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August 30, 2018

**VIA EMAIL ONLY**

Mr. Ronald J. Scalise, Jr.  
A.D. Freeman Prof. of Civil Law  
Tulane University Law School  
Weinmann Hall 216-B  
6329 Freret Street  
New Orleans, LA 70118

Ms. Mallory Waller  
Coordinator of Research  
Louisiana State Law Institute  
Room W127  
Paul M. Hebert Law Center  
Baton Rouge, LA 70803-1016

Re: HCR 89

Dear Prof. Scalise & Ms. Waller:

I have been retained by United Policyholders - a non-profit 501(c)(3) organization that serves as a voice and information resource for individual and business insurance consumers in all 50 states - to forward the enclosed Position Paper for your review and consideration in support application of a ten-year prescriptive period to an insured's bad faith claims against its insurer.

Should you have any questions, please contact me.

With kindest wishes and best regards I remain

Sincerely,



G. ANDREW VEAZEY

GAV

Enclosures

cc: Ms. Amy Bach (via email only)

2018 Regular Session

HOUSE CONCURRENT RESOLUTION NO. 89

BY REPRESENTATIVES LEGER AND GAROFALO

A CONCURRENT RESOLUTION

To urge and request the Louisiana State Law Institute to study the laws of prescription as they apply to violations of the duty of good faith and fair dealing to the persons insured by insurance companies, and to submit a written report of its findings and recommendations to the legislature.

WHEREAS, insurance companies owe a duty of good faith and fair dealing to the persons they insure; and

WHEREAS, many states, including Louisiana, have enacted laws to ensure such good faith and fair dealing with the insured; and

WHEREAS, it is in the best interest of the citizens of the state of Louisiana for there to exist certainty in the application of laws related to prescriptive periods for claims against insurance companies for violations of the obligation of good faith and fair dealing, and the issue of the applicable prescriptive period continues to be litigated by parties in Louisiana courts; and

WHEREAS, depending on whether a court determines the claim to be based in tort or contract may result in a court applying either a one-year or ten-year prescriptive period; and

WHEREAS, it would be beneficial to the Legislature of Louisiana to know the history of how these claims are treated, both across the nation and within Louisiana.

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby urge and request the Louisiana State Law Institute to study the laws of prescription and other similar laws throughout the United States as they apply to violations of the duty of good faith and fair dealing to the persons insured by insurance companies, and to submit a written

report of its findings and recommendations to the legislature no later than February 1, 2019, in order to clarify the law with respect to the applicable prescriptive period in Louisiana.

BE IT FURTHER RESOLVED that a suitable copy of this Resolution be transmitted to the director of the Louisiana State Law Institute.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE

## HCR 89

### Support for a Ten-Year Prescriptive Period

#### I. The great weigh of Louisiana authority supports application of a ten-year prescriptive period to an insured’s “bad faith” claims against its insurer.

“The proper prescriptive period to be applied in any action depends upon the nature of the cause of action. It is the nature of the duty breached that should determine whether the action is in tort or in contract.”<sup>1</sup> Tort duties are “general duties owed to all persons,” whereas contractual duties are “special obligation[s] contractually assumed by the obligor.”<sup>2</sup>

Because an insured’s bad faith claim arises from a breach of duties implied in the contract, the resulting cause of action should be subject to a ten-year prescriptive period. The following cases and authorities support the proposition that the applicable prescriptive period for an insured’s “bad faith” claim is ten years:

- (1) *Kelly v. State Farm Fire & Casualty Co.*, 2014-1921 (La. 5/5/15), 169 So. 3d 328, wherein the Louisiana Supreme Court held that:
  - (a) “[T]he basis for an insured’s cause of action [under La. R.S. § 22:1973 is] a breach of the implied covenant of good faith and fair dealing;”<sup>3</sup>
  - (b) The duty of good faith and fair dealing arises from “the contract between the parties;”<sup>4</sup>
  - (c) “[I]t is not the statute [La. R.S. § 22:1973] that creates the insured’s cause of action against the insurer;”<sup>5</sup> and

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<sup>1</sup> *Roger v. Dufrene*, 613 So.2d 947, 948 (La. 1993).

<sup>2</sup> *Robertson v. Sun Life Fin.*, 2012-2003 (La. App. 1 Cir. 9/13/13), 187 So. 3d 473; *Bd. of Sch. Directors of Union Par. v. Trimble*, 32 La. Ann. 793, 795 (1880) (holding that a breach of a duty implied in the contract is subject to a ten-year prescriptive period because “[t]he distinction between damages *ex delicto* and *ex contractu* is, that the latter ensue from the breach of a special obligation, and the former from the violation of a general duty”).

<sup>3</sup> *Kelly*, 169 So. 3d at 336 (emphasis added). See also *Katie Realty, Ltd. v. Louisiana Citizens Prop. Ins. Corp.*, 2012-0588 (La. 10/16/12), 100 So. 3d 324, 329 (“La. Rev. Stat. § 22:1973 imposes a duty of good faith and fair dealing and outlines the acts, which, if knowingly committed, constitute a breach thereof . . .”).

<sup>4</sup> *Kelly*, 169 So. 3d at 335 – 36 (quoting *Theriot v. Midland Risk Ins. Co.*, 694 So. 2d 184, 193 (La. 1997)) (emphasis added). See also La. C.C. art. 1983 (“Contracts must be performed in good faith”).

<sup>5</sup> *Kelly*, 169 So. 3d at 336 (quoting *Stanley v. Trincharde*, 500 F. 3d 411, 427 (5th Cir. 2007)) (emphasis added).

- (d) The duty of good faith and fair dealing is a special duty owed only to insureds, not a general duty owed to all persons.<sup>6</sup>
- (2) More than forty Louisiana state and federal cases which hold that a “threshold requirement” for an insured’s “bad faith” claim is a “valid, underlying, substantive claim upon which insurance coverage is based.”<sup>7</sup> This limitation derives from the view that the insured’s “bad faith” claims sound in contract, rather than tort because:
- (a) The duty of good faith and fair dealing does not exist absent a contract;<sup>8</sup>
- (b) Even if the insurer’s conduct is negligent, reckless, intentional, or malicious, there is no basis for complaint if there is no coverage under the contract; and
- (c) The “bad faith” statutes merely recognize a duty owed by an insurer, implied in contract, to perform its express contractual obligations in good faith.<sup>9</sup> The implied duty *supplements* the express contractual covenants by prohibiting an insurer “from engaging in conduct which (while not technically transgressing the express covenants) frustrates the other party’s rights to the benefits of the contract.”<sup>10</sup> Absent a right to receive policy benefits, the implied covenant of good faith and fair dealing has “nothing upon which to act as a supplement.”<sup>11</sup>

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<sup>6</sup> *Id.* at 332 – 33 (“Despite the broad wording of Section 22:1973(A), it does not give a third-party claimant the right to sue an insurer for a generalized breach of its duty of good faith and fair dealing.”); *Certain Underwriters at Lloyd’s, London v. Sea-Lar Mgmt., Inc.*, 2000-1512 (La. App. 4 Cir. 5/9/01), 787 So.2d 1069, 1076 (a breach of the implied duty of good faith and fair dealing is a breach of a ‘special duty’ and, thus, subject to a ten-year prescriptive period); *White v. State Farm Mut. Auto. Ins. Co.*, 479 Fed. Appx. 556 (5th Cir. 2012) (“claims alleging breach of a contractual duty in bad faith [are] a species of breach-of-contract claim rather than one sounding in tort.”).

<sup>7</sup> *See* Exhibit A.

<sup>8</sup> *Kelly*, 169 So. 3d at 332 – 33. *See also Dorsey v. N. Life Ins. Co.*, 2005 WL 2036738, at \*14 (E.D. La. Aug. 15, 2005) (“With respect to a breach of the duty of good faith and fair dealing, defendants correctly note that such a claim does not support a tort claim pursuant to article 2315. Pursuant to both Louisiana and Washington law, the duty of good faith and fair dealing does not exist absent a contract.”).

<sup>9</sup> *See* La. C.C. art. 1983 (“Contracts must be performed in good faith.”).

<sup>10</sup> *Love v. Fire Ins. Exch.*, 221 Cal. App.3d 1136, 1153 (Ct. App.1990)

<sup>11</sup> *Id.* (“when benefits are due an insured, delayed payment based on inadequate or tardy investigations, oppressive conduct by claims adjusters seeking to reduce the amounts legitimately payable and numerous other tactics may breach the implied covenant because it frustrates the insured’s *primary* right to receive the benefits of his contract—*i.e.*, prompt compensation for losses. Absent that primary right, however, the *auxiliary* implied covenant has nothing upon which to act as a supplement and should not be endowed with an existence independent of its contractual underpinnings.”). *See also Arceneaux v. State Farm Fire & Cas. Co.*, 2009 WL 959948, at \*3 (E.D. La. Apr. 7, 2009) (“Although the Court agrees with Plaintiffs that LA R.S. § 22:1973 imposes an additional duty of good faith and fair dealing on insurers, this duty does not exist ‘separate and apart’ from an insurer’s contractual obligations. The duty of good faith is intimately

- (3) La. C.C. art. 3499’s directive that “[u]nless otherwise provided by legislation, a personal action is subject to a liberative prescription of ten years,” and the fact that there is currently no legislation establishing a prescriptive period for actions under La. R.S. §§ 22:1973 and 22:1892.
- (4) The following cases, which hold that a ten-year prescriptive period applies to an insured’s “bad faith” claims:
- (a) *Cantrelle Fence & Supply Co., Inc. v. Allstate Ins. Co.*, 550 So. 2d 1306 (La. App. 1 Cir. 1989), *writ denied*, 559 So. 2d 123 (La. 1990) (ten-year prescriptive period applied to an insured’s claim under La. R.S. § 22:1892’s predecessor);
  - (b) *Keith v. Comco Ins. Co.*, 574 So. 2d 1270 (La. App. 2 Cir. 1991), *writ denied*, 577 So. 2d 16 (La. 1991) (ten-year prescriptive period applied to an insured’s claim for a bad faith failure to settle, which is actionable under La. R.S. § 22:1973(A));
  - (c) *We Sell Cars Used Cars, Inc. v. United National Insurance Co.*, 30,671 (La. App. 2 Cir. 6/24/98), 715 So. 2d 656 (ten-year prescriptive period applied to an insured’s claim under La. R.S. § 22:1892’s predecessor);
  - (d) *Wooten v. Cent. Mut. Ins. Co.*, 166 So. 2d 747 (La. App. 3d Cir. 1964) (ten-year prescriptive period applied to an insured’s claim for a bad faith failure to settle, which is actionable under La. R.S. 22:1973(A));<sup>12</sup>
  - (e) *Aspen Specialty Insurance Co v. Technical Industries, Inc.*, 2015 WL 339598 (W.D. La. 2015) (ten-year prescriptive period applied to an insured’s claim under La. R.S. § 22:1973);
  - (f) *Prudhomme v. Geico Ins. Co.*, 2015 WL 2345420 (W.D. La. 2015) and 2018 WL 1371240 (W.D. La. 2018) (ten-year prescriptive period applied to an insured’s claim under La. R.S. §§ 22:1973 and 22:1892);
  - (g) *Brooks v. Safeco Ins. Co. of Am.*, 2017 WL 8944056 (M.D. La. 2017) (“claims of bad faith under La. R.S. § 22:1973 are governed by La. Civ. Code art. 3499’s ten-year prescriptive period.”).
- (5) Louisiana’s leading insurance law treatise, which confirms that “[u]nless otherwise provided by statute, claims under the penalty statutes prescribe in ten years.”<sup>13</sup>

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related to State Farm’s contractual obligations, as the statute essentially imposes a duty on the insurer to perform its contractual obligations in good faith. In the absence of a contractual duty, the duty of good faith simply does not exist.”).

<sup>12</sup> *Kelly*, 169 So. 3d at 336 (“the legislature essentially codified within La. R.S. 22:1973(A) a jurisprudentially-recognized cause of action in favor of insureds for an insurer’s bad faith failure to settle.”)

<sup>13</sup> William S. McKenzie & H. Alston Johnson, *Insurance Law and Practice*, 15 Louisiana Civil Law Treatise § 11:25 (4th Ed. 2014).

- (6) Materials presented at a March 2018 seminar hosted by the Louisiana Judicial College, which confirm that the proper prescriptive period for an insured's bad faith claim is ten years.<sup>14</sup>
- (7) The Louisiana Supreme Court's holding in *Illinois Cent. R. Co. v. New Orleans Terminal Co.*, 78 So. 738, 740 (1918), that "there is no reason why the breach of a contract by means of a tort should not furnish ground for an action for breach of contract."
- (8) Well-settled Louisiana law that "[s]tatutes regulating prescription are strictly construed against prescription and in favor of the obligation sought to be extinguished,"<sup>15</sup> and that "any doubt about the applicability of a prescriptive statute should be resolved in favor of maintaining the obligation."<sup>16</sup>

Opponents of a ten-year prescriptive period often rely on *Zidan v. USAA Prop. & Cas. Ins. Co.*, 622 So. 2d 265 (La. App. 1 Cir. 1993), *writ denied*, 629 So.2d 1138 (La. 1993), and its progeny as proof that a ten year prescriptive period applies to an insured's "bad faith" claims.<sup>17</sup> However, *Zidan* did not involve *an insured's* "bad faith" claims.<sup>18</sup> Instead, the plaintiff in *Zidan* was a tort victim asserting "bad faith" claims against *another parties' insurer* (i.e., a "third-party claimant").<sup>19</sup> That distinction is crucial because "[i]t is the nature of the duty breached that should

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<sup>14</sup> Michael L. DuBos & Eulis Simien, *Jazz and a Second Line: Non-Compensatory Damages*, March 16, 2018 Louisiana Judicial College Evidence & Procedure Seminar

<sup>15</sup> *Mallett v. McNeal*, 2005-2289 (La. 10/17/06), 939 So.2d 1254, 1258.

<sup>16</sup> *St. Charles Par. Sch. Bd. v. GAF Corp.*, 512 So.2d 1165, 1169 (La. 1987), vacated on other grounds on reh'g (Aug. 7, 1987). See also *Woodlawn Park Ltd. P'ship v. Doster Const. Co., Inc.*, 623 So.2d 645, 648 (La. 1993) ("A court should resolve doubts about a peremptory exception by overruling the exception (or referring the exception to the merits) and affording the litigant its day in court.").

<sup>17</sup> See, e.g., *Yates v. SW. Life Ins. Co.*, 1998 WL 61033 (E.D. La. 1998); *Rodriguez v. Travelers Ins. Co.*, 2002 WL 31409452 (E.D. La. 2002); *Brown v. Protective Life Ins. Co.*, 353 F.Supp.2d 739 (E.D. La. 2004); *Marketfare Annunciation, LLC v. United Fire & Cas. Co.*, 2007 WL 837202 (E.D. La. 2007); *Harrell v. Fidelity Sec. Life Ins. Co.*, 2008 WL 170269 (E.D. La. 2008); *Ross v. Hanover Ins. Co.*, 2009 WL 2762713 (E.D. La. 2009); *Lundy Enterprises, L.L.C. v. Wausau Underwriters Ins. Co.*, 2009 WL 5217412 (E.D. La. 2009); *PNC Bank N.A. v. Fid. Nat. Title Ins. Co.*, 2013 WL 4710486 (E.D. La. 2013).

<sup>18</sup> *Zidan*, 622 So. 2d at 266 ("Ali Zidan was a guest passenger in a motor vehicle driven by Mohammad Rawashdeh when Rawashdeh was involved in an intersectional collision with a vehicle driven by Richard Bengtson. . . . Zidan instituted this action against Richard Bengtson; USAA Property and Casualty Insurance Company (USAA), Bengtson's insurer; and Liberty Lloyds Insurance Co. (Liberty Lloyds), Rawashdeh's insurer. The petition was filed on September 18, 1991, a year and a day from the date of injury. Liberty Lloyds filed a peremptory exception raising the objection of prescription.")

<sup>19</sup> *Id.*

determine whether the action is in tort or in contract,”<sup>20</sup> and the Louisiana Supreme Court explained in *Kelly* that:

- (1) “[T]he basis for an *insured’s* cause of action [under La. R.S. § 22:1973 is] a breach of the implied covenant of good faith and fair dealing” which has its “foundation in the **contract** between the parties;”<sup>21</sup> and
- (2) “The relationship between the insurer and third-party claimant is neither fiduciary nor contractual; it is fundamentally adversarial,” therefore, “a cause of action directly in favor of a third-party claimant against a tortfeasor’s insurer is not generally recognized absent **statutory creation**.”<sup>22</sup>

Accordingly, *Zidan* and its progeny do not support a one-year prescriptive period for an *insured’s* bad faith claims.

## **II. Reducing the prescriptive period to one year would thwart the purpose of insurance, encourage opportunistic behavior, injure Louisiana’s economy, and diminish the incentive and opportunity for amicable resolution of claims.**

Insurance is different from most contractual arrangements because of the quasi-public nature of insurance,<sup>23</sup> the inability of an insured to replace the performance of an insurer who breaches the contract,<sup>24</sup> and the frequent disparity in bargaining power, information, and resources between the parties.<sup>25</sup>

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<sup>20</sup> *Roger*, 613 So. 2d at 948.

<sup>21</sup> *Kelly*, 169 So. 3d at 335 – 36.

<sup>22</sup> *Id.*

<sup>23</sup> *See Manuel v. Louisiana Sheriff’s Risk Mgmt. Fund*, 95-0406 (La. 11/27/95), 664 So.2d 81, 85 (“all liability policies exist and are ‘executed for the benefit of all injured persons.’”); n. 19, *supra*.

<sup>24</sup> In a typical contract, the non-breaching party can replace the performance of the breaching party by paying the then-prevailing market price for the counter-performance. With insurance this is not possible. *See E.I. du Pont de Nemours & Co. v. Pressman*, 679 A.2d 436, 447 (Del. 1996) (“Unlike other contracts, the insured has no ability to ‘cover’ if the insurer refuses without justification to pay a claim. Insurance contracts are like many other contracts in that one party (the insured) renders performance first (by paying premiums) and then awaits the counter-performance in the event of a claim. Insurance is different, however, if the insurer breaches by refusing to render the counter-performance. In a typical contract, the non-breaching party can replace the performance of the breaching party by paying the then-prevailing market price for the counter-performance. With insurance this is simply not possible. This feature of insurance contracts distinguishes them from other contracts.”).

<sup>25</sup> *Noble v. National Am. Life Ins. Co.*, 624 P.2d 866, 867-68 (Ariz. 1981) (“The special nature of an insurance contract has been recognized by courts and legislatures for many years . . . . An insurance policy is not obtained for commercial advantage; it is obtained as protection against calamity. In securing the reasonable expectations of the insured under the insurance policy there is usually an unequal bargaining position between the insured and the insurance company. . . . Often the insured is in an especially vulnerable economic position when such a calamity loss occurs. The whole purpose of insurance is defeated if an insurance company can refuse or fail, without justification, to pay a valid claim.”).

As purveyors of a vital public service, insurers are held to a heightened standard of conduct:

“The insurers’ obligations are . . . rooted in their status as purveyors of a vital service labeled quasi-public in nature. Suppliers of services affected with a public interest must take the public’s interest seriously, where necessary placing it before their interest in maximizing gains and limiting disbursements.... [A]s a supplier of a public service rather than a manufactured product, the obligations of good faith and fair dealing encompass qualities of decency and humanity inherent in the responsibilities of a fiduciary. Insurers hold themselves out as fiduciaries, and with the public’s trust must go private responsibility consonant with that trust.”<sup>26</sup>

Louisiana holds an insurer to “a **high fiduciary duty** to discharge its policy obligations to its insured in good faith,”<sup>27</sup> and imposes “an **affirmative duty**” on insurers “to adjust claims fairly and promptly and to make a reasonable effort to settle claims.”<sup>28</sup> The imposition of such heightened duties and of penalties arising from a **knowing** breach of those duties is “compatible with recognition of insurers’ underlying public obligations and reflects an attempt to restore balance in the contractual relationship.”<sup>29</sup>

Establishing a one-year prescriptive period for claims against insurers who **knowingly** breach their “high fiduciary duty” is inequitable, encourages opportunistic breach, and undermines the statutory scheme adopted by the Louisiana Legislature to ensure that insurers comply with their express contractual duties. It makes no sense to apply a ten-year prescriptive period to claims for an insurer’s breach of an express promise in the contract, while applying a one-year prescriptive period to claims for an insurer’s **knowing** breach of duties intended to reinforce and incentivize compliance with the express duties.

Subjecting an insured’s “bad faith” insurance claims to a one-year prescriptive period also diminishes the incentive and opportunity for amicable resolution of claims and forces insureds to file preemptive and potentially unnecessary suits to protect their interests. The following examples aptly demonstrate this point:

- (1) An insured tenders a lawsuit to its insurer for defense and indemnity on 1/1/18. The insurer begins defending the insured and issues a reservation of rights letter on **1/20/18**, wherein it knowingly misrepresents pertinent facts or policy provisions in violation of

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<sup>26</sup> Goodman & Seaton, Ripe for Decision, Internal Workings and Current Concerns of the California Supreme Court, 62 Cal. L. Rev. 309, 346-47 (1974).

<sup>27</sup> *Pareti v. Sentry Indem. Co.*, 536 So. 2d 417, 423 (La. 1988) (emphasis added).

<sup>28</sup> La. R.S. 22:1973(A) (emphasis added).

<sup>29</sup> *Egan v. Mutual of Omaha Ins. Co.*, 620 P. 2d 141, 146 (Cal. 1979), *cert. denied*, 445 U.S. 912 (1980) (citations omitted). *See also McCullough v. Golden Rule Ins. Co.*, 789 P.2d 855, 858 (Wyo. 1990).

22:1973(B)(1).<sup>30</sup> Two years later, the insurer denies coverage. **Even if the insured sues the same day coverage is denied (i.e., 1/20/20), the insured’s claims for the misrepresentations have prescribed. The insured had until 1/20/19 to sue for the misrepresentations, he did not sue until 1/20/20, and he should have sued before the denial of coverage.** Under such a short prescriptive period, the insured is forced to sue his insurer for bad faith to preserve his rights and cannot await his insurer’s coverage determination.

(2) An insured sustains catastrophic losses during a hurricane and begins to submit documentation supporting his property damage and business interruption claims on 1/1/18. The insurer wrongly refuses to cover a portion of the property damage claim on 3/1/18 but continues to adjust the remainder of the claim. A year passes, the insured is still incurring business interruption losses, and the insurer has not adjusted the entire claim. **Under a one-year prescriptive period, the insured must sue its insurer for an “arbitrary and capricious”<sup>31</sup> failure to pay on or before 3/31/19 (i.e., one year and 30 days from the insurer’s refusal to pay for a portion of the property damage claim) – even though the entire claim has not yet been adjusted.** Under this scenario, the insured is again forced into court to preserve his rights, even though the claim is still being adjusted.

Louisiana law favors compromise,<sup>32</sup> and insureds prefer an amicable and positive relationship with their insurers. Insureds and their insurers should not be forced into an atmosphere of adversity that arises in bad faith litigation *while claims are still being adjusted*. That result will do nothing more than increase premiums, burden the courts, slow payments due under policies, and make the ability to obtain insurance more difficult.

Of equal concern is an insurer’s conduct that occurs more than a year after coverage is denied and the evidence of bad faith remains unknown. Insurers who act in bad faith are not willing to disclose their conduct and it may not be until well into the litigation process, through contested

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<sup>30</sup> *Kelly*, 169 So. 3d at 342 (“A communication from the insurer that either states an untruth or fails to state the truth is contemplated by La. R.S. 22:1973(B).”).

<sup>31</sup> The words “arbitrary and capricious” simply mean “unjustified, without reasonable or probable cause or excuse.” *Louisiana Bag Co., Inc. v. Audubon Indem. Co.*, 08–0453, p. 14 (La.12/2/08), 999 So.2d 1104, 1114.

<sup>32</sup> *Salling Wiping Cloth Co., Inc. v. Sewell, Inc.*, 419 So.2d 112, 117 (La. App. 2nd Cir.1982) (compromise is “favored under the law” because it “promotes efficiency by permitting parties to resolve their differences without resorting to the judicial machinery.”).

discovery, tedious depositions, or a search through thousands of emails that insureds are able to uncover their insurer's bad faith.

Insureds pay policy premiums with the expectation that their insurers will act properly in adjusting and settling claims but can no longer rely on that expectation if a one-year prescription applies. While insurers have an "affirmative duty" to investigate,<sup>33</sup> under a one-year prescriptive period, the "affirmative duty" to investigate is effectively shifted to insureds who must now investigate their insurers' investigation or else risk forfeiting their "bad faith" claims. If an insured fails to discover the insurer's "bad faith" within a year of the act or omission at issue, the insured must then persuade a Court, at its own expense, that the claim has not prescribed.<sup>34</sup> Insureds should not be forced to spend their time and money to investigate, and search for, a breach of the duty of good faith and fair dealing immediately upon receipt of an adverse coverage letter. To do so lessens the value of the premium paid and the service the insurers are required by law to provide.

Accordingly, a one-year prescriptive period is inappropriate, and the Committee should recommend that the Louisiana Legislature eliminate any confusion over the issue, follow the great weight of Louisiana authority, and enact a statute expressly providing a ten-year prescriptive period for insureds' bad faith claims.

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<sup>33</sup> La. R.S. 22:1973(A).

<sup>34</sup> *Prevo v. State ex rel. Dep't of Pub. Safety & Corr. Div. of Prob. & Parole*, 2015-0823 (La. 11/20/15), 187 So. 3d 395, 398 ("if prescription is evident on the face of the pleadings, the burden shifts to the plaintiff to show the action has not prescribed.").

## Exhibit A

### **Cases holding that an insured has no claim for bad faith in the absence of a claim for coverage.**

1. *Clausen v. Fidelity and Deposit Co. of Maryland*, 95–504 (La. App. 1 Cir. 8/4/95), 660 So.2d 83, writ denied, 95–2489 (La.1/12/96), 666 So. 2d 320.
2. *Medine’s Collision Ctr., LLC v. Progressive Direct Ins. Co.*, 2015-1661 (La. App. 1 Cir. 7/12/16), 199 So.3d 38, 42.
3. *Lee v. Sapp*, 2017-0490 (La. App. 4 Cir. 12/6/17), 234 So.3d 122, 131.
4. *Fleming v. Am. Auto. Ass’n, Inc.*, 1999-1638 (La. App. 4 Cir. 6/21/00), 764 So. 2d 274, 284.
5. *Tatum v. Colonial Lloyds Ins. Co.*, 97-38 (La. App. 3 Cir. 10/29/97), 702 So.2d 1076, 1077, writ denied, 97-2968 (La. 2/6/98), 709 So. 2d 740.
6. *Phillips v. Patterson Ins. Co.*, 2001-1545 (La. App. 3 Cir. 4/3/02), 813 So. 2d 1191, 1195.
7. *Hampton v. Audubon Ins. Co.*, 41,833 (La. App. 2 Cir. 1/10/07), 948 So. 2d 332, 334.
8. *Dousay v. Allstate Ins. Co.*, 99-32 (La. App. 3 Cir. 6/2/99), 741 So. 2d 750, 752.
9. *Bradley v. Allstate Ins. Co.*, 620 F. 3d 509, 526 (5th Cir. 2010).
10. *Bayle v. Allstate Ins. Co.*, 615 F. 3d 350, 363 (5th Cir. 2010).
11. *Nunez v. Allstate Ins. Co.*, 604 F. 3d 840, 847 (5th Cir. 2010).
12. *Hibbets v. Lexington Ins. Co.*, 377 Fed. Appx. 352, 355 (5th Cir. 2010).
13. *Williams v. Allstate Indem. Co.*, 359 Fed. Appx. 471, 475 (5th Cir. 2009).
14. *Brown v. Am. Modern Home Ins. Co.*, CV 16-16289, 2017 WL 2290268, at \*5 (E.D. La. May 25, 2017).
15. *USAA Gen. Indem. Co. v. Scott*, CV 16-211, 2016 WL 8711678, at \*2 (E.D. La. July 29, 2016)
16. *Douglas v. Renola Equity Fund, II, LLC*, CIV.A. 13-6192, 2015 WL 5552142, at \*2 (E.D. La. Sept. 18, 2015)
17. *LaCour v. Foremost Ins. Co.*, CIV.A. 13-3169, 2015 WL 1355362, at \*2 (W.D. La. Mar. 24, 2015)
18. *Chet Morrison Contractors, L.L.C. v. One Beacon Am. Ins. Co.*, CIV.A. 14-1958, 2015 WL 1221616, at \*6 (E.D. La. Mar. 17, 2015)
19. *RD Properties of Metairie, LLC v. Scottsdale Ins. Co.*, CV 13-4927, 2014 WL 12724664, at \*5 (E.D. La. Mar. 7, 2014).
20. *Sw. Veterinary Servs., Inc. v. Hartford Cas. Ins. Co.*, 2:12-CV-2281, 2013 WL 2471671, at \*9 (W.D. La. June 6, 2013)
21. *Slade v. Progressive Sec. Ins. Co.*, CV 6:11-2164, 2013 WL 12182957, at \*7 (W.D. La. Feb. 4, 2013).
22. *Hebert Farms v. Southern Ins. Co.*, CIV.A. 10-1927, 2012 WL 1867160, at \*10 (W.D. La. May 21, 2012), aff’d sub nom. *Hebert Farms v. S. Ins. Co.*, 500 Fed.Appx. 301 (5th Cir.2012)

23. *Commstop v. Travelers Indem. Co. Connecticut*, CIV.A. 11-1257, 2012 WL 1883461, at \*13 (W.D. La. May 17, 2012)
24. *Cashman Equip. Corp. v. Rozel Operating Co.*, 854 F. Supp. 2d 406, 414 (M.D. La. 2012).
25. *Helmer v. Empire Fire & Marine Ins. Co.*, CV 08-3872, 2010 WL 11541687, at \*4 (E.D. La. Mar. 1, 2010)
26. *Matthews v. Allstate Ins. Co.*, 731 F.Supp.2d 552, 566 (E.D. La. 2010)
27. *Kushner Lagraize, LLC v. Phoenix Ins. Co.*, CIV.A. 09-3376, 2009 WL 2922122, at \*3 (E.D. La. Sept. 9, 2009)
28. *Moffett v. Allstate Indem. Co.*, CIV. A. 07-6217, 2008 WL 5082902, at \*4 (E.D. La. Nov. 25, 2008).
29. *Lewis v. Lexington Ins. Co.*, CIV.A. 08-3645, 2008 WL 4974851, at \*1 (E.D. La. Nov. 19, 2008).
30. *Gustings v. Travelers & Standard Fire Ins. Co.*, CIV.A. 07-4443, 2008 WL 4948837, at \*4 (E.D. La. Nov. 18, 2008).
31. *Bougere v. State Farm Fire & Cas. Co.*, CIV. A. 07-3015, 2008 WL 4852286, at \*4 (E.D. La. Nov. 7, 2008).
32. *Alami v. W. Heritage Ins. Co.*, CIV.A. 07-7388, 2008 WL 1862332, at \*2 (E.D. La. Apr. 24, 2008).
33. *Orthopedic Practice, LLC v. Hartford Cas. Ins. Co.*, CIV.A. 06-8710, 2008 WL 687184, at \*4 (E.D. La. Mar. 10, 2008).
34. *Boyd v. State Farm Fire & Cas. Ins. Co.*, CIV.A. 07-6736, 2008 WL 544175, at \*1 (E.D. La. Feb. 25, 2008)
35. *Estate of Nicholson v. Farmers Ins. Co.*, 555 F. Supp. 2d 671, 676 (E.D. La. 2008).
36. *Arctic Slope Reg'l Corp. v. Affiliated FM Ins. Co.*, CIV.A. 07-0476, 2007 WL 4545894, at \*7 (W.D. La. Dec. 18, 2007), *aff'd*, 564 F.3d 707 (5th Cir. 2009).
37. *Nguyen v. St. Paul Travelers Inc. Co.*, CIV.A. 06-4130, 2007 WL 3275133, at \*4 (E.D. La. Nov. 5, 2007).
38. *Edwards v. Allstate Prop. & Cas. Co.*, CIV.A. 04-2434, 2005 WL 221558, at \*3 (E.D. La. Jan. 27, 2005).
39. *Rodriguez v. Travelers Ins. Co.*, CIV. A. 02-2013, 2002 WL 31409452, at \*1 (E.D. La. Oct. 23, 2002).
40. *Hartman Eng'g, Inc. v. Metro. Life Ins. Co.*, CIV.A. 01-2570, 2002 WL 1000978, at \*2 (E.D. La. May 13, 2002).
41. *Stock v. State Farm Ins. Co.*, CIV. A. 96-1903, 1996 WL 571774, at \*3 (E.D. La. Oct. 1, 1996).
42. *Abell Corp. v. Northland Ins. Co.*, CIV. A. 96-0717, 1996 WL 481072, at \*4 (E.D. La. Aug. 23, 1996).
43. *Riley v. Transamerica Ins. Grp. Premier Ins. Co.*, 923 F. Supp. 882, 888 (E.D. La. 1996), *aff'd sub nom. Riley v. TIG Ins. Co.*, 117 F.3d 1416 (5th Cir. 1997).