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2010

Louisiana policyholders get money back now; LA Citizens special assessment is expected for the next 15 years

By Charles E. Lavis, Jr.

Many homeowners I know are unaware they may be entitled to a refund of the Louisiana Citizens Property Insurance Corporation Special Assessment paid along with their regular homeowner's insurance premium.

The assessment is paid in addition to one's normal homeowner's insurance premium and is listed separately on the Declaration page of the homeowner's policy as a Louisiana Citizens Assessment.

The State of Louisiana authorized the special assessment to pay for LA Citizens' billion-dollar deficit caused by Hurricanes Katrina and Rita. Bonds were issued so that LA Citizens could pay its hurricane insurance claims. This assessment will remain in effect until the bonds are retired in 2025.

To help Louisiana policyholders recoup this additional charge, the Louisiana legislature passed a law, R.S. 47:6021, which authorizes a refundable income-tax credit for the Louisiana Citizens assessment.

Policyholders can only claim the refund in the year paid. The credit can be claimed on either the individual income-tax return or by filing a "Request for Refund of Louisiana Citizens Property Insurance Corporation Assessment," Form R-540INS, after the assessment has been paid.

This credit is available only for the amount of the LA Citizens assessments and is not available for the normal homeowner's premium. If you have questions concerning your eligibility for the refund, contact your CPA or the Louisiana Department of Revenue at 225-219-2700.



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Instances where Louisiana injured workers may be able to recover money for pain and suffering, lost wages, and similar damages upon proving fault

By Charles E. Lavis, Jr.



Many Louisiana work injuries are covered by workers' compensation insurance under the Louisiana Workers' Compensation Act. In these cases, regardless of fault, the employer is responsible for limited payment of weekly benefits during the time the employee is

medically unable to return to her position. The employer is also responsible for payment of related medical bills, mileage, and, if necessary, certain vocational-rehabilitation benefits.

However, there are some instances where the Louisiana Workers' Compensation Act does not apply and the injured employee may be able to recover in tort under his employer's Employers Liability Insurance policy or other policy. In these cases, the employee must prove employer fault and damages to recover pain and suffering, lost wages, and similar damages. Employers Liability Insurance, other liability insurance, and/or the employer may be responsible for tort liability and damages in the following situations:

- An injured worker is excluded from workers' compensation

coverage as an independent contractor. See *LA-R.S. 23:1021(7)* and *LA-R.S. 23:1061*.

- An employee of less than 12 months sustains an occupational disease and fails to prove causation of the occupational disease under the Louisiana Workers' Compensation Act by an "overwhelming preponderance of the evidence." See *LA-R.S. 23:1031.1D*.

- An employee, under the Louisiana Workers' Compensation Act, is unable to prove the compensability of heart-related or perivascular injuries caused by or aggravated by emotional stress at work. See *Thomas v. Conco Food Distributors*, 702 So.2d 944, 97-426 (La. App. 3 Cir. 10/22/97).

- An employee is the victim of a work-related intentional act (i.e., the employer consciously desires the physical results of his act, whatever the likelihood of that result happening from his conduct, or knows that the result is substantially certain to follow from his conduct, whatever his desire may be as to that result). See *LA-R.S. 23:1032*.

- An employee is injured as a result of engaging in horseplay at

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Medical ID THEFT

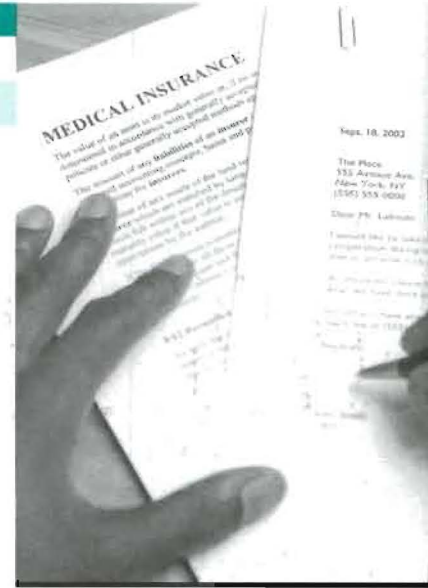
*Safeguard
yourself
against this
fast-growing
crime.*

In 2008, more than a quarter million Americans were victims of medical identity theft, a fast-growing crime. They discover theft when they receive large, unpaid bills for out-of-state emergency-room visits or air-ambulance charters in foreign places.

A victim is hurt when an unscrupulous wrongdoer steals their Social Security number and health insurance information, such as member identification and group policy numbers.

The perpetrator sells this information to someone who needs medical treatment or who works with a clinic or health-care supplier that colludes in fraudulent billing.

Unlike ordinary identity theft, few safeguards exist to detect fraud. Unlike credit-card theft, the victim's liability may not be capped at \$50.



To protect your records:

- Secure your health insurance cards.
- Examine claims statements closely.
- Scrutinize "Explanation of Benefits" reports.
- Ask for an annual benefits summary from your health insurer.
- Check your credit reports.
- If you are a victim, file a police report.
- Consult an attorney.

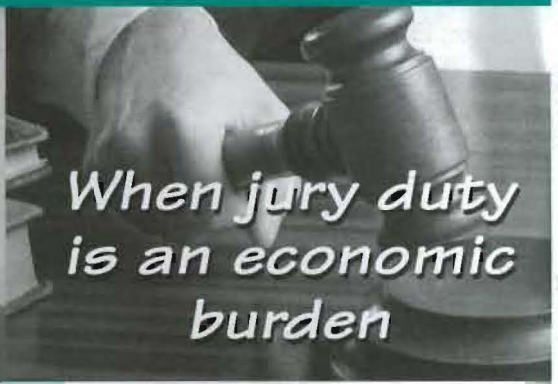
Roof-crush vehicle ACCIDENTS

To minimize injuries in a collision or rollover, automakers have a legal duty to design and construct car, truck, and SUV roofs that provide structural protection to drivers and passengers. Sadly, that's not always the case.

Partial quadriplegia

A 16-year-old was a belted front-seat passenger in a 1998 Ford Explorer rollover accident. She suffered a spinal fracture and head injury that caused partial quadriplegia, memory loss, and impaired ability to organize and process thoughts. She has limited use of her arms, uses a wheelchair, and requires assistance with daily living activities. Injury to her lungs paralyzed torso muscles, so she trained herself to breathe using her diaphragm. Her past medical expenses totaled about \$1 million, and future life-care costs are estimated at \$20 million. Her attorney sued, alleging the Explorer's roof was not crashworthy and could not withstand the impact of a foreseeable rollover collision. The parties agreed to a confidential structured settlement before her suit was filed.





When jury duty is an economic burden

CREDIT REPORTS *and auto insurance*

Believe it or not, your credit score can affect your auto insurance rates.

What's a credit score? It's a risk rating calculated from credit reports using special mathematical formulas. Lower scores result from paying bills late, having few or no credit references, or poor credit-card practices.

Even fiscally responsible consumers suffer premium increases of more than 100 percent when insurers credit-score them.

For 34 years, Mattie Grainger from South Carolina insured her autos with Allstate. She had a perfect driving record, few insurance claims, and enjoyed safe-driver discounts. Yet Allstate raised her premiums, telling her she didn't qualify for a lower rate because of a low credit score. Grainger's credit score was low because she simply didn't need extensive credit.

Many argue that applying credit-scoring in preparing insurance quotes or policy premiums is inherently unfair. We do, too.

Our firm believes that every citizen should serve as a trial juror to safeguard everyone's liberty, rights, and property. Most jurors on criminal or civil cases find their experiences rewarding and agree to serve again.

During hard economic times, however, many who are summoned to jury service may face severe fiscal insecurity. If you believe jury duty will harm you financially, you can ask a judge to excuse you from service.

Here are some examples:

- You are unemployed and need to look for work.
- You were recently employed and cannot take time off now.
- You will miss a mortgage payment because of lost time at work.
- Your employer, who used to pay for jury-service days, can no longer afford to.

There's a proviso: When the economy recovers, you accept the call to serve as a juror.



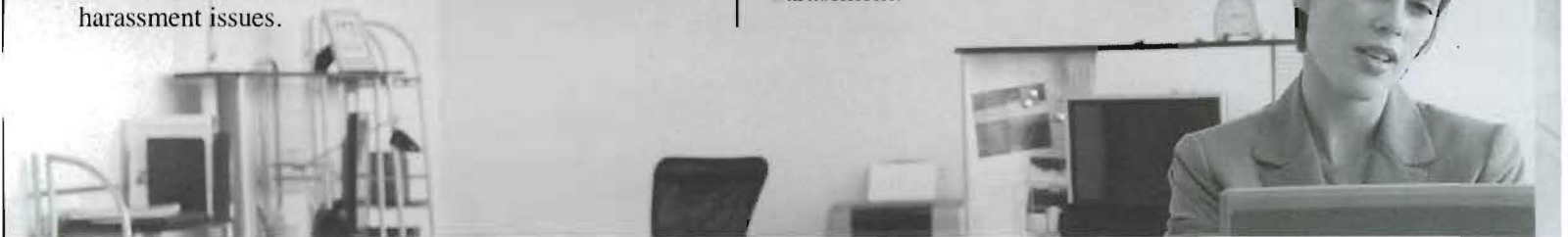
Sexual harassment at work...STILL ILLEGAL

Half of all sexual-harassment lawsuits are filed in companies with fewer than 200 employees. This illegal conduct usually occurs when someone with power and authority introduces an unwelcome sexual element, unrelated to an employee's work, into the relationship. Harassment may take the form of verbal comments, physical brushing or touching, e-mail abuse, a hostile work environment, retaliation, or even firing.

Please contact an attorney for assistance with sexual-harassment issues.

A case in point

A female overnight shipping-firm employee sued her employer, claiming that her male supervisor retaliated against her after she resisted his kissing her at an outside-office event. A jury awarded significant punitive damages when her attorney proved the supervisor gave her undesirable work schedules and late paychecks after the harassment.



GET MONEY BACK through unknown Louisiana insurance tax credit—See inside for details!

REFERRALS

We want you to think of us as your law firm.

If you have legal matters that need attention, please let us know. If we cannot handle the matter, we will refer you to a competent firm that can.

Please feel free to refer us to your family, friends, and neighbors for their legal needs.

We welcome the opportunity to help.



**CALL US. YOU'RE GOING TO FEEL A
WHOLE LOT BETTER ABOUT THINGS.**

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Instances where Louisiana injured workers may be able to recover money for pain and suffering...

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work and is therefore denied benefits under the Louisiana Workers' Compensation Act. See *LA-R.S. 23:1031 D*.

- An employee is injured at work as a result of a personal dispute with either an employee or third party and is therefore denied workers' compensation benefits under the Louisiana Workers' Compensation Act; See *Holiday v. State*, 747 So.2d 755, 98-2196 (La. App. 1 Cir. 12/28/99); *LA-R.S. 23:1031E*.

- An employee sustains work-related hearing loss that is not caused by a sudden event. See *LA-R.S. 23:1221(4)p*.

- A clerical employee sustains injuries relating to exposure to mold in the workplace, since the exposure is not an accident, not an occupational disease, and not peculiar to or characteristic of clerical employment. See *Watters v. Department of Social Services*, 2008-0977 (La. App. 4 Cir. 6/17/09).

- A domestic worker such as a maid, housekeeper, sitter, nanny, chauffeur, caregiver, nurse, or cook works for a private residential householder and sustains an injury relating to that residence. See *LA-R.S. 23:1035(B)(1)*.

- Work injuries involve an employer who, through a deliberate pattern of behavior, avoids responsibility towards its employee and the public at large. For example, the employer pays only in cash, pays less than minimum wage, does not pay overtime owed, and has the employee conduct his work in such a way as to put all liability for work-related auto accidents on the employee so as to shield the employer from liability; yet, when the employee is injured or killed in a job accident, the employer claims that the worker is really its employee to attempt to use the workers' compensation system to shield the employer from tort liability. See *Prejean v. The Original Kevin Guidry Produce Market*, 2007-0138 (La. App. 3 Cir. 11/21/07).

- The employer fails to secure workers' compensation insurance or qualify as a self-insured and fails to pay a final judgment awarding the employee workers' compensation benefits. See *LA-R.S. 23:1032.1*.

Of course, there are other situations where the injured employee's classification determines the applicable legal remedy and insurance policy. Classification is necessary under the Jones Act (applies to seamen), the Longshore and Harbor Workers' Compensation Act (applies to employees who load and unload boats, build boats, etc.; employees must meet both the Situs and Status tests of the LHWCA), the Defense Base Act (DBA applies to U.S. government contractors who perform work overseas), and the Federal Employers Liability Act (FELA applies to railroad workers). An injured employee should speak with his job-injury attorney to determine employee classification.

New minimum liability limits for Louisiana auto insurance; bodily injury limits of up to \$15,000 for one person, \$30,000 for more than one person

Beginning January 1, 2010, the minimum liability limits for Louisiana auto insurance are 15/30/25 upon renewal or new application of a Louisiana automobile insurance policy.

This mandatory insurance pays for property damages or personal injury for which you may be legally responsible. The old minimum limits required car owners to carry 10/20/10 liability limits.

The new limits provide payments of \$15,000 for bodily injury to one person, \$30,000 for bodily injury to more than one person in a single accident, and \$25,000 coverage for damage to someone else's vehicle or other property. Insurance premiums are expected to increase for those who carry only the minimum limits.