case.

Id. at 190.

The decision was affirmed by the 5th Circuit Court of Appeals in a very brief opinion at 196 F.2d 169 (5th Cir. 1952).



Morehead v. Allstate Insurance Company, 406 F.2d 122 (5th Cir. 1969). A dwelling was rendered a total loss in Hurricane Betsy. The trial court, sitting without a jury, found that the loss was caused not by wind, but by the house having floated from its piers and settling on the ground. The 5th Circuit affirmed in a brief opinion. A rare win for the windstorm insurer in a case arising from a hurricane.

Lamastus & Assoc., Inc. v. Gulf Ins. Co., 260 So. 2d 83 (La. Ct. App. 1972)(insurers sharing risk must pay pro rata share of loss based upon face value of policy).

Ebert v. Pacific Nat. Fire Ins. Co., 40 So. 2d 40 (La. Ct. App. 1949)(Court takes judicial notice of the “unusual severity” of the hurricane of 1947, reverses dismissal of suit on windstorm policy).

Picone v. Manhattan Fire & Marine Ins. Co., 218 La. 546, 50 So. 2d 188 (La. 1950)(judgment in favor of insured in wind versus flood case affirmed, arose from hurricane of 1947).

Smith v. Westchester Fire Ins. Co. of New York, 227 La. 812, 80 So. 2d 418 (La. 1955)(affirmed judgment in favor of insured in case arising from hurricane of 1947 but awarding only minimal damages as most damage caused by gradual subsidence of soil, not winds).

Riddle v. Allstate Ins. Co., 203 So. 2d 820 (La. Ct. App. 1967)(reversing dismissal of insured’s suit seeking to recover under policy covering personal property located at office during Hurricane Betsy, with Court of Appeals taking judicial notice of the storm’s severity including 150 mph winds).

Prejean v. Trinity Universal Ins. Co., 210 So. 2d 395 (La. Ct. App. 1968)(where plaintiff’s proof showed damage by wind after Hurricane Betsy, it is incumbent on defendant to prove damage caused by settlement or earth movement as per exclusions).

Cruz v. Hanover Ins. Co., 239 So. 2d 468 (La. Ct. App. 1970)(eyewitnesses testifying to damage during windstorm create a rebuttable presumption of causality, and said presumption must be rebutted by insurer).

VI. Conclusion

It is important to note that as insurers and policyholders face the aftermath of this storm, all involved should recognize that there are lives turned upside down. The last thing on a policyholder’s mind will be the language of his insurance policy. Full awareness of the policy’s exclusions and the law governing their enforceability is necessary to anticipate the outcome of the battle. If there is a moral to this overview, perhaps it is the proposition that despite the validity of contract exclusions, a jury will likely be the determining factor in what peril caused the loss and in assessing the damages accordingly. Knowing this fact, those affected may be better prepared to deal with the battle after the storm.



MEMBERSHIP IN THE
LOUISIANA
HOUSE OF REPRESENTATIVES
1812 - 2020

Revised – May 21, 2019

David R. Poynter Legislative Research Library
Louisiana House of Representatives



PREFACE

This publication is a result of research largely drawn from *Journals* of the Louisiana House of Representatives and *Annual Reports* of the Louisiana Secretary of State. Other information was obtained from the book, *A Look at Louisiana's First Century: 1804-1903*, by Leroy Willie, and used with the author's permission.

The David R. Poynter Legislative Research Library also maintains a database of House of Representatives membership from 1900 to the present at <http://drplibrary.legis.la.gov> . In addition to the information included in this biographical listing the database includes death dates when known, district numbers, links to resolutions honoring a representative, citations to resolutions prior to their availability on the legislative website, committee membership, and photographs. The database is an ongoing project and more information is included for recent years.

Early research reveals that the term *county* is interchanged with *parish* in many sources until 1815. In 1805 the Territory of Orleans was divided into counties. By 1807 an act was passed that divided the Orleans Territory into parishes as well. The counties were not abolished by the act. Both terms were used at the same time until 1845, when a new constitution was adopted and the term "parish" was used as the official political subdivision.

The legislature was elected every two years until 1880, when a sitting legislature was elected every four years thereafter. (See the chart near the end of this document.)

The War of 1812 started in June of 1812 and continued until a peace treaty in December of 1814. No legislature met in 1813. The historic Battle of New Orleans was fought in January of 1815, preventing a legislature from meeting in that year as well. During the Civil War there were two elected legislatures meeting simultaneously. (See the chart near the end of this document.)

In 1877 the Republican and Democratic parties convened two separate legislatures in New Orleans. The Republican legislature lost strength as a result of President Ulysses S. Grant refusing to send military forces to support the Republican legislature. In disappointment, many Republicans either changed party or simply decided to attend the Democratic legislature. Newly inaugurated president, Rutherford B. Hayes, withdrew all federal troops from Louisiana in April of 1877. This was the beginning of the end of the Reconstruction Era in Louisiana.

Membership lists for 1877 are based on the *Journal* for the 1877 Extraordinary Session. Information for the Regular Session is not available. Either the *Journal* was not published for that legislative session, or it has become a rare publication that cannot be found.



Members of the Orleans Parish delegation are listed by district number as well as political party from 1944 to the present. District numbers for East Baton Rouge, Jefferson, and Lafayette Parishes are listed beginning 2012. All districts are listed beginning with the 2016-2020 term.

This is a work in progress. As more information is found it is entered or corrected. *Journals* list the election and oath of office taken by legislators on the first day of a legislative session, in most cases. However, one must read the entire *Journal* proceedings for each session to learn of the death, resignation, election challenges, and unseating of members. This has not yet been done for all the years listed. The period from 1861 (Civil War) until 1880 (through Reconstruction) is especially difficult to research since there were *Journals* listing delegates, with no parish or party designation. During the Civil War, there were two legislatures meeting simultaneously, with few records documenting the Confederate legislature, which met in north Louisiana.

Additional information from the Louisiana public on the legislative membership is encouraged and invited by writing to:

Library Director
David R. Poynter Legislative Research Library
P.O. Box 94012
Baton Rouge, LA 70804-9012

You may also contact the library by e-mail at drplibrary@legis.la.gov. Please use a subject line of House Membership.



Abbreviations Used in This Publication:

E.S.	Extraordinary Session
R.S.	Regular Session
D	Democrat
R	Republican
I	Independent
Ind Dem	Independent Democrat
Pop	Populist
Pro	Progressive

Symbols Used in This Publication:

*	African-American descent
!	Woman
* !	Woman of African-American descent



1988-1992	A. Jess Smith.	D
1992-1996	Bryant O. Hammett, Jr.	D
	Charles McDonald.	D
	Francis C. Thompson.	D
1996-2000	Bryant O. Hammett, Jr.	D
	Charles McDonald.	D
	Francis C. Thompson.	D
2000-2004	Bryant O. Hammett, Jr.	D
	Charles McDonald.	D
	Francis C. Thompson.	D
2004-2008	Bryant O. Hammett, Jr. (resigned 2006)	D
	John F. "Andy" Anders (vice Hammett)	D
	Charles McDonald.	D
	Francis C. Thompson.	D
2008-2012	John F. "Andy" Anders	D
	Charles R. "Bubba" Chaney (changed party affiliation from D, Feb. 2011)	R
	Samuel "Sam" P. Little	R
2012-2016	John F. "Andy" Anders	D
	Charles R. "Bubba" Chaney	R
2016-2020	John F. "Andy" Anders	D 21
	Charles R. "Bubba" Chaney	R 19



1948-1952	Henry C. Sevier.	D
1952-1956	Edgar H. Lancaster, Jr.	D
1956-1960	Edgar H. Lancaster, Jr.	D
1960-1964	Edgar H. Lancaster, Jr.	D
1964-1968	Edgar H. Lancaster, Jr.	D
1968-1972	S. S. DeWitt.	D
	Lantz Womack.	D
1972-1976	Benny Gay Christian (resigned 1974).	D
	Francis C. Thompson (vice Christian, 1975).	D
1976-1980	Francis C. Thompson.	D
1980-1984	Francis C. Thompson.	D
1984-1988	Francis C. Thompson.	D
1988-1992	Francis C. Thompson.	D
1992-1996	Bryant O. Hammett, Jr..	D
	Francis C. Thompson.	D
1996-2000	Bryant O. Hammett, Jr..	D
	Francis C. Thompson.	D
2000-2004	Bryant O. Hammett, Jr..	D
	Francis C. Thompson.	D
2004-2008	Bryant O. Hammett, Jr. (resigned 2006).	D
	John F. "Andy" Anders (vice Hammett).	D
	Francis C. Thompson.	D
2008-2012	John F. "Andy" Anders.	D
	Charles R. "Bubba" Chaney (changed party affiliation from D, Feb. 2011).	R



1988-1992	John C. Ensminger (resigned 1991; elected state senator)...	R
	Charles McDonald (vice Ensminger, 1991).....	D
	A. Jess Smith.	D
1992-1996	Jay McCallum.	D
	Charles McDonald.	D
	Francis C. Thompson.....	D
1996-2000	Jay McCallum.	D
	Charles McDonald.	D
	Francis C. Thompson.....	D
2000-2004	Jay McCallum (resigned 2003).	D
	Hollis Downs (vice McCallum).....	R
	Charles McDonald.	D
	Francis C. Thompson.....	D
2004-2008	Charles McDonald.	D
	Francis C. Thompson.....	D
2008-2012	Charles R. "Bubba" Chaney (changed party affiliation from D, Feb. 2011).	R
	Samuel "Sam" P. Little.....	R
2012-2016	Charles R. "Bubba" Chaney.....	R
	Katrina R. Jackson.	* ! D
	John C. "Jay" Morris, III.	R
2016-2020	Charles R. "Bubba" Chaney.....	R 19
	Katrina R. Jackson.	* ! D 16
	John C. "Jay" Morris, III.	R 14



1976-1980	Jimmy N. Dimos.	D
	John C. Ensminger.	D
	E. L. "Bubba" Henry (Speaker).	D
	Thomas W. Humphries.	D
	Shady R. Wall.	D
1980-1984	Jimmy N. Dimos.	D
	John C. Ensminger.	D
	Jamie Fair.	D
	Charles D. Jones.	* D
	Shady R. Wall.	D
1984-1988	Evelyn K. Blackmon.	! D
	Jimmy N. Dimos.	D
	John C. Ensminger.	(1972-1985) D, (1985-) R
	Charles D. Jones.	* D
1988-1992	Charles Anding.	D
	Jimmy N. Dimos (Speaker).	D
	John C. Ensminger (resigned 1991; elected state senator). .	R
	Charles McDonald (vice Ensminger, 1991)..	R
	Charles D. Jones.	* D
1992-1996	Rodney Alexander.	D
	Charles Anding.	D
	Jimmy N. Dimos.	D
	Willie Hunter, Jr..	* D
	Charles McDonald.	D
	Francis C. Thompson.	D
1996-2000	Rodney Alexander.	D
	Jimmy N. Dimos (resigned 1999; not replaced).	D
	Willie Hunter, Jr..	* D
	Charles McDonald.	D



1996-2000	Francis C. Thompson.....	D
(continued)	Mike Walsworth.....	R
2000-2004	Rodney Alexander (resigned 2003; elected US Congress). .	D
	James R. "Jim" Fannin.....	D
	Willie Hunter, Jr.....	* D
	Kay Kellogg Katz.	! R
	Charles McDonald.....	D
	Francis C. Thompson.....	D
	Mike Walsworth.....	R
2004-2008	James R. "Jim" Fannin.....	D
	Willie Hunter, Jr.....	* D
	Kay Kellogg Katz.	! R
	Charles McDonald.....	D
	Francis C. Thompson.....	D
	Mike Walsworth.....	R
2008-2012	Charles R. "Bubba" Chaney (changed party affiliation from D, Feb. 2011).	R
	James R. "Jim" Fannin.....	D
	Frank A. Hoffman.	R
	Rosalind D. Jones.	* ! D
	Kay Kellogg Katz.	! R
	Samuel "Sam" P. Little.	R
2012-2016	Charles R. "Bubba" Chaney.....	R
	James R. "Jim" Fannin.....	D
	Frank A. Hoffman.	R
	Marcus L. Hunter.....	* D
	Katrina R. Jackson.....	* ! D
	John C. "Jay" Morris, III.	R



1972-1976	Benny Gay Christian (resigned 1974).	D
	Francis C. Thompson (vice Christian, 1975).. . . .	D
	Lantz Womack.. . . .	D
1976-1980	N.L. "Lanny" Johnson.	D
	Francis C. Thompson.. . . .	D
1980-1984	Francis C. Thompson.. . . .	D
	Glen L. Williams.	D
1984-1988	Francis C. Thompson.. . . .	D
1988-1992	Francis C. Thompson.. . . .	D
1992-1996	Francis C. Thompson.. . . .	D
1996-2000	Francis C. Thompson.. . . .	D
2000-2004	Francis C. Thompson.. . . .	D
2004-2008	Francis C. Thompson.. . . .	D
2008-2012	Charles R. "Bubba" Chaney (changed party affiliation from D, Feb. 2011).	R
2012-2016	Charles R. "Bubba" Chaney.. . . .	R
2016-2020	Charles R. "Bubba" Chaney.. . . .	R 19



1928-1932	Daniel F. Ashford (deceased 1930).....	D
	Joseph T. Curry (vice Ashford, 1930).....	D
1932-1936	Joseph T. Curry.....	D
1936-1940	Joseph T. Curry.....	D
1940-1944	Joseph T. Curry.....	D
1944-1948	J. C. Seaman.....	D
1948-1952	J. C. Seaman.....	D
1952-1956	J. C. Seaman.....	D
1956-1960	J. C. Seaman.....	D
1960-1964	J. C. Seaman.....	D
1964-1968	S. S. DeWitt.....	D
1968-1972	S. S. DeWitt.....	D
	Lantz Womack.....	D
1972-1976	Lantz Womack.....	D
1976-1980	N. L. "Lanny" Johnson.....	D
1980-1984	Glen L. Williams.....	D
1984-1988	Al Ater.....	D
	Francis C. Thompson.....	D
1988-1992	Al Ater.....	D
	Francis C. Thompson.....	D
1992-1996	Bryant O. Hammett, Jr.. ..	D
	Francis C. Thompson.....	D
1996-2000	Bryant O. Hammett, Jr.. ..	D
	Francis C. Thompson.....	D
2000-2004	Bryant O. Hammett, Jr.. ..	D
	Francis C. Thompson.....	D



1988-1992	A. Jess Smith.	D
1992-1996	Charles McDonald.	D
	Francis C. Thompson.	D
1996-2000	Charles McDonald.	D
	Francis C. Thompson.	D
2000-2004	Charles McDonald.	D
	Francis C. Thompson.	D
2004-2008	Charles McDonald.	D
	Francis C. Thompson.	D
2008-2012	Charles R. "Bubba" Chaney (changed party affiliation from D, Feb. 2011).	R
	Samuel P. "Sam" Little.	R
2012-2016	Charles R. "Bubba" Chaney.	R
2016-2020	Charles R. "Bubba" Chaney.	R 19



1932-1936	Allen Joseph Ellender	TERREBONNE
1936-1940	Lorris M. Wimberly	BIENVILLE
1940-1947	Ralph Norman Bauer	ST. MARY
1948-1950	Morris A. Lottinger, Sr.	TERREBONNE
1950-1952	Lorris M. Wimberly	BIENVILLE
1952-1956	Clarence C. "Taddy" Aycock	ST. MARY
1956-1957	Lorris M. Wimberly	BIENVILLE
1957-1960	Robert Angelle	ST. MARTIN
1960-1964	J. Thomas Jewell	POINTE COUPEE
1964-1967	Vail Montgomery Delony	EAST CARROLL
1968-1972	John Sydney Garrett	CLAIBORNE
1972-1980	E. L. "Bubba" Henry	JACKSON
1980-1984	John J. Hainkel, Jr.	ORLEANS
1984-1988	John A. Alario, Jr.	JEFFERSON
1988-1992	Jimmy N. Dimos	OUACHITA
1992-1996	John A. Alario, Jr.	JEFFERSON
1996-2000	Huntington B. "Hunt" Downer, Jr.	TERREBONNE
2000-2004	Charles W. "Charlie" DeWitt	RAPIDES

