

From The Bench

legal news of interest

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BRINEY & FORET

Attorneys at Law

413 Travis Street
Post Office Drawer 51367
Lafayette, Louisiana 70505
337-237-4070
FAX 337-233-8719
Website: www.brineyforet.com

LOUISIANA LEGISLATURE 2003 RECENT DEVELOPMENTS

by Stacy D. Saltzman

The 2003 Regular Session of the Louisiana Legislature resulted in significant changes in the law pertaining to insurance, workers' compensation and mold claims. The effective date of the following noted changes was August 15, 2003.

Insurance

Act 790 amends LSA-R.S. 22:658 requiring all insurers to make a written offer to settle any property damage claim, including a claim made by a third party, within 30 days after receipt of satisfactory proof of loss of that claim. The penalty for failure to make a written offer to settle or make payment within the 30-day period was increased from 10% to 25% of the amount due. Additionally, no claim for attorney fees may be made for the prosecution or collection of the amount due.

Act 532 enacts LSA-R.S. 32:866(A)(3)(b) providing that the "No Pay/No Play" limitations on recovery do not apply if, at the time of the accident, the uninsured vehicle is not being operated and is not in violation of the Louisiana Highway Regulatory Act.

Workers' Compensation

A new Office of Workers' Compensation form will be developed and will be required for use by all employers or insurers to give proper notice to injured workers of an employee's right to select one treating physician in any field or specialty after the initial examination by the employer's choice of physician as a result of **Act 886** which amends LSA-R.S. 23:1121(B). The forms will be provided in person or by certified mail. An authorized representative of the employer or insurer must explain the form to illiterates or workers with language barriers and certify they have "reasonably read and explained" the form to such employees. The representative of the employer or insurer and the employee must sign the form to that effect. If the employee refuses to sign the form to choose his "treating physician", medical benefits may be suspended, but only after an expedited hearing and order of the court and only until he signs the form. Further, if the employee is treated by a physician not at the specific direction of the employer or insurer, that physician will be the employee's treating physician. If the employee chooses to select the employer's physician, that physician will become the employee's choice, but only after the employee has been informed of his right to select his physician and agrees.

Act 1204 amends LSA-R.S. 23:1201(F), and provides if the employer fails to provide for payment of medical benefits or fails to consent to the employee's request to select a treating physician, the employer will be assessed a penalty up to the greater of 12% of any unpaid compensation or medical benefits, or \$50.00 per calendar day for each day the benefits remain unpaid or the consent is withheld. The maximum amount of penalties which may be imposed is \$8,000.00. Additionally, reasonable attorney fees may be sought for each disputed claim.

Act 616 repeals the provision in LSA-R.S. 23:1225(C)(1)(b) allowing for a reduction of benefits for receipt of old-age benefits received under the Social Security Act.

Act 980 amends LSA-R.S. 23:1226(B)(3) concerning the procedure for handling claims against vocational counselors. An employee may not file a tort damage suit related to the vocational services against a vocational counselor until an expedited hearing is requested by the employee to review the quality of services performed by the vocational counselor. An expedited hearing is now available to the employer to require the employee's cooperation in the rehabilitation process and to order a 50% reduction in benefits for each week of non-cooperation in the vocation rehabilitation process.

Mold

Act 333 amends LSA-R.S. 9:3143(6) expanding the definition of "owner" under the New Home Warranty Act to include heirs, invitees, and assigns to a home. LSA-R.S. 9:3144(B)(19) now provides that mold and mold damage is not warranted by a builder unless the parties otherwise agree in writing. Under LSA-R.S. 9:3150, The New Home Warranty Act also provides the exclusive preemptive periods between builders and owners relative to home construction.

Act 880 enacts LSA-R.S. 37:2181 through 2192 requiring all persons engaged in the practice of mold remediation after July 1, 2004 to be licensed. Licenses will be issued by the State Licensing Board for Contractors after the applicants meet certain requirements. If a licensee performs mold remediation, he may not perform mold assessment services on the same property.



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Stacy D. Saltzman recently joined Briney & Foret as an associate attorney. Originally from Sulphur, Louisiana, Stacy graduated from McNeese State University in 1999 where she obtained a Bachelor of Social Science degree in Criminal Justice. In 2002, she obtained her Juris Doctorate degree, Magna Cum Laude, from Southern Louisiana Law Center. She is admitted to practice before the U.S. Court of Appeals, Fifth Circuit; U.S. District Courts, Eastern, Western, and Middle Districts of Louisiana; and U.S. District Courts, Northern and Southern Districts of Mississippi.

Briney & Foret

Patrick J. Briney	Shannon J. Gremillion
Charles J. Foret	Gary J. Delahoussaye
Katherine M. Loos	Richard M. Montgomery
Michael P. Corry	Matthew D. McConnell
Kevin S. Frederick	Stacy D. Saltzman

Christopher L. Zaunbrecher*
*of counsel

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