ouisiana Legislative Auditor

Report Highlights

Louisiana Citizens Property Insurance Corporation -Claims Litigation

December 2007



The Louisiana Citizens Property Insurance Corporation (Citizens) was created as a nonprofit corporation, formed as an instrumentality of the state to operate two residual market insurance programs, the FAIR and Coastal Plans. Citizens was created to provide fire, extended coverage, vandalism, malicious mischief, and homeowners insurance in the coastal and other areas of Louisiana to applicants who are entitled to, but are unable to, procure

coverage through the voluntary market. Citizens contracts with four service providers to handle all policy administration. Three of Citizens' service providers, Bankers, First Premium, and MacNeill, write new policies, while the fourth, Audubon, only handles Audubon's existing claims. Citizens has verbal agreements with seven law firms to defend Citizens in lawsuits. Six firms handle claims litigation, while the seventh serves as Citizens' general counsel, defending Citizens against a variety of cases. During our audit period (August 29, 2005, through June 30, 2007), Citizens paid an estimated \$3.5 million to \$3.7 million in claims-related legal expenses.

Audit Results

- Citizens did not use a formal process to select its defense attorneys or to set the attorneys' fees, nor did it maintain documentation to support the process used to select the attorneys or set the fee structure.
- ➡ We identified two situations related to Citizens' hiring of law firms that may need to be reviewed by the Louisiana Board of Ethics.
- → Citizens has no controls in place to ensure that its established case assignment rotation is followed.
- **⊃** Citizens does not have written contracts with the law firms it uses to provide legal defense in claims litigation cases.
- Citizens' contract with Audubon does not include clear or specific performance standards and requirements.
- Citizens' staff or service providers do not appear to adequately review attorney invoices.
- We identified inconsistent billing practices among the attorneys, as well as inconsistencies in supporting documentation the attorneys provided with their invoices.
- ➡ Citizens does not require its attorneys to provide case assessment reports to its service providers, nor does it have a formal policy for case assessment.
- ➡ Citizens and its service providers have not entered initial reserves into Citizens' computer system in a regular or consistent manner.
- → Citizens does not have an adequate system to ensure that it is getting the best results from its attorneys.

Steve J. Theriot, CPA

> Legislative Auditor

HOW DID CITIZENS SELECT DEFENSE ATTORNEYS FOR CLAIMS LITIGATION CASES, ASSIGN CASES TO ATTORNEYS, AND SET ATTORNEYS' FEES?

Informal Attorney Selection and Fee-Setting Processes

➡ Citizens did not use a formal process to select its defense attorneys or set the attorneys' fees. Citizens also did not maintain documentation to support the process it used to select the attorneys or set the fee structure.

RECOMMENDATIONS

- ✓ Citizens should develop a formal policy to select claims litigation attorneys.
- ✓ Citizens should formally adopt into policy the Attorney General's fee schedule since Citizens is a public entity. Doing so would ensure that Citizens follows a fee schedule that is in line with attorney experience and does not exceed the state maximum.

Possible Ethics Violations

➡ We identified two situations related to Citizens' hiring of law firms that may need to be reviewed by the Louisiana Board of Ethics.

RECOMMENDATION

✓ Before Citizens assigns any new cases to these two law firms, Citizens should require the firms to obtain opinions from the Louisiana Board of Ethics on the legality of using the firms to provide legal services for Citizens and should require the firms to compete in a competitive bid process.

Case Assignment Process Lacks Controls

➡ Citizens has no controls in place to ensure that its established case assignment rotation is followed.

RECOMMENDATION

✓ Citizens officials should implement controls to ensure that staff members follow the established rotation process of assigning cases to law firms and that they document the reasons for any deviations from the established rotation.

DO CITIZENS' CONTRACTS WITH LAW FIRMS AND SERVICE PROVIDERS INCLUDE PROVISIONS TO HOLD THE CONTRACTORS ACCOUNTABLE FOR PRODUCING DESIRED RESULTS?

No Written Contracts With Law Firms

➡ Citizens does not have written contracts with the law firms that provide its legal defense in claims litigation cases.

RECOMMENDATIONS

- ✓ Citizens should execute formal, written contracts with its defense attorneys. The provisions of the contracts should be designed to hold the attorneys accountable for delivery of services and prevent the inappropriate or inefficient use of public resources.
- ✓ To ensure compliance with applicable provisions of the State Procurement Code, Citizens should submit all contracts with law firms that exceed \$2,000 to the OCR for review and approval.

Contracts With Service Providers

➡ Citizens' contract with Audubon does not include clear or specific performance standards and requirements. The litigation aspects of all four service providers' contracts are vague.

RECOMMENDATION

Citizens should ensure that all contracts with service providers include clear and specific performance standards and requirements. HAS CITIZENS' STAFF OR SERVICE PROVIDERS REVIEWED ATTORNEY INVOICES FOR ACCURACY AND REASONABLENESS?

Attorney Invoices Not Consistently Reviewed

- Citizens' service providers do not appear to have adequately reviewed all of the attorney invoices we examined.
- We noted inconsistent billing practices among the attorneys, as well as inconsistencies in what supporting documentation the attorneys provided with their invoices.

RECOMMENDATIONS

- ✓ Citizens should develop standard billing guidelines, which it should provide to its defense attorneys and service providers as well as to its staff members who are responsible for reviewing attorney invoices.
- ✓ Citizens should begin using written contracts for the law firms it hires to litigate claims cases. Citizens should also provide in the contracts that the attorneys must submit supporting documentation for the charges on their invoices in order to be paid.
- ✓ We recommend that Citizens include specific guidelines in its service providers' contracts regarding how and when the service providers are to review attorney invoices. These guidelines should include a detailed list of all items the service providers are to review (e.g., hourly rates and approved services) and how to document their reviews (e.g., by signing and dating the invoices).

HAS CITIZENS' CLAIMS LITIGATION
SYSTEM ENSURED THAT CASES ARE
PROPERLY ASSESSED, RESERVES ARE
APPROPRIATELY SET AND ADJUSTED, AND
LITIGATION IS ADEQUATELY MONITORED?

No Case Assessment Required

➡ Citizens has not required its attorneys to provide case assessment reports to its service providers at regular intervals. In addition, Citizens does not have a formal policy for case assessment.

RECOMMENDATION

 Citizens should implement a formal case assessment policy.

Inconsistent Reserve Practices

➡ Citizens has not accounted for its reserves regularly or consistently, thus the reserve balances needed for Citizens' management reports are not reliable.

RECOMMENDATION

Citizens should continue its work towards establishing accurate reserve balances. We also recommend that management refine the reserve process to ensure that reserves are set and adjusted consistently and regularly. Citizens could accomplish this goal by clarifying and enforcing its requirements on how the service providers should enter initial reserves, requiring the service providers to adjust reserves as they obtain new information, and standardizing the way that service providers reserve for legal expenses. In addition, we recommend that Citizens move forward with its decision to revise the way it categorizes reserves to reflect changes in the NAIC reporting requirements and that, after the computer data problems are resolved, Citizens retain an actuary to issue an opinion on its reserves annually.

Inadequate Litigation Monitoring

➡ Citizens does not have an adequate system to ensure that it gets the best results from its defense attorneys.

RECOMMENDATION

✓ Citizens' management should enhance the responsibilities of the litigation gate keeper and determine if it should hire additional staff with legal expertise or other credentials to strengthen the gate keeping function.

Louisiana Legislative Auditor

1600 N. 3rd Street P.O. Box 94397 Baton Rouge, LA 70804-9397

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Kerry Fitzgerald,
Performance
Audit Manager,
at
225-339-3800.

LOUISIANA CITIZENS PROPERTY INSURANCE CORPORATION CLAIMS LITIGATION



= PERFORMANCE AUDIT = ISSUED DECEMBER 5, 2007

LEGISLATIVE AUDITOR 1600 NORTH THIRD STREET POST OFFICE BOX 94397 BATON ROUGE, LOUISIANA 70804-9397

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OFFICE OF LEGISLATIVE AUDITOR

STATE OF LOUISIANA BATON ROUGE, LOUISIANA 70804-9397

1600 NORTH THIRD STREET POST OFFICE BOX 94397 TELEPHONE: (225) 339-3800 FACSIMILE: (225) 339-3870

December 5, 2007

The Honorable Donald E. Hines,
President of the Senate
The Honorable Joe R. Salter,
Speaker of the House of Representatives

Dear Senator Hines and Representative Salter:

This report provides the results of our performance audit of the claims litigation system used by the Louisiana Citizens Property Insurance Corporation (Citizens). The audit was conducted under the provisions of Title 24 of the Louisiana Revised Statutes (R.S.) (the state audit law) and R.S. 22:1430.15, which provides that Citizens shall be subject to examination by the Legislative Auditor.

The report contains our findings, conclusions, and recommendations. Appendix B contains the responses to the report. I hope this report will benefit you in your legislative decision-making process.

Sincerely

Steve J. Theriot, CPA Legislative Auditor

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EXECUTIVE SUMMARY

Performance Audit Findings

How did Citizens select defense attorneys for claims litigation cases, assign cases to attorneys, and set attorneys' fees?

The former Chief Executive Officer of Citizens used an informal process to select the attorneys it uses to defend the corporation in claims litigation cases. This system was based on the geographic location of the claims and on social, professional, or commercial relationships the firms had with him and/or Citizens' general counsel. Citizens did not maintain documentation to support the process it used to select the attorneys. In addition, we identified two situations related to Citizens' hiring of law firms that may need to be reviewed by the Louisiana Board of Ethics to determine whether any ethics violations occurred. (See pages 11-16.)

Our audit further revealed that Citizens has no controls in place to ensure that its established case assignment rotation is followed. The case assignment rotation was designed to determine which cases would be assigned to each law firm. (See page 17.)

We also found that Citizens did not use a formal process to determine the attorneys' fees and did not maintain documentation to support its fee structure. (See pages 17-18.)

This report suggests several important policy changes that would strengthen Citizens' controls over hiring law firms, assigning cases to law firms, and establishing attorneys' fees. (See pages 11-18.)

Do Citizens' contracts with law firms and service providers include provisions to hold the contractors accountable for producing desired results?

Citizens has not ensured that the law firms it uses to defend the corporation in claims litigation cases are held accountable for producing desired results because Citizens did not enter into written contracts with the law firms it hired. Although it may not be standard practice in the insurance industry to use written contracts, Citizens is an entity of the state. As such, it has a responsibility to implement controls to protect its assets and ensure that its resources are used effectively and efficiently. Without written contracts that contain specified performance expectations and deliverables, Citizens cannot hold the law firms accountable for desired results. (See pages 19-20.)

Although Citizens does have written contracts with its four service providers, not all contracts contain clear, specific performance-related provisions or deliverables. The contracts between Citizens and three of the service providers include clear descriptions of the required work and of performance measures and specific timelines for each requirement. The contract with the fourth service provider, however, does not. In addition, the litigation aspects of all four contracts are vague. The lack of this type of information in the contracts impedes Citizens' ability to hold this service provider accountable for desired results. (See pages 21-22.)

In this report, we recommend that Citizens enter into written contracts with the law firms it uses and that it submit the contracts to the Office of Contractual Review. (See pages 19-20.) We also recommend that Citizens ensure that its contracts with service providers contain clear, specific performance standards and requirements and that Citizens submit these contracts to the Office of Contractural Review, as well. (See pages 21-22.)

Has Citizens' staff or service providers reviewed attorney invoices for accuracy and reasonableness?

Citizens' staff or its service providers appear to have performed some type of review on the majority of sample attorney invoices we examined in our audit, but we question the quality of their reviews. We noted that the staff or service providers made no reductions in the amounts to be paid to the attorneys based upon their reviews, other than to reduce some invoice amounts for previous payments. In addition, we found several examples of inconsistent billing practices among the law firms, as well as inconsistencies in the types of documentation provided by the law firms to support their invoices. (See pages 23-25.)

This report makes several recommendations related to billing practices and reviews of attorney invoices that would strengthen Citizens' controls over these aspects of its claims litigation oversight. (See pages 25-26.)

Has Citizens' claims litigation system ensured that cases are properly assessed, reserves are appropriately set and adjusted, and litigation is adequately monitored?

Citizens' claims litigation system has not ensured that cases are properly assessed because Citizens has not required its service providers to obtain initial or subsequent case assessment reports from its attorneys. This failure to obtain periodic case assessments occurred because Citizens does not have a formal policy requiring service providers and attorneys to assess Citizens' liability, estimate costs and activities to defend each case, and identify settlement opportunities early in the litigation process. According to Citizens' claims manager, management is working on a formal case assessment process but has not yet implemented it. (See pages 27-28.)

In addition, Citizens has not ensured that reserves are appropriately set and adjusted because Citizens and its service providers have not entered initial reserves into Citizens' computer system in a regular or consistent manner. As a result, the reserve balances needed for Citizens' management reports are not reliable. In addition, our review showed that the service providers did not reserve for litigation loss adjustment expense (LLAE) reserves or the liabilities related to the litigation process, such as attorney fees. (See pages 28-30.)

Finally, our audit shows that Citizens' claims litigation has not been adequately monitored. Although Citizens' law firms and service providers have been informally monitoring the individual cases they handle, Citizens has no overall mechanism whereby it continually monitors and reviews all cases to ensure that it is getting the best results from its attorneys. Citizens does maintain a spreadsheet containing limited lawsuit information; however, because it contains numerous errors and omissions, it cannot be used as an effective, overall monitoring tool. If Citizens were to enhance its claims litigation gatekeeping function, as suggested in this report, management would be better able to monitor all lawsuits, verify that attorneys are working cases in the corporation's best interest, and ensure that public assets are used efficiently and effectively. (See pages 30-34.)

INTRODUCTION

Audit Initiation and Objectives

We conducted this examination under the provisions of Louisiana Revised Statute (R.S.) 22:1430.15. This statute provides that the Louisiana Citizens Property Insurance Corporation (Citizens) shall be subject to examination by the Legislative Auditor. In accordance with this legislative mandate, the Legislative Auditor directed his staff to conduct an examination of the corporation in the form of a performance audit. We followed the applicable generally accepted government auditing standards as promulgated by the Comptroller General of the United States in conducting the audit.

Overview of Louisiana Citizens Property Insurance Corporation

The Louisiana Citizens Property Insurance Corporation (Citizens) was created as a non-profit corporation by Act 1133 of the 2003 Regular Legislative Session. Act 1133 enacted, in part, R.S. 22:1430.2(A). The corporation was formed as an instrumentality of the state to operate two residual market insurance programs, the FAIR and Coastal Plans, as successors to the Louisiana Insurance Underwriting Plan and the Louisiana Joint Reinsurance Plan.

According to the enabling legislation, Citizens was created to provide fire, extended coverage, vandalism, malicious mischief, and homeowners insurance in the coastal and other areas of Louisiana to applicants who are entitled to, but are unable to, procure coverage through the voluntary (i.e., private) market. Citizens is to operate insurance plans functioning exclusively as residual market mechanisms. That is, Citizens was designed to be an insurer of last resort. Any person with an interest in insurable property (residential or commercial) is entitled to apply to Citizens either directly or through a representative for coverage through the Coastal or FAIR Plan.

R.S. 22:1430.3(A) establishes a 15-member board of directors for Citizens. During the 2007 Regular Legislative Session, the legislature changed the composition of the board effective January 2008. The board is responsible for adopting a plan of operation for Citizens. The House and Senate Insurance Committees must approve the plan of operation, as well as all revisions to the plan. The plan must be filed with the Office of Property and Casualty of the Louisiana Department of Insurance (DOI).

Citizens has historically contracted its administrative services with the Property Insurance Association of Louisiana (PIAL), although it is currently in the process of severing that relationship. In addition, Citizens contracts with four service providers to handle all policy administration. Three of the service providers, Bankers Insurance Group ("Bankers"), First Premium Insurance Group ("First Premium"), and MacNeill Group ("MacNeill") write new policies, while the fourth, Audubon Insurance Group ("Audubon"), only handles Audubon's existing claims.

Rates charged by Citizens on residential policies must be at least 10 percent higher than the rates charged among the 10 insurers with the greatest total direct written premium (DWP) in each parish for that line of business in the preceding year. The Commissioner of Insurance may suspend the 10 percent provision when he deems the market not competitive, and wind and hail coverage is excluded from the 10 percent provision until January 1, 2009. More information about Citizens' rate-setting process can be found in the Legislative Auditor's report issued in May 2007 titled *Louisiana Citizens Property Insurance Corporation - Rates*.

State law includes financing provisions for Citizens to use if either plan incurs a deficit. Specifically, when the deficit meets certain criteria, the entire deficit shall be recovered through regular assessments of assessable insurers. The insurers may then recoup the costs of the regular assessments from their policyholders. The law also provides that, if regular assessments are not sufficient to cover the deficit, the remaining deficit shall be recovered through emergency assessments on applicable policyholders. More information about the assessment process can be found in the Legislative Auditor's report issued in December 2006 titled *Louisiana Citizens Property Insurance Corporation - Assessments*.

Overview of Citizens' Claims Litigation System

Claims System

In most cases, policyholders report claims directly to their insurance agents. The agents enter the claims into the Louisiana Plans Management System (LPMS), Citizens' electronic policy management system, to which three of Citizens' service providers have online access. The agents then forward the claims files to the designees at the appropriate service provider for review. The service providers then assign the claims to adjusters based on the complexity of the claim and the individual adjusters' level of experience.

LPMS does not contain reliable summary financial data. Because of circumstances resulting, in part, from Hurricanes Katrina and Rita, Citizens never tested or debugged the system before implementation. In addition, numerous changes occurred after the system was in place, again without testing the overall effects of these changes. Citizens is currently working with an information technology professional to resolve these problems. According to this consultant, the transaction-level claims data in LPMS that we examined is the most reliable data available for our purposes.

Insurers use reserves to account for their outstanding loss liabilities and loss adjustment liabilities. The adjusters should review the claims files and increase or decrease the reserves as necessary. Citizens separates these liabilities into loss reserves, loss adjustment expense (LAE) reserves (e.g., costs of outside adjusters), and litigation loss adjustment expense (LLAE) reserves (e.g., attorney's fees).

After an adjuster reviews a file and adjusts the reserves, he or she may contact the insured and/or claimant and take a recorded statement, order a police and/or fire report, or order an appraisal, depending upon the type of loss reported. When an adjuster receives the results of an appraisal, he or she is to enter the information into LPMS and, if appropriate, adjust the reserves. If there are no issues with coverage or liability, the adjuster will request payment from Citizens within the adjuster's level of authority. Exhibit 1 shows the approval authority required for each level of claim payments.

Exhibit 1 Louisiana Citizens Property Insurance Corporation Levels of Authority for Claim Payments			
Person/Entity	Non-Catastrophe Claim Payment Amount	Catastrophe Claim Payment Amount	
Service Providers	\$25,000	\$75,000	
Large Loss Supervisor - PIAL (dedicated to Citizens)	\$25,001 - \$100,000	\$75,001 - \$100,000	
Claims Manager - PIAL (dedicated to Citizens)	\$100,001 - \$250,000 without defense attorney's recommendation to settle; \$100,001 - \$500,000 with defense attorney's recommendation to settle.		
Chief Executive Officer - Citizens and/or PIAL	All claims above \$500,000		

¹ Exceptions to this rule are claims that involve the Jackson Bell law firm. All of these claims are to go to the large loss supervisor instead of the claims manager. If a Jackson Bell claim exceeds the large loss supervisor's level of authority, it is to go to Citizens' chief executive officer for approval.

Source: Citizens' claims manager.

Litigation System

Citizens may receive notice of lawsuits involving claims issues in a variety of ways. For example, Citizens often receives notice of lawsuits through the Secretary of State's office. Alternatively, Citizens may be served with notices of lawsuits by insureds, claimants, or carriers. An insured could also be served by a third party. In these cases, the insured would then notify Citizens of the lawsuit.

When Citizens receives notice of a lawsuit, Citizens' claims staff identifies basic information about the case (e.g., service provider, type of policy, and venue) and the issues involved in the suit (e.g., coverage questions, catastrophe-related claims, or bad faith allegations). The claims staff then assigns the case to one of five law firms that handle the corporation's defense, based on information about the case and the issues involved. The five firms and the location of their offices are as follows:

- 1. Bienvenu, Foster, Ryan & O'Bannon, New Orleans
- 2. Dysart & Tabary, Metairie
- 3. Haik, Minvielle & Grubbs, New Iberia

- 4. Hulse & Wanek, New Orleans
- 5. Jackson Bell, Baton Rouge

Some cases also name the service provider and/or adjuster involved in the claim as a party in the lawsuit. As long as the service provider or adjuster acted in good faith, Citizens will assign one of two additional law firms to defend those parties. The two firms Citizens uses in these cases and the location of their offices are as follows:

- 1. Hailey, McNamara, Hall, Larmann & Papale, Metairie (defends service providers)
- 2. Johnson, Johnson, Barrios & Yacoubian, New Orleans (defends adjusters)

Once the defense attorney has the file, the adjuster works with the defense counsel on issues such as settlement negotiations, discovery, independent medical examinations, and/or appraisals.

In January 2006, DOI issued a mandate for insurance companies to mediate hurricane cases when policyholders request the process. A cost-saving alternative to litigation, mediation is a non-binding extension of the negotiation process used to resolve disputes. Both parties submit their disputes to an impartial mediator, who acts as a liaison to assist them in reaching a settlement in their dispute. Mediations can be initiated before, during, or after a lawsuit is filed, or in place of a lawsuit. Citizens' Claims Manual states that, when deciding which resolution process Citizens should use for a lawsuit, it should consider the value of the claim versus the cost of litigation.

Defense Attorney Expenditures

To calculate payments Citizens made to the law firms it hired for claims defense, we obtained data on Citizens' litigation-related payments from both Citizens' accounts receivable system (FiServ) and the law firms that represent Citizens. In addition, we obtained data from Point, Audubon's accounting system, since Audubon does not use LPMS as do the other service providers. According to these sources, during our audit period (August 29, 2005, through June 30, 2007), Citizens paid the law firms an estimated \$3.5 million to \$3.7 million in claims-related legal expenses.

In addition, we used Citizens' litigation spreadsheet, which Citizens' staff maintains to track lawsuits, to determine the number of cases each firm has handled and the dates Citizens began assigning cases to each law firm. Even though we determined that this spreadsheet is not completely accurate, it is the best source of information we could find to present descriptive information in this section of the report. Exhibit 2 shows the date of the first case assignment for each law firm as well the breakdown of fees and cases by law firm.

Exhibit 2						
Louisiana Citizens Property Insurance Corporation						
	Case Assignments and Fees Paid to Law Firms					
Law Firm	Date First Case Was Assigned to Law Firm	Number of Cases Assigned to Law Firm	Percentage of Cases Assigned to Law Firm	Total Fees Paid to Law Firm Based on Law Firm's Data 8/29/05 - 6/30/07	Total Fees Paid to Law Firm Based on Citizens' Data 8/29/05 - 6/30/07	
Bienvenu, Foster, Ryan					±1	
& O'Bannon	June 2005	708	36.3%	\$2,004,490 ¹	\$1,718,220 ¹	
Dysart & Tabary	June 2005	376	19.3%	\$152,950	\$159,559	
Haik, Minvielle & Grubbs	June 2005	282	14.5%	\$496,871	\$568,172	
Hailey, McNamara, Hall, Larmann & Papale	June 2006	13 ²	0.7%	\$307,147	\$318,508	
Hulse & Wanek	November 2005	128	6.6%	\$250,292	\$268,358	
Jackson Bell	February 2006	418	21.5%	\$294,212	\$317,293	
Johnson, Johnson, Barrios & Yacoubian	July 2006	14 ²	0.7%	\$144,432	\$144,432	
Total				\$3,650,394	\$3,494,542	

¹The total we received from this law firm may be higher than the total we received from Citizens or Audubon because one of the sources may or may not have included payments for work the firm performed as General Counsel for Citizens.

Source: Prepared by legislative auditor's staff using unaudited data provided by Citizens, Audubon, and the law firms.

Sample Description

As part of our fieldwork, we selected a sample of 40 claims litigation cases to review (see Appendix A for selection methodology). Exhibit 3 shows characteristics of our sample. Approximately 93 percent of our sample is catastrophe-related, and about 88 percent is comprised of open cases. In addition, our sample is representative of all service providers and law firms.

²These figures do not include possible closed cases; data provided by Citizens did not contain such information.

Exhibit 3 Louisiana Citizens Property Insura Characteristics of 40 Samp		oration
Type of Claim		
Catastrophe-related (Date of loss is 8/29/05 or 9/24/05)*	37	(92.5% of cases)
Non-catastrophe related	3	(7.5% of cases)
Total	40	100%
Claim Status		
Open	35	(87.5% of cases)
Closed	5	(12.5% of cases)
Total	40	100%
Service Providers		
Audubon	7	(17.5% of cases)
Bankers	10	(25.0% of cases)
First Premium	5	(12.5% of cases)
MacNeill	14	(35.0% of cases)
None (non-existent or canceled policy)	2	(5.0% of cases)
First Premium, Audubon, and Bankers**	1	(2.5% of cases)
MacNeill and Audubon**	1	(2.5% of cases)
Total	40	100%
Law Firms		
Bienvenu, Foster, Ryan & O'Bannon	17	(42.5% of cases)
Dysart & Tabary	6	(15.0% of cases)
Haik, Minvielle & Grubbs	3	(7.5% of cases)
Hailey, McNamara, Hall, Larmann & Papale	5	(12.5% of cases)
Hulse & Wanek	3	(7.5% of cases)
Jackson Bell	11	(27.5% of cases)
Johnson, Johnson, Barrios & Yacoubian	5	(12.5% of cases)
Total	50***	

Dates of Hurricanes Katrina and Rita.

Source: Prepared by legislative auditor's staff using unaudited information provided by Citizens' staff.

^{**} Special case circumstances resulted in these cases being assigned to multiple service providers.

*** Because some cases require representation from multiple law firms, the totals exceed 40 cases and the percentages total over 100 percent.

Findings, Conclusions, and Recommendations

How did Citizens select defense attorneys for claims litigation cases, assign cases to attorneys, and set attorneys' fees?

Informal Process Used to Select Attorneys

Citizens selected the seven law firms it uses to defend claims litigation cases through an informal process. The former CEO of Citizens selected the attorneys based on the geographic location of the claims and on social, professional, or commercial relationships the firms had with him and/or Citizens' general counsel. Neither Citizens' Board of Directors nor its service providers appear to have been formally involved in the selection of the law firms. In addition, Citizens was unable to provide any documentation to support the process it used to select the law firms. Thus, we based our findings about the selection process on interviews with Citizens' former CEO and general counsel, former chairman of the Board of Directors, and the service providers and attorneys.

Three of the seven law firms Citizens uses appear to have performed legal work for the precursors to the FAIR and Coastal Plans (i.e., the Louisiana Joint Reinsurance Plan and the Louisiana Insurance Underwriting Plan). These firms are Bienvenu, Foster, Ryan & O'Bannon; Dysart & Tabary; and Haik, Minvielle & Grubbs. Once Citizens was established in January 2004, it began using these three firms for claims litigation. An attorney from Bienvenu, Foster, Ryan & O'Bannon has also always served as Citizens' general counsel.

After Hurricanes Katrina and Rita, Citizens' claims litigation case load increased. In response, Citizens added two new firms, Hulse & Wanek and Jackson Bell. In addition, a series of lawsuits filed against Citizens also named as defendants the adjusters and service providers Citizens used. The adjusters and service providers needed their own legal representation in these cases, so Citizens hired Johnson, Johnson, Barrios & Yacoubian and Hailey, McNamara, Hall, Larmann & Papale to defend those parties, respectively. Exhibit 4 shows the seven law firms Citizens uses, the location of their offices, who they were hired to defend, and the types of suits each firm handles.

Exhibit 4 Louisiana Citizens Property Insurance Corporation Summary Information on Law Firms Hired by Citizens					
Office Location	Party Defended	Type of Suits Handled			
New Orleans	Citizens	 Suits with coverage issues Mass joinder/Class action Particular plaintiff attorneys Suits filed on the Northshore Regular assignment rotation 			
Metairie	Citizens	Suits filed in Plaquemines and St. Bernard parishes			
New Iberia	Citizens	 Suits filed in parishes of St. Martin, Lafayette, Vermilion, Assumption, Iberia, St. Mary, and Iberville Suits on western side of state 			
Metairie	Citizens' Service Providers	Suits with service providers named as defendant			
New Orleans	Citizens	Regular assignment rotation			
Baton Rouge	Citizens	 Regular assignment rotation Suits filed in East Baton Rouge Parish and with the Civil District Court in Orleans Parish 			
New Orleans	Citizens' Adjusting Firms	Suits with adjusting firms named as defendant			
	New Orleans Metairie New Orleans Metairie New Orleans Baton Rouge New Orleans	New Orleans Metairie Citizens Metairie Citizens Metairie Citizens Citizens Metairie Citizens Citizens Metairie Citizens Citizens			

If Citizens were to use some type of advertising and/or solicitation process for law firms, it could better ensure that it selects qualified law firms in an equitable manner. Our own office, for instance, uses a solicitation process to select independent CPA firms to perform audit engagements for state entities that we do not audit internally. This process gives us assurance that we are hiring the most qualified firms at the best cost.

According to Citizens' current CEO and Chairman of the Board, they are aware that the attorney selection process used in the past was informal. They further stated that they plan to make changes in the way attorneys are selected. They are currently awaiting the incoming governor to appoint members to the board of directors so that the new members can participate in the selection process.

Recommendation 1: Citizens should develop a formal policy to select claims litigation attorneys. At a minimum, this policy should include the following provisions:

- Minimum qualifications for the attorneys (e.g., adequate experience in insurance defense, no conflicts of interest, adequate malpractice insurance)
- Objective criteria upon which Citizens can base its decision (including the results of any previous work for Citizens)
- Participation of members of the Citizens Board of Directors in the selection decision
- Retention of documentation supporting the decision

Citizens' management may also want to consider including provisions that require advertising and/or some sort of solicitation process when selecting attorneys.

Summary of Citizens' Response: Citizens agrees with this recommendation and states that it expects to complete the draft policy by January 1, 2008 to be reviewed at the January 2008 meeting of Citizens' Board of Directors.

Summary of PIAL's Response: PIAL declined to respond to any of the recommendations included in this report.

Possible Ethics Violations

We identified two situations related to Citizens' hiring of law firms that may need to be reviewed by the state Board of Ethics to determine whether any ethics violations occurred. The two law firms involved are Johnson, Johnson, Barrios & Yacoubian and Jackson Bell. The specific factors surrounding the hiring of these law firms are described in the following paragraphs. The Louisiana Board of Ethics may wish to consider investigating the circumstances surrounding the hiring of these law firms to determine whether any ethics violations occurred and whether it is appropriate for Citizens to continue to do business with these firms in the future.

The first situation we identified is that two current state legislators, Nicholas Lorusso and Michael Jackson, have worked on claims litigation cases for Citizens. Louisiana's ethics code allows legislators to contract with state government or quasi-public entities provided the legislators are selected through a competitive process, although there may be exceptions to this provision. The Code of Governmental Ethics in R.S. 42:1113(D) states, in part:

No legislator, . . . nor any entity in which [a] legislator . . . owns any interest, . . . shall enter into any contract or subcontract with any branch, agency, department, or institution of state government . . . , or any other quasi public entity created in law unless the contract or subcontract is awarded by competitive bidding . . . or is competitively negotiated through a request for proposal process or any similar competitive selection process . . .

As illustrated on page 9, we did not see any evidence that Citizens selected the law firms through a competitive selection process.

According to Representative Lorusso, he has been a non-equity associate with the law firm of Johnson, Johnson, Barrios & Yacoubian since June 2006. Current Citizens' officials told us that Citizens' former CEO hired this firm in July 2006 to represent adjusters when they are named in Citizens' lawsuits. Representative Lorusso was sworn in to the Louisiana House of Representatives in April 2007. Representative Lorusso stated that while Johnson, Johnson, Barrios & Yacoubian continues to represent the independent adjusting companies retained by Citizens, he removed himself from the Citizens cases before taking his oath of office.

Representative Michael Jackson is a partner with the Jackson Bell law firm. Citizens hired this law firm in February 2006 to defend Citizens in claims litigation cases. Representative Jackson was sworn in to the Louisiana House of Representatives in January 2000. He stated that he requested an opinion from the Louisiana Board of Ethics on this situation and that ethics officials told him that they would not issue an advisory opinion for events that have already occurred. Representative Jackson also said that he then requested an opinion from the Attorney General's office but that he has not yet received the opinion.

The second situation we identified is that Representative Jackson's wife, Stephanie Jackson, is responsible for claims management at Citizen. One of the staff members that Ms. Jackson directly supervises assigns the claims litigation cases to the various law firms used by Citizens, including the Jackson Bell law firm. The ethics code in R.S. 42:1113 (A) prohibits members of a public servant's immediate family from entering into any transaction that is under the supervision or jurisdiction of the agency of the public servant. This provision may apply to Stephanie Jackson in her position at Citizens supervising the employee who assigns cases to her husband's firm.

According to Citizens' current CEO and Chairman of the Board, they are aware of these two situations and will await the Board of Ethics' response.

Recommendation 2: Before Citizens assigns any new cases to the Johnson, Johnson, Barrios & Yacoubian law firm, Citizens should require the firm to obtain an opinion from the Louisiana Board of Ethics on the legality of using the firm to provide legal services for Citizens and should require the firm to compete in a competitive bid process.

Summary of Citizens' Response: Citizens agrees with this recommendation, stating that it will request an opinion regarding this firm from the Louisiana Board of Ethics prior to assigning the firm any new cases.

Summary of PIAL's Response: PIAL declined to respond to any of the recommendations included in this report.

Summary of Representative Nicholas Lorusso's Response: Representative Lorusso partially agrees with this recommendation, stating that he was assigned to assist in the defense of the independent adjusting companies retained by Citizens prior to his election as a State Representative. He also states that upon being sworn in, he advised

the firm that he could no longer represent such parties. He also states that he had no personal involvement regarding Citizens' selection of the Johnson, Johnson, Barrios & Yacoubian law firm. Specifically regarding the recommendation, Representative Lorusso states that he has neither entered into a contract with Citizens to perform legal work (either as a Legislator or prior to his election) nor is he seeking to enter into such a contract, and that at no time has he had any ownership interest in the Johnson, Johnson, Barrios & Yacoubian law firm.

Legislative Auditor's Additional Comment: Representative Lorusso responded to an earlier draft of our report. In his response, he refers to Recommendation 4. It should be noted that Recommendation 4 has been reworded slightly and changed to Recommendation 2 in this report.

Recommendation 3: Before Citizens assigns any new cases to the Jackson Bell law firm, Citizens should require the firm to obtain an opinion from the Louisiana Board of Ethics on the legality of using the firm to provide legal services for Citizens and should require the firm to compete in a competitive bid process.

Summary of Citizens' Response: Citizens agrees with this recommendation, stating that it will request an opinion regarding this firm from the Louisiana Board of Ethics prior to assigning the firm any new cases.

Summary of PIAL's Response: PIAL declined to respond to any of the recommendations included in this report.

Summary of Representative Michael Jackson's Response: Mr. Charles Patin of the Kean, Miller, Hawthorne, D'Armand, McGowan & Jarman law firm responded on behalf of Representative Jackson. Mr. Patin disagrees with this recommendation and quotes Chapter 10 of Title 38 of the Louisiana Revised Statutes regarding public works contracts. He also states that legal services are not related to this provision, thus our reference to Part II of Chapter 10 of Title 38 is inapplicable. Mr. Patin also points out that Chapter 16 of Title 39 of the Louisiana Revised Statutes states that contracts for professional services may be awarded without the necessity of competitive bidding or competitive negotiation, thus, he says, this recommendation is inapplicable. He further states that, with respect to the provisions of Chapter 17, the Louisiana Procurement Code does not apply to professional services contracts and that if the legislature intended for professional services contracts be subject to a competitive selection process, Section 1113 would expressly state this intent. Since it does not state such, he says, no competitive selection process was required for Citizens to enter into a contract with the Jackson Bell law firm.

Legislative Auditor's Additional Comment: We draw no conclusion in this report on the propriety or impropriety of the hiring of the Jackson Bell law firm. We merely present the facts and suggest that the Louisiana Board of Ethics should make this determination.

Recommendation 4: Before Citizens assigns any new cases to the Jackson Bell law firm, Citizens should request an opinion from the Louisiana Board of Ethics on the legality of hiring Jackson Bell for legal services work, considering Stephanie Jackson's position as claims manager at Citizens.

Summary of Citizens' Response: Citizens partially agrees with this recommendation, stating that it will request an opinion from the Louisiana Board of Ethics regarding this recommendation. Citizens also points out that Mrs. Jackson had no involvement in the selection of the Jackson Bell law firm and did not participate in the assignment of cases to the firm.

Summary of PIAL's Response: PIAL declined to respond to any of the recommendations included in this report.

Summary of Representative Michael Jackson's Response: Mr. Charles Patin, on behalf of Representative Jackson, disagrees with this recommendation and states that Mrs. Jackson did not enter into a professional services contract for the provision of legal services with Citizens; rather, Citizens did. He also states that, under the definition of Section 1113(A), even if one assumes that Mr. and Mrs. Jackson share a community property arrangement and by virtue thereof Mrs. Jackson would have an interest in her husband's law practice and that that interest might exceed twenty-five percent, Section 1113(A) is nevertheless inapplicable because of the express exclusion of any person who is a legislator.

Legislative Auditor's Response: To clarify our finding regarding this provision of the Louisiana Code of Ethics, we further illustrate our point, as follows:

"No public servant [i.e., Stephanie Jackson] . . . or member of such a public servant's immediate family [i.e., Michael Jackson] . . . shall bid on or enter into any contract, subcontract, or other transaction that is under the supervision or jurisdiction of the agency of such public servant [i.e., Stephanie Jackson's supervision of case assignment for Citizens' defense attorneys]." (emphasis added)

In this finding, we are referring to Stephanie Jackson as the public servant, not Michael Jackson, because of her position as claims manager for Citizens. Thus, the exclusion of any person who is a legislator does not apply to Mrs. Jackson because she is not a legislator. Our point is that no member of Mrs. Jackson's immediate family may enter into a contract that is under her supervision.

Again, in this finding, we merely present the facts and suggest that the Louisiana Board of Ethics should make this determination.

Case Assignment Process Lacks Controls

Citizens' officials told us that their policy is to rotate the assignment of claims lawsuits among the law firms of Bienvenu, Foster, Ryan & O'Bannon; Jackson Bell; and Hulse & Wanek, based on venue and type of case. According to Citizens' general counsel, the corporation assigns the cases geographically to save the lawyers from having to travel, thus minimizing expenses. Some exceptions exist where Citizens may deviate from the standard rotation. For instance, Haik, Minvielle & Grubbs handles cases filed in southwest Louisiana. Johnson, Johnson, Barrios & Yacoubian defends adjustors. Hailey, McNamara, Hall, Larmann & Papale defends service providers. In addition, if a law firm receives multiple cases in a day, it may request Citizens to assign some of the cases to another firm.

As previously mentioned, Citizens' claims staff maintains an Excel spreadsheet containing information on claims in litigation, both pending and closed. We reviewed a sample of 40 cases from this unaudited spreadsheet to test whether Citizens followed its prescribed rotation for assigning cases to law firms. Because of time constraints and the lack of detail in the spreadsheet, however, we were not able to research the details of every case (over 2,000) to determine whether Citizens consistently assigned the cases to the appropriate attorneys. In addition, the spreadsheet we used to select our sample did not contain sufficient information to allow us to test the rotation among the law firms. As a result, it is not possible to determine if Citizens correctly followed its rotation according to the designed procedure.

Recommendation 5: Citizens officials should implement controls to ensure that staff members follow the established rotation process of assigning cases to law firms and that they document the reasons for any deviations from the established rotation.

Summary of Citizens' Response: Citizens agrees with this recommendation and states that it will develop a quality assurance program to monitor compliance with the rotation process.

Summary of PIAL's Response: PIAL declined to respond to any of the recommendations included in this report.

Attorney Fees Informally Set

According to Citizens' general counsel, Citizens pays attorneys \$125 per hour for regular claims litigation work and \$175 per hour for general counsel duties and class action and mass joinder cases. The former CEO of Citizens set the attorney fees. It does not appear that he used a formal process to set the fees, nor does Citizens have any documentation to support the fee structure.

We compared Citizens' fee structure for its defense attorneys to the fee schedule that the state Office of the Attorney General sets for professional legal services. According to the Attorney General's fee schedule, the maximum hourly rate is \$175 per hour; therefore, the hourly rate that Citizens pays its attorneys does not exceed the maximum amount that the Attorney General sets for attorneys. The Attorney General bases its fee schedule on the number

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of years of experience the attorney has and the type of other services the law firm is providing (e.g., paralegal or law clerk); however, Citizens does not.

Although Citizens does not have formal documentation showing how it developed its fee structure, its attorney fees appear to be reasonable. In the future, Citizens should develop a formal structure for setting attorney fees and maintain documentation that supports this process. Citizens should adopt a fee schedule that takes into consideration the experience of the attorneys, adjusts for services provided by others such as paralegals or law clerks, and provides that rates shall not exceed the Attorney General's maximum hourly rate.

Recommendation 6: Since Citizens is a public entity, Citizens should formally adopt into policy the Attorney General's fee schedule. Doing so would ensure that Citizens follows a fee schedule that is in line with attorney experience and does not exceed the state maximum.

Summary of Citizens' Response: Citizens disagrees with this recommendation, stating that because Citizens' status as a state agency is still in question, it has requested an opinion from and will wait for a response from the Attorney General before making a decision on this recommendation.

Summary of PIAL's Response: PIAL declined to respond to any of the recommendations included in this report.

Do Citizens' contracts with law firms and service providers include provisions to hold the contractors accountable for producing desired results?

No Written Contracts With Law Firms

Citizens does not have written contracts with the law firms that provide its legal defense in claims litigation cases. Citizens does have a retention agreement with its general counsel. The only fee included in this agreement, however, is the retention fee. Citizens' general counsel told us that it is not standard practice in the insurance industry for insurers to have written contracts with law firms. He also stated that the attorney fees were verbally agreed upon and that there is a tacit understanding that all expenses should be reasonable. According to the National State Auditors Association (NSAA), however, contracts for the purchases of services must be formal, written documents. Without written contracts, Citizens cannot hold the law firms accountable for desired results.

NSAA also says that contracts should protect the interests of the agency, identify the responsibilities of the parties to the contract, define what is to be delivered, and document the mutual agreement. Furthermore, contracts should hold contractors accountable for delivery of quality services and prevent the inappropriate or inefficient use of public funds. To achieve such objectives, contracts should include clearly defined performance standards and measurable outcomes, clear statements of expected goods and services, contractor evaluation factors, adequate sanctions, spending restrictions, and audit clauses. According to the Web site of the Louisiana Division of Administration, Office of Contractual Review (OCR), at minimum, contracts should include appropriate signatures and approvals; contract beginning and end dates; a description of the work to be performed including goals and objectives, deliverables, performance measures, and a monitoring plan; payment details and budget information; a schedule of reports and deliverables; travel guidelines; a termination clause; and an audit clause.

Although it may not be standard practice in the insurance industry to use written contracts with law firms, Citizens is an entity of the state. As such, it has a responsibility to implement controls to protect its resources and ensure that they are used effectively and efficiently. One such control is the use of written contracts. The Louisiana Office of Risk Management (ORM), which is also a state entity, requires written contracts with attorneys who do business with state agencies. Because Citizens does not use written contracts, it has no controls in place to hold the attorneys accountable for producing results that are in Citizens' best interest.

Furthermore, the State Procurement Code (R.S. 39:1482 and R.S. 39:1502, taken collectively) provides that OCR must approve all professional services contracts in excess of \$2,000 to be valid. Citizens is statutorily placed under DOI (through R.S. 36:686). Thus, Citizens is a state entity and should therefore obtain OCR approval for contracts that exceed \$2,000.

Recommendation 7: Citizens should execute formal, written contracts with its defense attorneys. The provisions of the contracts should be designed to hold the attorneys accountable for delivery of services and prevent the inappropriate or inefficient use of public resources. The contracts should include the following provisions:

- Clear statements of expected services
- Fees and payment details
- Spending restrictions
- Schedule of reports and deliverables
- Monitoring plan
- Adequate sanctions, including a termination clause
- Audit clause
- Appropriate signatures and approvals
- Contract beginning and end dates

Including these provisions should help protect the interests of Citizens, identify the responsibilities of the law firms, define what is to be delivered, and document the parameters of what the parties agreed upon. The contracts should also emphasize achieving the best result for both Citizens and the insured policyholders in an efficient and cost-conscious manner.

Summary of Citizens' Response: Citizens agrees with this recommendation and will develop formal contracts with defense attorneys, which will be reviewed with the Citizens Board of Directors at the January 2008 meeting.

Summary of PIAL's Response: PIAL declined to respond to any of the recommendations included in this report.

Recommendation 8: To ensure compliance with applicable provisions of the State Procurement Code, Citizens should submit all contracts with law firms that exceed \$2,000 to the OCR for review and approval.

Summary of Citizens' Response: Citizens disagrees with this recommendation, stating that because Citizens' status as a state agency is still in question, it has requested an opinion from and will wait for a response from the Attorney General before making a decision on this recommendation.

Summary of PIAL's Response: PIAL declined to respond to any of the recommendations included in this report.

Contracts With Service Providers Lack Critical Detail

Citizens does have written contracts with the four service providers it uses: Audubon, Bankers, First Premium, and MacNeill. Not all contracts, however, contain clear, specific performance-related provisions or deliverables, as suggested by NSAA. The lack of this type of information in the contracts impedes Citizens' ability to hold the service providers accountable for desired results.

Citizens signed and executed the contract with Audubon on December 29, 2003. Citizens executed the contracts with the other three providers later--these other three contracts went into effect October 1, 2005. We reviewed all four contracts to ascertain what provisions, if any, they include that would enable Citizens to hold the service providers accountable. We focused our review on activities related to the claims litigation progress.

The contracts between Citizens and Bankers, First Premium, and MacNeill include clear descriptions of the required work and performance measures and specific timelines for each requirement. On the contrary, the contract with Audubon does not include clear or specific performance standards and requirements. In addition, we found the litigation aspects of all four contracts to be vague, stating only that Citizens will pay for legal counsel if Citizens believes the service providers were acting in good faith. In the cases of Bankers, First Premium, and MacNeill, the contracts require the service providers to coordinate efforts with attorneys when necessary. Audubon's contract states only that if litigation arises and Audubon has acted in good faith, Citizens will cover litigation costs.

We discussed these contracts with Citizens officials. According to the current CEO and Chairman of the Board, they are in the process of having Citizens' workflow processes analyzed. When that task is completed, they will be able to take measures to ensure that future contracts with service providers contain all necessary provisions to hold the service providers accountable for desired results.

Recommendation 9: As mentioned in Recommendation 7, Citizens should ensure that all contracts with service providers include clear and specific performance standards and requirements by amending the current contracts and/or by including these provisions in future contracts with service providers.

Summary of Citizens' Response: Citizens agrees with this recommendation, stating that it is currently examining work flows and procedures relating to the service providers as it begins to prepare an RFP for an October 1, 2008 bid and that it will ensure that the new contracts are clear as to performance measures.

Summary of PIAL's Response: PIAL declined to respond to any of the recommendations included in this report.

Recommendation 10: In conformity with Recommendation 8, Citizens should submit all service provider contracts to OCR for review and approval.

Summary of Citizens' Response: Citizens disagrees with this recommendation, stating that because Citizens' status as a state agency is still in question, it has requested an opinion from and will wait for a response from the Attorney General before making a decision on this recommendation.

Summary of PIAL's Response: PIAL declined to respond to any of the recommendations included in this report.

Has Citizens' staff or service providers reviewed attorney invoices for accuracy and reasonableness?

Attorney Invoices Not Consistently Reviewed

Citizens' staff or its service providers appear to have performed some type of review on the majority of sample attorney invoices we examined. No reductions in the amounts to be paid to the attorneys, however, other than to reduce some invoice amounts for previous payments, occurred based upon their reviews. The fact that no adjustments were made to any of the invoice amounts after the reviews were completed (with the exception of adjustments for previous payments) causes us to question the quality of the reviews.

Citizens set the maximum hourly rate it pays the attorneys, but it has not provided guidance to its staff or service providers regarding reviews of attorney invoices. This lack of guidance has resulted in inconsistencies in the supporting documentation that attorneys have submitted with their invoices. It has also resulted in inconsistencies in the amounts Citizens has paid the law firms for tasks related to claims litigation.

We reviewed 84 attorney invoices. Of these 84 invoices, 45 (53.6%) showed notations or markings that appear to be evidence of some sort of review. For example, four invoices had "OK to pay" written on them, and 18 had the total amounts circled or had check marks near the totals. We could not consistently determine, however, who had done the reviews or the extent of their reviews. We did not find any evidence or review on the other 39 invoices.

We asked the service providers about adjusting invoice amounts based on their reviews. One service provider replied that since Citizens had not provided billing guidelines to the service providers or the attorneys, they have no basis to disallow charges that are not egregious. Another service provider stated that they had no basis to disallow charges because they have little interaction with the attorneys on which to base their decisions.

The Defense Research Institute (DRI) is a national organization of lawyers involved in the defense of civil litigation. The DRI has developed *Recommended Case Handling Guidelines for Insurers*. A section of these guidelines is about insurance defense billing. ORM has customized the DRI guidelines to fit the state's needs. ORM's guidelines specify the types of services the insurer (or ORM) will not allow defense attorneys to include in their invoices. Some examples are secretarial and clerical activities like copying, faxing, and maintaining calendars. The guidelines also specify the detail and format law firms are required to follow on their invoices.

In addition, the ORM guidelines specify the types of work that will be reimbursed at paralegal rates versus attorney rates as well as other services, in addition to the attorney's time, that may be charged to ORM such as long-distance charges and photocopying. The guidelines also specify the format and supporting documentation required for defense attorneys to be

reimbursed for their use of outside vendors. Citizens has not provided anything similar to this type of guidance to its attorneys or service providers.

In our review of the 84 attorney invoices, we found that the attorneys generally followed the DRI guidelines. For example, they generally itemized their work with one task for each entry. In addition, they generally billed paralegal work at a paralegal rate rather than at the attorney rates. We found several examples, however, of inconsistent billing practices among the law firms. Some examples of the inconsistencies we identified are as follows:

- We found numerous instances where law firms billed for paralegals (and attorneys in a few cases) to mail or fax documents, organize files, or update calendars. Such charges were included in the invoices of some law firms but not others. These types of activities are clerical in nature as opposed to paralegal or attorney activities and are specifically disallowed in the ORM guidelines.
- We found several instances where law firms listed multiple items under single entries on their invoices when the items should have been split into separate entries. For instance, a firm would list items such as "opened, organized and reviewed file materials" as one entry on the invoice. In this example, reviewing the file materials could be a task for a paralegal or attorney depending on the reason for the review, and it should be listed as a separate entry. The other tasks are clerical in nature and should not be grouped with the file review tasks.
- We identified a few vague descriptions of some tasks such as notations stating, "Letter from Clerk of Court" or "reviewed file materials." These descriptions do not clearly explain what the attorney or paralegal actually did with the letter from the clerk of court or why he or she reviewed the file.
- We found that the rates the attorneys charged for paralegals and photocopies varied among the attorneys. Paralegal rates ranged from \$50 per hour to \$80 per hour. Photocopying charges ranged from \$0.06 per page to \$0.25 per page. Some copy charges did not specify the number of pages copied and only listed the total charge.
- On one invoice, the rate charged for the attorney varied from \$125 per hour for some tasks to \$175 per hour for others. This case was not a mass joinder or class action lawsuit; therefore, the rate should have been only \$125 per hour for all tasks. According to Citizens, this was an oversight and should have been billed at \$125 per hour.

To determine what documentation had been provided by the attorneys to support their invoices, we reviewed one invoice from each of the law firms. Again, we found inconsistencies amongst the law firms. For two of the seven invoices we reviewed, the service providers' files contained all of the substantive work products (e.g., motions, letters, answers to interrogatories, and petitions) for which the law firms had billed Citizens. The files for three other invoices contained none of the work products listed on the invoices. The files for the other two invoices contained some of the documents listed on the invoices but not others.

According to Citizens' current CEO and Chairman of the Board, they are aware of these inconsistencies and are considering hiring a third party to review attorney invoices.

Recommendation 11: Citizens should develop standard billing guidelines, which it should provide to its defense attorneys and service providers as well as to its staff members who are responsible for reviewing attorney invoices. At a minimum, the billing guidelines should include the following:

- The types of tasks that are billable (e.g., attorney tasks) and not billable (e.g., secretarial tasks)
- The level of detail and format to be used on invoices (e.g., one task per entry, time in 1/10-hour segments, etc.)
- The documentation required to support the entries on the invoice (e.g., substantive work products, status reports, receipts from vendors, etc.)
- The maximum rates for paralegals and in-house photocopies
- Situations where prior consultation with a service provider or Citizens is required (e.g., hiring experts, extensive legal research, etc.)

Summary of Citizens' Response: Citizens agrees with this recommendation and states that it will provide written guidelines for reviewing attorney bills and that these guidelines will be reviewed by Citizens' Board of Directors prior to releasing the RFP for service providers.

Summary of PIAL's Response: PIAL declined to respond to any of the recommendations included in this report.

Recommendation 12: As stated in Recommendation 7, we suggest that Citizens should begin using written contracts for the law firms it hires to litigate claims cases. We further recommend that Citizens provide in the contracts that the attorneys must submit supporting documentation for the charges on their invoices in order to be paid.

Summary of Citizens' Response: Citizens agrees with this recommendation and states that it will develop contracts for the law firms outlining performance expectations and required documentation.

Summary of PIAL's Response: PIAL declined to respond to any of the recommendations included in this report.

Recommendation 13: We recommend that Citizens include specific guidelines in its service providers' contracts regarding how and when the service providers are to review attorney invoices. These guidelines should include a detailed list of all items the service providers are to review (e.g., hourly rates and approved services) and how to document their reviews (e.g., by signing and dating the invoices).

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Summary of Citizens' Response: Citizens agrees with this recommendation and will include this information in the performance standards as stated in Recommendation 9 of this report.

Summary of PIAL's Response: PIAL declined to respond to any of the recommendations included in this report.

Has Citizens' claims litigation system ensured that cases are properly assessed, reserves are appropriately set and adjusted, and litigation is adequately monitored?

No Case Assessment Required

According to the DRI, contracted law firms should provide the insurer and the insured with an initial evaluation report on a lawsuit within a specified number of days after receiving an assignment. The firm should also provide reports of significant developments, such as summaries of depositions and pre-trial reports, settlement options, an updated evaluation of the client's liability and damages, an updated litigation plan, and a trial report if the firm anticipates that the case will go to trial. ORM requires contracted attorneys to submit a case assessment form within 60 days of case assignment and a 6-month report and updated status reports when there is any change to a case. Citizens, however, has not required its service providers to obtain any such reports or updates from its attorneys. This lack of case assessments occurred because Citizens does not have a formal, standard policy requiring service providers and attorneys to assess Citizens' liability, estimate costs and activities needed to defend each case, and identify settlement opportunities early in the litigation process.

In the sample of 40 cases we examined, we found only one instance where the attorney submitted a written case assessment to the service provider during litigation. Officials from First Premium stated that they require attorneys to fill out a "30 Day Case Assessment" form to evaluate case liability and identify the costs and activities needed to defend each case. However, we did not see any evidence of First Premium using this form in our review of their six cases in our sample. None of the other service providers has a formal case assessment process. Without formal case assessments, Citizens cannot ensure that service providers are aware of the status on all of their lawsuits or adequately monitor all pending lawsuits.

According to Citizens' claims manager, they are working on a formal case assessment process but have not yet implemented it.

Recommendation 14: Citizens should implement a formal case assessment policy that includes the following:

- A requirement that defense attorneys submit initial case assessments to Citizens by a certain deadline, such as 30 or 60 days after the attorneys receive assignments. The initial case assessment should include, at a minimum, the following:
 - A summary of the facts and arguments in the case
 - A plan outlining necessary tasks to defend the case
 - An evaluation of liability
 - A litigation budget

- A requirement that defense attorneys submit follow-up case assessments to Citizens at periodic intervals including, at a minimum, the following:
 - An update (i.e., status) report on the information provided in the initial case assessment
 - Information on pleadings and discovery up until that point
 - A list of appropriate witnesses and exhibits
 - An analysis explaining the merits of settling versus going to trial

Summary of Citizens' Response: Citizens agrees with this recommendation and will include this information in its contracts with attorneys and service providers.

Summary of PIAL's Response: PIAL declined to respond to any of the recommendations included in this report.

Inconsistent Reserve Practices

As previously stated, reserves are the accounting of the outstanding loss liabilities and loss adjustment liabilities for which an insurer is responsible. That is, reserves are the funds that insurers set aside to pay future expenses for which they are responsible for but have not yet received a bill. Citizens separates reserves into three categories: loss reserves, loss adjustment expense (LAE) reserves, and litigation loss adjustment expense (LLAE) reserves. Loss reserves are estimates of the future costs of coverage payments to the insureds. LAE reserves are the funds that Citizens sets aside to pay the non-litigation expenses of the adjustment process, such as the costs of outside adjusters. LLAE reserves are the liabilities related to the litigation process, such as attorney fees.

Citizens and its service providers have not entered initial reserves into Citizens' computer system in a regular or consistent manner. According to Citizens' Operations Manual, LPMS automatically establishes the initial average loss reserves and the LAE reserve on all incurred and reported losses within the first 24 hours of receiving a claim. In our review of claims data, however, we found that in some cases, LPMS automatically populated the reserves fields at the time that the claims were established, but in other cases, the service providers manually entered the initial reserves. According to a consultant working with Citizens, the Operations Manual not being updated as reserving policies changed over time could have caused these differences.

According to Citizens' Operations Manual, the service providers are responsible for reviewing reserves every 30 days and adjusting them as warranted based on new information. In our review of sample cases from LPMS, we found that in most instances, Bankers, First Premium, and MacNeill entered reserves, paid the related expenses, and decreased the reserves for the expenses at the same time. Instead, the service providers should have established a reserve when each liability was first identified and then adjusted it in the future as necessary. Industry standards assert that, as an insurer receives new information that would affect the liability amount of a claim, the reserve should be revised. Because neither Citizens' staff nor service providers have consistently established and adjusted reserves, Citizens has not been able to report reliable reserve balances on its management reports or financial statements.

Our review also showed that Citizens' service providers did not reserve for LLAE consistently or on a regular basis. Audubon, Bankers, and First Premium all stated that they set LLAE reserves as a standard practice. In our review of the sample cases, however, we found that they did not always reserve for LLAE, as required by the Operations Manual. MacNeill, on the other hand, stated that it does not generally set LLAE reserves, as it cannot set reserves higher than the policy coverage limits. Our review, however, showed that MacNeill did sometimes account for litigation-related liabilities; however, MacNeill accounted for them as LAE in some instances instead of LLAE.

Furthermore, the term that Citizens uses, "litigation loss adjustment expense" (LLAE), is not a standard industry term or categorization. The National Association of Insurance Commissioners (NAIC) classifies loss adjustment expenses into two broad categories: "Defense and Cost Containment" and "Adjusting and Other." Defense Cost Containment expenses include internal and external defense and litigation cost containment expenses, such as litigation management expenses, fees for appraisers if working in defense of a claim, attorney fees for defense work, and the cost of engaging experts. Adjusting and Other expenses are LAE that do not fit into the first category, including fees and expenses of adjusters and settling agents, attorney fees incurred in the determination of coverage, and the fees and salaries for appraisers if working in the capacity of an adjuster. According to Citizens' current Chief Financial Officer, the corporation will be adjusting its reserve accounting to reflect industry standards.

Finally, because of problems with its computer system, Citizens has not yet been able to accurately account for its reserve liability. According to NAIC, insurance companies provide their loss data in Annual Statement Schedule P. Schedule P shows the payments, incurred amounts, and reserves, as well as earned premiums and claims counts for reported claims, closed claims, and open claims. In addition, the NAIC requires companies to attach a "Statement of Actuarial Opinion" to their Annual Statements. The "Statement of Actuarial Opinion" is a signed statement by a qualified actuary, wherein the NAIC requires the actuary to express his or her opinion on the reserves. Citizens' current CEO and current CFO stated that they are working diligently towards producing auditable financial statements that will include a proper accounting of reserve liabilities in the future.

Recommendation 15: Citizens should continue its work towards establishing accurate reserve balances. We also recommend that management refine the reserve process to ensure that reserves are set and adjusted consistently and regularly. Citizens could accomplish this goal by clarifying and enforcing its requirements on how the service providers should enter initial reserves, requiring the service providers to adjust reserves as they obtain new information, and standardizing the way that service providers reserve for legal expenses. In addition, we recommend that Citizens move forward with its decision to revise the way it categorizes reserves to reflect changes in the NAIC reporting requirements and that, after the computer data problems are resolved, Citizens retain an actuary to issue an opinion on its reserves annually.

Summary of Citizens' Response: Citizens agrees with this recommendation and states that it is aware of this issue and has taken corrective action. Citizens also states that it will reevaluate the current reserving program as part of the service provider RFP

process and will ensure that the policy complies with NAIC terminology. Citizens also states that it will have an actuary review reserves on a regular basis.

Summary of PIAL's Response: PIAL declined to respond to any of the recommendations included in this report.

Inadequate Litigation Monitoring

According to Citizens officials, the Excel litigation spreadsheet is the only source of information its claims staff maintains to monitor claims lawsuits. To assess the accuracy of the spreadsheet, we compared information it contains for our 40 sample cases with documentation scanned into the ImageRight claims files by the service providers. Specifically, we compared the case assignment dates on the spreadsheet to the corresponding dates on the case assignment e-mail messages Citizens sent to the attorneys, which are located in the case files. We found numerous errors and omissions in the spreadsheet, as described below:

- The case assignment dates on the spreadsheet matched the documentation in the case files for only 13 (32.5%) of the cases.
- For two cases (5.0%), the spreadsheet was missing the dates Citizens assigned the cases to the law firms. (We were able to locate the dates in Citizens' case files.)
- For the remaining 25 cases (62.5%), the dates on the spreadsheet did not match the dates found in the case file documentation. The differences ranged from two to 75 days.

According to Citizens, the service providers are responsible for monitoring the defense attorneys that Citizens assigns to the claims lawsuits. Monitoring includes reviewing the invoices that the attorneys submit to the service providers. None of the service providers has standard review criteria to follow, but they all said that they review the bills for obvious errors. The service providers gave us the following information when we asked them what their review process entailed.

- Officials at Audubon said that their examiners check to make sure activities listed on attorney invoices appear reasonable and bring anything questionable to a manager for review. One manager stated that no examiner has ever brought anything unreasonable to his attention, nor is he aware of any deductions that have been made to invoices.
- Officials at Bankers said that their staff reviews attorney invoices for errors but does not have standard review criteria for other billing practices. In their opinion, it would be difficult to come up with such criteria, as cases can vary dramatically. They said that they usually do not have problems with the invoices that attorneys submit.
- Officials at First Premium said that their staff reviews invoices for mistakes or odd charges, such as billing 23 hours in a 24-hour period. They also said that any

bill over \$10,000 is sent to the Director of Claims for review. First Premium officials further stated that it is difficult for them to question Citizens' lawyers because there are no rules in place and because they did not hire the lawyers. If Citizens does not provide guidance to the lawyers up front, the lawyers cannot know what is expected of them, according to First Premium. If adequate controls were in place, First Premium said that the service providers would have the authority to question attorneys' invoices.

• MacNeill officials said that their staff reviews attorney invoices and looks for obvious errors such as billing 25 hours in a day. Any discrepancies are brought to Citizens' attention for Citizens to handle; however, this does not happen often. Because of limited interaction with the attorneys, however, MacNeill does not always know what the lawyers are working on, which would enable them to do a more thorough review.

As previously stated, the service providers did not have any input into the selection of law firms or the assignment of cases to the law firms. Under this arrangement, it is difficult for the service providers to question the attorneys' invoices because Citizens does not have written contracts with the attorneys that outline specific performance expectations. The service providers would be better able to hold the attorneys accountable if they were able to hire the attorneys themselves or at least have more interaction and communication with the attorneys so that they can effectively monitor litigation for their claims.

For Citizens to monitor claims litigation effectively, written contracts must first be in place with all law firms hired to defend Citizens in claims cases, as mentioned previously. In addition, it is important to have effective contract monitoring policies and procedures that examine compliance with regulations and requirements and focus on outcomes. Contract monitoring should also focus resources on the riskiest contractors and employ standardized criteria to evaluate performance. Exhibit 5 lists tasks and elements that entities should follow to monitor their contracts properly.

Exhibit 5 Elements of Effective Contract Monitoring Assign the monitoring responsibilities to a contract manager with the authority, resources, and time to monitor the project Ensure that the contract manager possesses adequate skills and has the necessary training to properly manage the contract Track budgets and compare invoices and charges to contract terms and conditions Ensure that deliverables are received on time and document the acceptance or rejection of deliverables Withhold payments to vendors until deliverables are received Retain documentation supporting charges against the contract Evaluate the contractor's performance against a set of pre-established, standard criteria and retain a record of the contractor's performance, after the contract is completed

Source: Contracting for Services, a Best Practices Document published by the National State Auditors Association.

Although the attorneys and service providers informally monitor the individual cases they handle, Citizens has no overall mechanism whereby it continually monitors and reviews all cases to ensure that it is getting the best results from the attorneys. For instance, Citizens is not able to ascertain when it is best to settle a case versus go to trial, determine if an attorney is defending a case as quickly and cost-effectively as possible, or communicate pertinent case information and precedents to attorneys on a regular and consistent basis.

As previously mentioned, Citizens does maintain a spreadsheet containing limited lawsuit information. Because the spreadsheet contains numerous errors and omissions, however, it cannot be used as an effective overall monitoring tool. If Citizens were to enhance its "gatekeeping" function, management would be able to monitor all lawsuits, verify that attorneys are working cases in the corporation's best interest, and ensure that public assets are used efficiently.

Maintaining the spreadsheet with fewer errors and omissions would help a litigation gatekeeper monitor the status of all cases, both open and closed, to ensure that Citizens is represented in the most effective and economical manner. Citizens should also consider assigning someone to review the accuracy of the litigation spreadsheet and to ensure that attorneys handle cases in Citizens' best interest. Assigning a litigation gatekeeper more specific duties and establishing a contract monitoring process would help Citizens ensure that it effectively monitors all cases in litigation.

Exhibit 6 provides an example of the information that Citizens' gatekeeping function could monitor, using the 35 open cases in our sample of 40 cases. Factors such as the number of cases each firm is handling, the amount of money each law firm is invoicing Citizens, and the length of time cases have been pending are important considerations in ensuring that cases are being worked in the most effective and efficient manner.

Exhibit 6 Louisiana Citizens Property Insurance Corporation Data on 35 Open Sample Lawsuits							
Low Firm	Number of Sample	Average Amount Paid to Law Firm per Case	Total Amount Paid to Law Firm From	Cases Pending From Date Lawsuits Filed Through 6/30/07			
Law Firm	Cases Handled		8/29/05 Through 6/30/07	Average Number of Days	Total Number of Days		
Bienvenu, Foster, Ryan & O'Bannon	15	\$3,971	\$59,569	515	4,117		
Dysart & Tabary	4	\$0	\$0	312	1,247		
Haik, Minvielle & Grubbs	2	\$1,302	\$2,605	267	533		
Hulse & Wanek	3	\$820	\$2,461	288	864		
Jackson Bell	11	\$636	\$6,997	233	2,561		
Total	35	-	\$71,634	-	9,322		

Source: Prepared by legislative auditor's staff using information provided by Citizens, law firms, and service providers.

Exhibit 7 provides an example of the information that Citizens' gatekeeping function could monitor using the five closed cases in our sample of 40 cases. Factors such as how much the law firms are paid, how long cases took to close, and the amounts the policyholder settled for are important in adequate litigation monitoring.

Exhibit 7 Louisiana Citizens Property Insurance Corporation Data on Five Closed Sample Lawsuits								
Service Provider	Law Firm	Amount Paid to Law Firm	Days Suit Open (from date filed to date closed)	Amount Paid to Policyholder				
Audubon	Bienvenu, Foster, Ryan & O'Bannon	\$676	193	\$83,922				
Bankers	Dysart & Tabary	\$1,103	261	\$39,482				
Audubon	Dysart & Tabary	\$1,592	420	\$2,567				
MacNeill	Haik, Minvielle & Grubbs	\$2,604	225	\$5,647				
	Bienvenu, Foster, Ryan & O'Bannon	\$4,279						
First Premium	Johnson, Johnson, Barrios & Yacoubian	\$3,237	162	\$245,000				
	Hailey, McNamara, Hall, Larmann & Papale	<u>\$2,624</u>						
		Sub-total \$10,140						
Total		\$16,115	1,261	\$376,618				

Source: Prepared by legislative auditor's staff using information provided by Citizens, law firms, and service providers.

Recommendation 16: Citizens' management should enhance the responsibilities of the litigation gatekeeper and determine if they should hire additional staff with legal expertise or other credentials to strengthen the gate keeping function. Gatekeeping efforts should ensure that:

- Law firms work with Citizens and the insureds to achieve the best results for Citizens in an efficient and cost-conscious manner
- Attorneys develop effective and strategically sound legal defense in a timely manner
- Service providers receive required communication from attorneys, such as assignment acknowledgment, initial case assessment reports, and follow-up case assessment reports
- Attorneys communicate significant developments, decisions, and delays as soon as practical

- Law firms are aware of Citizens' approved billing policies and procedures
- Service providers are aware of Citizens' approved bill and file review policies and procedures

Summary of Citizens' Response: Citizens agrees with this recommendation and states that it will review this recommendation in conjunction with the workflow analysis and the new service provider RFP.

Summary of PIAL's Response: PIAL declined to respond to any of the recommendations included in this report.

APPENDIX A: SCOPE AND METHODOLOGY

Audit Scope

The audit focused on the system used by Citizens to monitor claims litigation. The audit examined the system in effect from August 29, 2005, through June 30, 2007. Our audit objectives were to answer the following four questions:

- 1. How did Citizens select defense attorneys for claims litigation cases, assign cases to attorneys, and set attorney fees?
- 2. Do Citizens' contracts with law firms and service providers include provisions to hold the attorneys and service providers accountable for producing desired results?
- 3. Has Citizens' staff or service providers reviewed attorney invoices for accuracy and reasonableness?
- 4. Has Citizens' claims litigation system ensured that cases are properly assessed, reserves are appropriately set and adjusted, and litigation is adequately monitored?

Methodology

To gain an overview of Citizens' claims litigation system and obtain comparable criteria, we performed the following procedures:

- Researched state laws, rules, and regulations
- Interviewed staff at Citizens, Citizens' service providers, claims litigation attorneys hired by Citizens, and representatives of the Department of Insurance (DOI) and Office of Risk Management (ORM)
- Reviewed Citizens' Claims Manual
- Reviewed policies and procedures of ORM
- Obtained Attorney General's professional legal services fee schedule

To obtain information on whether the claims litigation system ensured that Citizens has adequately monitored litigation, we performed the following procedures:

- Interviewed staff at Citizens and Citizens' service providers
- Analyzed the claims litigation spreadsheet maintained by Citizens' claims staff
- Reviewed Citizens' contracts with service providers and researched best practices for contracts

- Examined guidelines from the Defense Research Institute
- Reviewed ORM's guidelines
- Selected a sample of claims cases (see below) and conducted various tests
- Solicited legal fees payment data from attorneys and a service provider and compared it to Citizens' data

Sample Selection

To develop our sample, we used the list of open and closed lawsuits from Citizens' litigation tracking spreadsheet. We used a random number generator to select 30 cases from this list. This list included some cases from the previous FAIR and Coastal Plans; however, we skipped these cases when the random number generator selected them. The random sample of 30 cases at this point included only one lawsuit represented by the law firm of Hulse & Wanek and two cases from the firm of Haik, Minvielle & Grubbs. To ensure that the sample included three cases from each law firm, we used the list of random numbers to identify additional cases for which Hulse & Wanek and Haik, Minvielle & Grubbs served as Citizens' defense attorneys.

Occasional lawsuits required Citizens to provide defense for the service provider and/or the adjuster involved on the claim. Citizens hired Johnson, Johnson, Barrios & Yacoubian and Hailey, McNamara, Hall, Larmann & Papale to represent these parties, resulting in cases in which Citizens assigned multiple law firms. Although the sample now included a selection of all attorneys representing Citizens, it did not include any cases with these additional law firms. To ensure that our sample represented all law firms hired by Citizens, we added cases from these other firms from the litigation tracking spreadsheet again using a random number generator.

APPENDIX B: RESPONSES



P.O. BOX 60730 NEW ORLEANS, LA 70160 PHONE (504) 831-6930 www.lacitizens.com 433 METAIRIE ROAD SUITE 400 METAIRIE, LA 70005-4385 FAX (504) 831-6676

Monday, December 3, 2007

Steve J. Theriot, CPA Legislative Auditor State of Louisiana 1600 North Third Street P.O. Box 94397 Baton Rouge, LA 70804-9397

Re: Citizens Claims Litigation Audit Your November 16, 2007 letter

Dear Mr. Theriot:

On November 14, 2007 Bill Newton and I met with your staff concerning the captioned audit. We received the draft audit on November 16th and were asked to respond by December 3, 2007.

As background, we believe you are aware that since its inception, until recently, Louisiana Citizens Property Insurance Corporation outsourced all operations to the Property Insurance Association of Louisiana. Citizen's has made a recent decision to separate the entities and we are following through on our separation plans at this time. Currently, Citizens Property Insurance Corporation has three employees, as follows:

- J. John Wortman, CEO, employed 4/23/07
- Mark P. Brockelman, CFO, employed 5/22/07
- Dan E. Laffey, Vice President, employed 7/30/07

Our responses are attached to this letter. In addition, we have forwarded our responses to the Citizens Board of Directors and plan on discussing the findings and responses in detail at the December 13, 2007 Board of Directors Meeting.

We appreciate the professionalism of your staff and look forward to working with you as we work to improve the operations of Louisiana Citizens Insurance Corporation. Should you have questions or comments please feel free to contact me.

Sincerely,

J. John Wortman, CEO

504-832-3229

C: Bill Newton, Chairman

John Waters, General Counsel

Mark Brockelman, CFO



Louisiana Legislative Auditor Performance Audit Division

Response to Audit Recommendations

RECOMMENDATION(S)

Recommendation 1: Citizens should develop a formal policy to select claims litigation attorneys. At a minimum, this policy should include:

- Minimum qualifications for the attorneys (e.g., adequate experience in insurance defense, no conflicts of interest, adequate malpractice insurance)
- Objective criteria upon which Citizens can base its decision (including the results of any previous work for Citizens)
- Participation of members of the Citizens Board of Directors in the selection decision
- Retention of documentation supporting the decision

Citizens' management may also want to consider including provisions that require advertising and/or some sort of solicitation process when selecting attorneys.

Recommendation 2: Before Citizens assigns any new cases to the Johnson, Johnson, Barrios & Yacoubian law firm, Citizens should require the firm to obtain an opinion from the Louisiana Board of Ethics on the legality of using the firm to provide legal services for Citizens and should require the firm to compete in a competitive bid process.

Recommendation 3: Before Citizens assigns any new cases to the Jackson Bell law firm, Citizens should require the firm to obtain an opinion from the Louisiana Board of Ethics on the legality of

RESPONSE

We agree that a formal policy should be developed. This will be accomplished with the guidance of our Claim and Legal personnel. We expect to complete the draft policy by January 1, 2008 and will review it with the Citizens Board of Directors at the January 2008 meeting.

We will request an opinion regarding this firm from the Louisiana Board of Ethics prior to assigning them any new cases.

We will request an opinion regarding this firm from the Louisiana Board of Ethics prior to assigning them any new cases.

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using the firm to provide legal services for Citizens and should require the firm to compete in a competitive bid process.

Recommendation 4: Before Citizens assigns any new cases to the Jackson Bell law firm, Citizens should request an opinion from the Louisiana Board of Ethics on the legality of hiring Jackson Bell for legal services work, considering Stephanie Jackson's position as claims manager at Citizens.

Although Ms. Jackson had no involvement in the selection of the Jackson Bell law firm and did not participate in the assignment of cases to the firm, we will request an opinion from the Louisiana Board of Ethics regarding this recommendation.

Recommendation 5: Citizens officials should implement controls to ensure that staff members follow the established rotation process of assigning cases to law firms and that they document the reasons for any deviations from the established rotation.

A quality assurance program will be developed to monitor compliance with the rotation process.

Recommendation 6: Citizens should formally adopt into policy the AG fee schedule, since Citizens is a public entity. Doing so would ensure that Citizens follows a fee schedule that is in line with attorney experience and does not exceed the state maximum.

We believe there is considerable question still remaining as to which elements of Louisiana law apply to Citizens. Citizens is "considered a political instrumentality," but it "is not and shall not be deemed a department, unit or agency of the state." R.S. 22:1430.17. Its assets and funds are not considered "part of the general fund of the state," and the state is forbidden by law to provide general appropriations to Citizens, whose debts, obligations, claims and liabilities are not debts of the state or a pledge of its credit. R.S. 22:1430 B. (1) and R.S. 22:1430.17. Its revenues are not taxes, fees, licenses, or charges imposed by the legislature. R.S. 22:1430.17. It does not meet the definition of political subdivision set forth in the state constitution, Art. 6, Section 44(2). It is not a unit of the state, and it has been held by the Third Circuit Court of Appeal that it is not a political subdivision of the state. See: Eastman v. Louisiana Citizens Property Insurance Corporation, No. CW 07-01079 (October 18, 2007), in which the Third Circuit held that Citizens is a political instrumentality, but not a political subdivision, copy attached. Certain laws or portions of laws mentioned in Citizens' enabling statute, which would automatically apply were Citizens a "public body," are made expressly applicable to Citizens, not because it is a "public body," but because, for the purpose of those laws, Citizens "may be considered as if it were a public body." R.S. 22:1430.2 D. (1). Heretofore it has been the opinion of the Division of Administration and the Office of State Purchasing that the procurement

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code, which is not mentioned in Citizens' enabling act, does not apply to Citizens, because it is not an agency of the state, and because it has the authority to "negotiate" contracts pursuant to R.S. 22:1430 B (4). See: letters of Division of Administration, Office of the Commissioner, dated February 21, 2005, addressed respectively to Mr. Murphy Foster and Mr. Robert P. Hubbard, extracts attached.

Because questions have been raised concerning whether Citizens is a "public body" or "public entity" for the purposes of laws not expressly made applicable to it in its enabling statute, Citizens requested an opinion of the Attorney General. Very recently, Citizens has been advised by the Attorney General that such an opinion may not be forthcoming. See: Attorney General's letter of November 19, 2007, attached. Accordingly, at its next meeting Citizens' board will consider your recommendation, its response, and you will be advised.

Attachments are included as follows:

Exhibit 1: Third Circuit Opinion

Exhibit 2: Extract of LeBlanc letter to Foster

Exhibit 3: Extract of LeBlanc letter to Hubbard

Exhibit 4: AG's letter of November 19, 2007

We will develop formal contracts with defense attorneys. This will be accomplished and reviewed with the Citizens Board of Directors at the January 2008 meeting.

Recommendation 7: Citizens should execute formal, written contracts with its defense attorneys. The provisions of the contracts should be designed to hold the attorneys accountable for delivery of services and prevent the inappropriate or inefficient use of public resources. The contracts should include the following provisions:

- Clear statements of expected services;
- Fees and payment details;
- Spending restrictions;
- A schedule of reports and deliverables;
- A monitoring plan;
- Adequate sanctions, including a termination clause;
- Audit clauses;
- · Appropriate signatures and approvals;

and

Contract beginning and end dates.

Including these provisions should help protect the interests of Citizens, identify the responsibilities of the law firms, define what is to be delivered, and document the parameters of what the parties agreed upon. The contracts should also emphasize achieving the best result for both Citizens and the insured policyholders in an efficient and cost-conscious manner.

Recommendation 8: To ensure compliance with applicable provisions of the State Procurement Code, Citizens should submit all contracts with law firms that exceed \$2,000 to the OCR for review and approval.

Please see response to Recommendation 6, above.

Recommendation 9: As mentioned in Recommendation 7, Citizens should ensure that all contracts with service providers include clear and specific performance standards and requirements by amending the current contracts and/or by including these provisions in future contracts with service providers.

We are currently examining work flows and procedures relating to the Service Providers as we begin to prepare the RFP for the October 1, 2008 bid. We will make sure the new contracts are clear as to performance measures.

Recommendation 10: Citizens should submit all service provider contracts to the Office of Contractual Review (OCR) for review and approval.

Please see response to Recommendation 6, above.

Recommendation 11: Citizens should develop standard billing guidelines, which it should provide to its defense attorneys and service providers as well as to its staff members who are responsible for reviewing attorney invoices. At a minimum, the billing guidelines should include the following:

We will provide written guidelines for reviewing attorney bills. This will be accomplished and reviewed with the Board of Directors prior to releasing the RFP for Service Providers.

- The types of tasks that are billable (e.g., attorney tasks) and not billable (e.g., secretarial tasks)
- The level of detail and format to be used on invoices (e.g., one task per entry, time in 1/10-hour segments, etc.)
- The documentation required to support

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the entries on the invoice (e.g., substantive work products, status reports, receipts from vendors, etc.)

- The maximum rates for paralegals and inhouse photocopies
- Situations where prior consultation with a service provider or Citizens is required (e.g., hiring experts, extensive legal research, etc.)

Recommendation 12: As stated in Recommendation 7, we suggest that Citizens should begin using written contracts for the law firms it hires to litigate claims cases. We further recommend that Citizens provide in the contracts that the attorneys must submit supporting documentation for the charges on their invoices in order to be paid.

As discussed earlier, we will develop contracts for the firms outlining performance expectations and required documentation.

Recommendation 13: We recommend that Citizens include specific guidelines in their service providers' contracts regarding how and when the service providers are to review attorney invoices. These guidelines should include a detailed list of all items the service providers are to review for in (e.g., hourly rates, approved services) and how to document their reviews (e.g., by signing and dating the invoices).

This will be included in the directions outlined in the response to Recommendation 9.

Recommendation 14: Citizens should implement a formal case assessment policy that includes the following:

- A requirement that defense attorneys submit initial case assessments to Citizens by a certain deadline, such as 30 or 60 days after the attorneys receive assignments. The initial case assessment should include, at a minimum:
 - a summary of the facts and arguments in the case
 - a plan outlining necessary tasks to defend the case
 - an evaluation of liability
 - a litigation budget

As discussed in the responses to various recommendations above, this will be clearly defined in the contracts for attorneys and service providers.

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- A requirement that defense attorneys submit follow-up case assessments to Citizens at periodic intervals including, at a minimum:
 - an update (i.e., status) report on the information provided in the initial case assessment
 - information on pleadings and discovery up until that point
 - a list of appropriate witnesses and exhibits
 - an analysis explaining the merits of settling versus going to trial

Recommendation 15: Citizens should continue its work towards establishing accurate reserve balances. We also recommend that management refine the reserve process to ensure that reserves are set and adjusted consistently and regularly. Citizens could accomplish this goal by clarifying and enforcing its requirements on how the service providers should enter initial reserves, requiring the service providers to adjust reserves as they obtain new information, and standardizing the way that service providers reserve for legal expenses. In addition, we recommend that Citizens move forward with its decision to revise the way it categorizes reserves to reflect changes in the NAIC reporting requirements and that, after the computer data problems are resolved, Citizens retain an actuary to issue an opinion on its reserves annually.

Our quality assurance program surfaced the fact that service providers had not been complying with our reserving policy. Corrective action has been taken, and we will continually monitor the effectiveness of their improvement plans. We will re-evaluate the current reserving program as we conclude the service provider RFP process. We will also make sure that the policy complies with NAIC terminology.

We also plan to have reserves reviewed on a regular basis by a qualified actuary.

Recommendation 16: Citizens' management should enhance the responsibilities of its "gate keeper" and determine if they should hire additional staff with legal expertise or other credentials to strengthen the gate keeping function. Gate keeping efforts should ensure that:

- Law firms work with Citizens and the insureds to achieve the best results for Citizens in an efficient and cost-conscious manner;
- Attorneys develop effective and strategically sound legal defense in a timely manner;

The elements listed in Recommendation 16 will be reviewed in conjunction with the workflow analysis and the new service provider RFP.

- Service providers receive required communication from attorneys, such as assignment acknowledgment, initial case assessment reports, and follow-up case assessment reports;
- Attorneys communicate significant developments, decisions, and delays as soon as practical;
- Law firms are aware of Citizens' approved billing policies and procedures;
- Service providers are aware of Citizens' approved bill and file review policies and procedures.

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BARRYSALLINGER

2002/002

STATE OF LOUISIANA

COURT OF APPEAL, THIRD CIRCUIT

NO: CW 07-01079

Judgment rendered and mailed to all parties or counsel of record on October 18, 2007.

CHRISTINE EASTMAN
VERSUS
LOUISIANA CITIZENS PROPERTY
INSURANCE CORPORATION

FILED: 08/30/07

On application of Christine Eastman for Supervisory Writ in No. 2006-6296 on the docket of the Fourteenth Judicial District Court, Parish of Calcasieu, Honorable R. Richard Bryant, Jr.

Counsel for:

Clayton Arthur Larsh Davis

Christine Eastman

Counsel for:

Denaid Cleveland

Louisiana Cisizens Property Ins. Corp.

Lake Charles, Louisiana, on October 18, 2007.

WRIT GRANTED AND MADE PEREMPTORY. We find that the trial court erred in granting the defendant's motion to strike the plaintiff's request for jury trial. Louisiana Revised Statute 22:1430.17 identifies the defendant corporation as a "political instrumentality" rather than a "political subdivision" of the state. Additionally, the statute clearly states that the corporation is not an agency of the state. Furthermore, the statutes that follow show that the corporation is not in the nature of a political subdivision or state agency. Louisiana Revised Startne 22:1430.2(B)(1) differentiates between the assets of the corporation and the general funds of the state, and subsection D(1) of that same section subjects the corporation only to those provisions of La.R.S. 42:4.1-13 and La.R.S. 44:1-41 for purposes of public body consideration. The mere fact that the entity was created by legislative act does not make it a political subdivision of the state or a state agency. Therefore, the trial court's raing is reversed, and the jury trial is reinstated.

J.D. J.

J. C. P.

M.G.S.



State of Louisiana Division of Administration

REC'D FEB 2 4 2005

OFFICE OF THE COMMISSIONER

Jerry Luke LeBlanc COMMISSIONER OF ADMINISTRATION

February 21, 2005

Mr. Murphy Foster Breazeale, Sachse and Wilson, LLP P.O. Box 3197 Baton Rouge, LA 70821-3197

Re: Administrative Appeal - File No. LCPIC 05-01

Dear Mr. Foster:

The Louisiana Procurement Code governs procurements of services made by state agencies. La. R.S. 39:1554(B) and 1556(10). LCPIC was not required by law to conduct this procurement either through the Office of State Purchasing ("OSP") or through the statutory requirements of the Louisiana Procurement Code. LCPIC is not a state agency. La. R.S. 22:1430.17. LCPIC itself is required by law to adopt a plan of operation which includes "procedures for the development of requests for proposals, which shall incorporate an open access plan, and shall be prerequisite to any servicing company contract." La. R.S. 22:1430.7(A)(1). LCPIC is also empowered to negotiate contracts to carry out its statutory responsibilities. La. R.S. 22:1430.6(C)(4). Section 27 of the LCPIC Plan of Operation sets forth the procedure for the selection of service providers but does not include the involvement of OSP.

Sincerely,

Jerry Luke LeBlanc

Commissioner of Administration

Ms. Denise Lea, Office of State Purchasing

Mr. Terry Lisotta, Louisiana Citizens Property Insurance Corporation

Mr. Brian L. Keefer, Bankers Insurance Company

Mr. Jay A. Pellegrini, First Premium Insurance Group

Mr. Robert Hubbard, The Audubon Insurance Group

Mr. Allen D. Darden, Phelps Dunbar, LLP

Mr. Lawrence Stern, CGI

Mr. Alvin M. Johnston, Frontier General Insurance Agency, Inc.

Mr. Lolly J. Leger, Trinity Insurance Services Group

Mr. James G. Drawert, The Republic Group

Mr. John "J.E." Brignac, Jr., Imperial

Mr. John M. Delgado, Crawford Lewis, PLLC

Mr. Dean E. Stroud, MacNeill Insurance Group

Mr. John Dale Powers, Powers & Willard

Mr. John W. Waters, Bienvenu, Foster, Ryan & O'Bannon

Mr. Allen D. Darden, Phelos Dunbar, LLP



State of Houristana division of administration

OFFICE OF THE COMMISSIONER



Jerry Luke Leblanc COMMISSIONER OF ADMINISTRATION

February 21, 2005

Mr. Robert P. Hubbard Senior Vice President Audubon Insurance Company P.O. Box 15989 Baton Rouge, LA 70895-5989

Re: Administrative Appeal - File No. LCPIC 05-01

Dear Mr. Hubbard:

The Louisiana Procurement Code governs procurements of services made by state agencies. La. R.S. 39:1554(B) and 1556(10). LCPIC was not required by law to conduct this procurement either through the Office of State Purchasing ("OSP") or through the statutory requirements of the Louisiana Procurement Code. LCPIC is not a state agency. La. R.S. 22:1430.17. LCPIC itself is required by law to adopt a plan of operation which includes "procedures for the development of requests for proposals, which shall incorporate an open access plan, and shall be prerequisite to any servicing company contract." La. R.S. 22:1430.7(A)(1). LCPIC is also empowered to negotiate contracts to carry out its statutory responsibilities. La. R.S. 22:1430.6(C)(4). Section 27 of the LCPIC Plan of Operation sets forth the procedure for the selection of service providers but does not include the involvement of OSP.

Sincercly,

Jerry Linke LeBlanc

Commissioner of Administration

cc: Ms. Denise Lea, Office of State Purchasing

Mr. Terry Lisotta, Louisiana Citizens Property Insurence Corporation

Mr. Brian L. Keefer, Bankers Insurance Company

Mr. Jay A. Pollogrini, First Premium Insurance Group

Mr. Allen D. Darden, Phelps Dunbar, LLP

Mr. Lawrence Stern, CGI

Mr. Murphy J. Foster, III, Breazeale, Sachse and Wilson, LLP

Mr. Alvin M. Johnston, Frontier General Insurance Agency, Inc.

Mr. Lolly J. Leger, Trinity Insurance Services Group

Mr. James G. Drawert, The Republic Group

Mr. John "J.E." Brignac, Jr., Imperial

Mr. John M. Delgado, Crawford Lewis, PLLC

Mr. Dean E. Stroud, MacNeil Insurance Group

Mr. John Dale Powers, Powers & Willard

Mr. John W. Waters, Bienvenu, Foster, Ryan & O'Bannon

EXHIBIT IV



State of Houisiana
DEPARTMENT OF JUSTICE
P.O. BOX 94005

BATON ROUGE 70804-9005

November 19, 2007

Mr. J. John Wortman, Chief Executive Officer Louisiana Citizens Property Insurance Corp. 433 Metairie Road, Suite 400 Metairie, LA 70005-4385

> Re: Louisiana Citizens Property Insurance Corporation Attorney General Opinion Request

Dear Mr. Wortman:

This office is in receipt of your opinion request dated October 2, 2007. The request is made on behalf of the Louisiana Citizens Property Insurance Corporation ("Corporation") and relates to the issue of whether the Corporation is a public entity. The request states that the Louisiana Legislative Auditor has informed the Corporation that the Corporation is a "public entity or body" and, as such, is subject to various state laws. A similar position was recently taken by the Louisiana Legislative Auditor as to Property Insurance Association of Louisiana ("PIAL"). PIAL has since filed suit against the Legislative Auditor in the 19th JDC, Docket No. 559741, Section B, seeking a judicial determination on whether it is a public or private body. Our office represents the Auditor in this matter.

Please be advised that it is the policy of the Attorney General not to furnish opinions on questions that may be the subject of litigation or which are scheduled for determination by the courts. The issues raised in your opinion request are similar to those presently before the court in the PIAL case and therefore this office will decline to respond to your request due to the likelihood of litigation.

Should you have any questions please contact me at your convenience.

Very truly yours,

CHARLES C. FOTI, JR. ATTORNEY GENERAL

BY:

RICHARD L. MCGIMSEY

ASSISTANT ATTORNEY GENERAL

CCF, JR:RLM:dam

XC:

Ken DeJean

Middleberg Riddle & Gianna Attorneys and Counselors

PLEASE DELIVER IMMEDIATELY

TO: Steve Theriot

FIRM: Office of the Legislative Auditor

FAX NO. 225-339-3987

RE: Please see attached letter.

MESSAGE

No. of Pages, including this page 3

FROM: Lisa Ruiz for AJ Herbert III

TEL. NO.: 225-381-7700 FAX NO.: 225-381-7730

DATE: November 30, 2007

If you do not receive all pages, please call SENDER at the above number

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Middleberg Riddle & Gianna

A.J. Herbert III

Attorneys and Counselors

Suite 1101 450 Laurel Street Baton Rouge, Louisiana 70801 (225) 381-7700 (225) 381-7780 (Telecopier) aherbert@midrld.com (e-mail)

31st Floor
201 St. Charles Avenue
New Orleans, Louisiana 70170-3100
(504) 523-7200
(504) 581-5983 (Telecopier)
aherbert@midrid.com (e-mail)

November 30, 2007

VIA FACSIMILE: (225)339-3987

Steve Theriot, CPA
Legislative Auditor
Office of the Legislative Auditor
State of Louisiana
1600 N. Third Street
Baton Rouge, LA 70802

RE:

Property Insurance Association of Louisiana

Our File No.: 5298-0008

Dear Mr. Theriot:

The following comments are submitted on behalf of the Property Insurance Association of Louisiana ("PIAL") to the draft performance audit on claims litigation issues involving Louisiana Citizens Property Insurance Corporation ("Citizens").

While PIAL appreciates the opportunity to review the draft report and to provide comments thereon to your office, the claims administration and legal defense matters pertaining to Citizens are performed at the direction of, or are the responsibility of, the third party service providers (who are under direct contract to Citizens and not PIAL), the new Citizens management team, and the General Counsel of Citizens. While some of the staff who perform services in the claims defense area are currently supplied by PIAL to Citizens, those individuals are 100% allocated to Citizens and are currently directed in the performance of their functions by the management of Citizens.

Theriot, Steve November 30, 2007 Page 2 of 2

The Board of Directors of PIAL appreciates the opportunity to provide these comments. If you have any questions, please feel free to call.

Sincerely,

A.J. Herbert III

AJH/lar

ÇC:

Joe Deutsch Dennis Cook John Wortman John Waters, Esq.

LOUISIANA HOUSE OF REPRESENTATIVES

3535 Canal St., Suite 103 New Orleans, Louisiana 70119 Email: larep094@legis.state.la.us Phone: 504.483.4711 Fax: 504.483.4713



Administration of Criminal Justice Civil Law & Procedure

NICHOLAS J. LORUSSO State Representative ~ District 94

November 28, 2007

Via U.S. Mail and Facsimile (225-339-3870)

Mr. Steve J. Theriot, CPA Legislative Auditor Office of Legislative Auditor 1600 North Third Street Baton Rouge, Louisiana 70802

Re:

Performance Audit on Citizens Property Insurance Corporation

Dear Mr. Theriot:

Thank you for your attached letter dated November 16, 2007 enclosing the draft of the section of your office's Performance Audit Report regarding Citizens' claims litigation. Additionally, thank you also for providing me with an opportunity to provide the following response to this audit report.

FACTUAL BACKGROUND

Prior to my election as a State Representative, as a non-equity employee of the law firm of Johnson, Johnson, Barrios & Yacoubian, I was assigned by the firm to assist in the defense of several independent adjusting companies who were retained by Louisiana Citizens Property Insurance Corporation ("Citizens"). However, upon being sworn into the Louisiana House of Representatives, I advised the firm that I could no longer represent such parties. As a result, other attorneys in the firm assumed the handling of these cases.

While the factual background contained in the second paragraph on Page 1 of the preliminary draft is essentially correct, I respectfully submit the changes indicated below would make the statement more accurate:

Nicholas J. Lorusso has been a non-equity employee with the law firm of Johnson, Johnson, Barrios & Yacoubian since June 2006. In July 2006, this firm was retained to represent adjusters when they were named in Citizen's lawsuits. Subsequently, Rep. Lorusso was elected to the Legislature, then sworn into the Louisiana House of Representatives on April 17, 2007. While Johnson, Johnson, Barrios & Yacoubian continues to represent the independent adjusting companies retained by Citizens, Rep. Lorusso removed himself from the cases involving the adjusters retained by Citizens prior to taking his oath of office.

CIRCUMSTANCES REGARDING HIRING OF LAW FIRMS

The draft report recommended that the Louisiana Board of Ethics should consider investigating the circumstances surrounding Citizen's hiring of Legislators. In that regard, it should be noted that I personally had no involvement whatsoever regarding the request for the law firm of Johnson, Johnson, Barrios & Yacoubian to represent the independent adjusting companies retained by Citizen's, which occurred eight months **prior** to my election to the Louisiana House of Representatives. As a result, I am unable to provide any first-hand information regarding this issue.

RECOMMENDATION 4

You have also asked me to state whether I agree, partially agree or disagree with Recommendation 4 of the "Checklist for Audit Recommendations," which states:

Recommendation 4: Before the Johnson, Johnson, Barrios & Yacoubian law firm provides any more legal services to Citizens, Rep. Lorusso should request an opinion from the Louisiana Board of Ethics on the legality of his firm contracting with Citizens unless the firm is selected by Citizens through the competitive bidding or a competitive selection process.

As explained below, I respectfully partially agree with this recommendation.

Louisiana Revised Statute 42:1113(D) states that neither a (1) Legislator, nor (2) "Entity in which [a] legislator ... owns any interest in," shall enter into any contract with the state government, unless the contract is awarded by competitive bidding. In determining whether this statutes prohibits the law firm of Johnson, Johnson, Barrios & Yacoubian from performing legal services for independent adjusting companies who were retained by Citizens unless the contract is received competitive bidding, it must first be resolved whether La. R.S. 42:1113(D) applies to this firm.

With regard to the portion of this statute which prohibits a Legislator from entering into such a contract, it should be noted that I have neither entered into a contract with Citizens to perform legal work either as a Legislator or prior to my election, nor am I seeking to enter into

Mr. Steve J. Theriot, CPA November 28, 2007 Page 3

such a contract. As a result, La. R.S. 42:1113(D) does not appear to apply to me individually, and as a result would also be inapplicable to the law firm of Johnson, Johnson, Barrios & Yacoubian.

With regard to the portion of this statute which prohibits an "Entity in which [a] legislator ... owns any interest in" from entering into such a contract, it should be noted that at no time have I ever had any ownership interest whatsoever in the law firm of Johnson, Johnson, Barrios & Yacoubian. In fact, at all times I have merely been a non-equity employee of the firm. Therefore, is it does not appear the law firm of Johnson, Johnson, Barrios & Yacoubian is an "entity in which [a] legislator . . . owns any interest in" as contemplated by this statute. Consequently, it is reasonable to conclude that the law firm of Johnson, Johnson, Barrios & Yacoubian is not subject to the provisions of La. R.S. 42:1113(D) requiring competitive bidding in order to perform such legal services.

Most important, however, Louisiana Revised Statute 39:1494 states that "Contracts for professional services may be awarded without the necessity of competitive bidding or competitive negotiation." (emphasis added) It should be noted that La. R.S. 39:1484(18) provides a definition of "Professional Services," which includes "work rendered by [a] . . . lawyer."

Based upon the foregoing review of Louisiana Revised Statutes 39:1484(18), 39:1494 and 42:1113(D), as well as the Louisiana Supreme Court ruling in *Duplantis v. Louisiana Board of Ethics*, 2000-1750, 2000-1956 (La. 2001) 782 So.2d 582, it appears clear that the law firm of Johnson, Johnson, Barrios & Yacoubian is not prohibited from providing legal services to the independent adjusting companies retained by Citizens without a competitive bidding process. Nevertheless, I will of course welcome the receipt of any applicable rulings from the Board.

Thank you in advance for your attention to this matter. If I can be of further assistance or require any additional information, please do not hesitate to contact me.

Sincerely,

Nicholas J. Lorusso

Enclosures



CHARLES L. PATIN, JR., PARTNER
DIRECT DIAL 225.382.3430
DIRECT FAX 225.215.4030
CHARLIE.PATIN@KEANMILLER.COM

December 3, 2007

Steve J. Theriot, C.P.A. Legislative Auditor Attention: Kyle Farrar 1600 North Third Street Baton Rouge, Louisiana 70802 Via Hand Delivery

Re:

Jackson/Legislative Auditor

Our File No.: New

Dear Mr. Theriot:

Please be advised that I represent State Representative Michael Jackson and his spouse, Stephanie Jackson, in connection with your agency's performance audit of the Louisiana Citizens Property Insurance Corporation, Claims Litigation matter. This letter will address the various alleged ethics violations asserted by your agency in the draft performance audit as the same pertain to my clients.

ALLEGED ETHICS VIOLATION: REPRESENTATIVE MICHAEL JACKSON

The draft performance audit states that Representative Jackson may be in violation of Section 1113(D) of the Code of Governmental Ethics. This provision provides in pertinent part as follows:

D. (1)(a) No legislator or person who has been certified by the secretary of state as elected to the legislature, or spouse of a legislator or person who has been certified as elected to the legislature, nor any corporation, partnership, or other legal entity in which the legislator or person who has been certified by the secretary of state as elected to the legislature or the spouse of a legislator or spouse of a person who has been certified by the secretary of state as elected to the legislature owns any interest in, except publicly traded corporations, shall enter into any

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contract or subcontract with any branch, agency, department, or institution of state government or with the Louisiana Insurance Guaranty Association, the Louisiana Health Insurance Association, or any other quasi public entity created in law unless the contract or subcontract is awarded in accordance with Part II of Chapter 10 of Title 38 of the Louisiana Revised Statutes of 1950 or is competitively negotiated through a request for proposal process or any similar competitive selection process in accordance with Chapters 16 or 17 of Title 39 of the Louisiana Revised Statutes of 1950.

Chapter 10 of Title 38 of the Louisiana Revised Statutes of 1950 deals with public contracts. "Public contract" is defined at La. R.S. 38:2211(A)(10) as "... any contract awarded by any public entity for the making of any public works or for the purchase of any materials or supplies." "Public work" is defined at La. R.S. 38:2211(A)(12) as "... the erection, construction, alteration, improvement, or repair of any public facility or immovable property owned, used, or leased by a public entity."

A contract for provision of legal services, by definition, is not a public works contract. The provision of legal services does not involve the "erection, construction, alteration, improvement, or repair of any public facility or immovable property owned, used, or leased by a public entity." Accordingly, reference to Part II of Chapter 10 of Title 38 of the Louisiana Revised Statutes of 1950 is patently inapplicable and ought to be deleted from the final version of the performance audit on the Louisiana Citizens Property Insurance Corporation, Claims Litigation.

Similarly, Chapter 16's provisions of Title 39 of the Louisiana Revised Statutes of 1950 dealing with competitive bidding, competitive negotiations, and requests for proposals, or similar competitive selection processes, are expressly made inapplicable to contracts for the provision of legal services. "Contracts for professional services may be awarded without the necessity of competitive bidding or competitive negotiation." La. R.S. 39:1494. A contract for the provision of legal services is a contract for professional services. Accordingly, reference to Chapters 16 of Title 39 of the Louisiana Revised Statutes of 1950 is equally inapplicable and ought to be deleted from the final version of the performance audit on the Louisiana Citizens Property Insurance Corporation, Claims Litigation.

With respect to the provisions of Chapter 17, the Louisiana Procurement Code is not applicable to professional services contracts. Its provisions are limited to contracts

for the procurement of supplies, services, or major repairs. La. R.S. 39:1554(B). Contracts for professional services are expressly excluded. La. R.S. 39:1554(D)(b).

Moreover, "[t]he legislature is presumed to have acted with deliberation and to have enacted a statute in light of the preceding statutes involving the same subject matter." Holly & Smith Architects, Inc. v. St. Helena Congregate Facility, Inc., 2006-0582 (La. 11/29/06), 943 So.2d 1037, 1045. Under this well established rule of statutory construction, the legislature is presumed to have known that professional service contracts are exempted from requirements applicable to competitive bidding, competitive negotiations, requests for proposals, or any similar competitive selection process required in Part II of Chapter 10 of Title 38 and/or Chapters 16 and 17 of Title 39 of the Louisiana Revised Statutes of 1950.

Finally, the provisions of the Louisiana Code of Governmental Ethics are penal in nature in that a violation of Section 1113 may subject an elected official to censure or the imposition of a fine not to exceed ten thousand dollars. La. R.S. 42:1153(A). The code's provisions must be strictly construed. See *Hornsby v. Bayou Jack Logging*, 2004-1297 (La. 5/6/05), 902 So.2d 361, 369 (observing: "Statutes which authorize the imposition of a penalty are to be strictly construed").

Accordingly, had the legislature intended to subject professional service contracts, such as contracts for the provision of legal services, to a competitive bidding, competitive negotiation, request for proposals, or similar competitive selection process, it would have expressly stated such a requirement in Section 1113 of the Louisiana Code of Governmental Ethics. In absence of such an express statement, no competitive selection process was required in order for the Louisiana Citizens Property Insurance Corporation to enter into a legal services contract with Mr. Jackson's law firm.

ALLEGED ETHICS VIOLATIONS: STEPHANIE JACKSON

The draft performance audit states that Mrs. Stephanie Jackson may be in violation of Section 1113(A) of the Code of Governmental Ethics. This provision provides in pertinent part as follows:

No public servant, excluding any legislator and any appointed member of any board or commission and any member of a governing authority of a parish with a population of ten thousand or less, or member of such a public servant's immediate family, or legal entity in which he has a controlling Steve J. Theriot, C.P.A. December 3, 2007 Page 4

> interest shall bid on or enter into any contract, subcontract, or other transaction that is under the supervision or jurisdiction of the agency of such public servant.

Mrs. Jackson did not enter into a professional services contract for the provision of legal services with the Louisiana Citizens Property Insurance Corporation. Instead, a legal services contract was entered into between the Louisiana Citizens Property Insurance Corporation and the law firm of Jackson Bell. "Controlling interest" is defined at La. R.S. 42:1102(8) as "... any ownership in any legal entity or beneficial interest in a trust, held by or on behalf of an individual or a member of his immediate family, either individually or collectively, which exceeds twenty-five percent of that legal entity." Under this definition and the language of Section 1113(A), even if one assumes that Mr. and Mrs. Jackson share a community property arrangement and by virtue thereof Mrs. Jackson would have an interest in her husband's law practice and that that interest might exceed twenty-five percent, Section 1113(A) is nevertheless inapplicable because of the express exclusion of any person who is a legislator.

Accordingly, reference to La. R.S. 42:1113(A), as it pertains to Mrs. Stephanie Jackson ought to be deleted from the final version of the performance audit on the Louisiana Citizens Property Insurance Corporation, Claims Litigation.

CONCLUSION

None of the alleged ethics violations cited in the draft performance audit pertaining to State Representative Michael Jackson and/or his spouse, Mrs. Stephanie Jackson, are meritorious and reference to these alleged violations ought to be deleted from the final version of the performance audit.

In the event your agency should persist in making these unwarranted and legally unsupportable allegations against my clients in the final version of the performance audit, I respectfully request that this letter be attached to the performance audit report.

Steve J. Theriot, C.P.A. December 3, 2007 Page 5

Should you wish to discuss these matters further, please do not hesitate to contact me.

Very truly yours,

Charles L. Patin, Jr.

CLPjr/bc

cc: Honorable Michael Jackson