



# From The Bench

*legal news of interest*

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## LOUISIANA LEGISLATURE 2005 WORKERS' COMPENSATION DEVELOPMENTS

*by Stacy D. Saltzman*

The 2005 Regular Session of the Louisiana Legislature resulted in several changes in the law pertaining to workers' compensation. The effective date of these changes was August 15, 2005.

**Act 257 enacts *LSA-R.S. 23:1032.1* allowing a claimant to sue for damages in tort if a direct employer fails to obtain coverage and does not timely pay a final workers' compensation judgment.**

An employee may elect to seek damages in tort if a direct employer knowingly fails to secure workers' compensation insurance or proper certification of self-insured status and fails to pay a final judgment for sixty days after the parties have exhausted their rights of appeal. The employee will only have the right if benefits due to the employee were not paid by another insurance or self-insurance policy or contract of workers' compensation coverage. The direct employer's obligation for legal damages may be discharged and satisfied if the employee accepts the direct employer's offer to pay the judgment for workers' compensation benefits and the employee is reimbursed for all costs and expenses, including attorney fees, incurred in connection with the claim for legal damages until the payment of the workers' compensation judgment. If the employee obtains a judgment for legal damages, the employee may elect to recover from the direct employer the greater of the judgment for legal damages or the judgment for workers' compensation benefits. However, the employee is limited to recovery of one judgment, and payment of the elected judgment discharges both judgments. All public bodies or municipalities are exempt from this provision.

**Act 257 amends and reenacts *LSA-R.S. 23:1101(B)* permitting a person who has paid or become obligated to pay compensation benefits to sue a third person in district court.**

Any person having paid or having become obligated to pay compensation may bring suit in district court against a third person to recover any amount which he has paid or becomes obligated to pay as compensation to an employee or the employee's dependents.

**Act 257 amends and reenacts *LSA-R.S. 23:1226(A)* requiring that vocational rehabilitation services (job placement or vocational training) be provided by licensed professional vocational rehabilitation counselors.**

Vocational rehabilitation services shall be provided by a licensed professional vocational rehabilitation counselor, and all services provided shall be compliant with the Code of Professional Ethics for licensed rehabilitation counselors as established by *LSA-R.S. 37:3441 et seq.*

**Act 257 amends and reenacts *LSA-R.S. 23:1272(D)* giving the district court judge and the workers' compensation judge authority to approve lump sum settlements of a workers' compensation claim in a lawsuit against a third party.**

The workers' compensation judge and the district court hearing the third-party suit, filed pursuant to *LSA-R.S. 23:1101*, shall have the authority to approve a lump sum or compromise settlement of the workers' compensation claim. This authority shall include approval and establishment of the credit due the employer. The fees of the attorney representing the employee in the workers' compensation matter shall be approved by the district court judge.

**Act 257 amends and reenacts *LSA-R.S. 23:1310.7(B)(1)* and (2) providing a workers' compensation judge with authority to hold a person in direct or constructive contempt of court.**

In the case of direct or constructive contempt, the workers' compensation judge may assess a civil fine of up to five hundred (\$500.00) dollars for each contempt violation which shall be payable to the Kids' Chance Scholarship Fund, Louisiana Bar Foundation.



**Katherine M. Loos**, a partner at Briney & Foret for over 20 years, is pleased to announce that in addition to her regular practice, she is expanding her practice through an association with the mediation and arbitration company of Perry, Dampf, Watts & Associates. Ms. Loos has litigation experience in a broad spectrum of cases including toxic tort, product liability, automobile liability, insurance and workers' compensation.

She has obtained favorable decisions in dozens of jury trials in many of the state courts of Louisiana and in U.S. District Court. Ms. Loos serves as counsel for DIRECTV in cases arising out of satellite signal theft in federal courts throughout Louisiana. She has extensive first-chair bench trial, jury trial and appellate experience and is regularly involved in mediations.

Ms. Loos is a member of the Louisiana State, Lafayette Parish and Federal Bar Associations, the State Bar of Texas, and the Louisiana Association of Defense Counsel. She holds the rank of master in the American Inn of Court of Acadiana. Ms. Loos is admitted to practice in Louisiana, the U.S. District Courts for the Eastern, Middle and Western Districts of Louisiana; U.S. District Court for the Southern District of Texas; U.S. Court of Appeals, Fifth Circuit and all courts of the State of Texas.



**Jason R. Garrot** recently joined Briney & Foret as an associate attorney. Originally from Abbeville, Mr. Garrot obtained his Bachelor of Science degree in Psychology from Louisiana State University in 1998. Following his undergraduate studies, Mr. Garrot worked as an insurance adjuster before entering law school in 2001. In 2004, he obtained his Juris Doctorate from Loyola University Law School in New Orleans. After

graduating from law school, Mr. Garrot clerked for 15<sup>th</sup> Judicial District Court Judge J. Byron Hebert. He is admitted to practice in all Louisiana state courts. His professional memberships include the Federal, Lafayette Parish and Louisiana State Bar Associations, as well as the Lafayette Young Lawyers Association. Mr. Garrot's practice includes the defense of commercial and general liability, automobile liability and civil litigation.

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