

House Committee on Civil Law and Procedure

Minutes of Meeting
2024 - 2025 Interim
August 7, 2024

I. CALL TO ORDER

Representative Nicholas Muscarello, Jr., chair of the House Committee on Civil Law and Procedure, called the meeting to order at 9:18 a.m. in Room 6, in the state capitol in Baton Rouge, Louisiana.

II. ROLL CALL

MEMBERS PRESENT:

Representative Nicholas Muscarello, Jr., chair
Representative Chad Brown
Representative Josh Carlson
Representative Emily Chenevert
Representative Kathy Edmonston
Representative Peter F. Egan, Sr.
Representative Brian Leonard Glorioso
Representative Michael T. Johnson
Representative Ed Larvadain, III
Representative Michael Melerine
Representative Sylvia Elaine Taylor
Representative Christopher Turner, vice chair
Representative Mark Wright
Representative John E. Wyble

MEMBERS ABSENT:

Representative Wilford Dan Carter, Sr.
Representative Lauren Ventrella

STAFF MEMBERS PRESENT:

Allison Alonzo, attorney
Jennifer Nguyen, attorney
Stephanie Weinman, committee administrative assistant

ADDITIONAL ATTENDEES PRESENT:

Myrtis Jarrell, sergeant at arms

Michael McCain, clerk

III. DISCUSSION

Representative Muscarello stated that providing data driven solutions to the insurance rate crisis is the goal of the meeting.

At the request of Representative Muscarello, Allison Alonzo, staff attorney, explained the "Housley presumption". Ms. Alonzo stated that diligent research was being done to compare which other states have a similar fault-based presumption.

In response to a question from Representative Edmonston, Representative Melerine explained in detail the Housley decision. Representative Melerine also discussed his evidentiary presumption legislation from the 2024 Regular Session.

Representative Egan commented that he has dealt with the Housley presumption for over twenty years. He proposed that the insurance industry should pursue a meta analysis of radiological results to have a baseline for the many people who have herniated discs.

Representative Muscarello stated that industry representatives have told him that the data is very poor, and he welcomed Representative Egan's suggestion.

Representative Melerine stated that doctors have told him under oath that technology only determines whether the condition is acute or degenerative by studying the leakage of the fluid in the disc.

James Donohue, Louisiana Association of Defense Counsel, 450 Laurel Street, Suite 1600, Baton Rouge, LA 70821, appeared for information only to discuss from a defense perspective the problems with the Housley presumption.

Stephen F. Butterfield, Louisiana Association of Defense Counsel, 127 Terra Bella Boulevard, Covington, LA 70433, appeared for information only to provide a synopsis from a practitioner's standpoint on the Housley presumption. He stated that House Bill No. 24 from the 2024 Regular Session would have required someone to prove that, more likely than not, the accident caused the injury. He added that Louisiana is an outlier with the jurisprudential Housley presumption.

Representative Muscarello questioned the effect on insurance rates if the Housley presumption was overturned, to which Mr. Butterfield responded that it would indirectly lower rates or at least create a better litigation climate in Louisiana.

Representative Muscarello and Mr. Butterfield discussed medical billing and the need for reform to allow the defense to assert that the reasonable and customary rate should be set.

Mr. Donahue and Representative Muscarello further discussed the effect of the Housley presumption on case settlements.

Representative Taylor stated that uniformity in setting medical costs should be addressed, to which Mr. Donahue agreed.

Representative Larvadain questioned the effect of the Housley presumption on jury trials and insurance rates, to which Mr. Butterfield responded that putting one litigant at an advantage with the Housley presumption is unfair. Mr. Butterfield further responded that getting rid of the Housley presumption would make our litigation climate look like we are serious about reforms.

Representative Melerine, Mr. Butterfield, and Mr. Donohue discussed the number of new cases their firms opened each month and the number of claims filed with insurance companies that are settled prior to trial because of the Housley presumption. Mr. Butterfield stated that, regarding the property market, the commissioner brought back positive data from meetings in London. Representative Melerine requested that insurance carriers be invited to appear before the committee.

Representative Muscarello, Mr. Donohue, and Mr. Butterfield had an in depth discussion regarding the collateral source rule and private insurance. Mr. Donohue added that, in his opinion, medical billing is grossly inflated.

Representative Melerine discussed the effects of the balanced billing act, over-treatment, and litigation finance companies directing treatment as opposed to a medical provider.

Representative Taylor reiterated that there should be uniformity in medical billing and the focus of tort reform should not be on the judiciary. Mr. Donohue stated that doctors should be included in elements of setting rates.

Representative Johnson and Mr. Butterfield discussed the burden of proof, a preponderance of the evidence in civil cases versus beyond a reasonable doubt in criminal cases, and the effect of the Housley presumption.

Jared Dunahoe, 402 2nd Street, Natchitoches, LA 74157, and Robert E. "Bob" Kleinpeter, 442 Europe Street, Baton Rouge, LA 70802, appeared for information only on behalf of the Louisiana Association of Justice and presented points of view from a plaintiff's perspective on the Housley presumption.

Representative Mike Johnson and Mr. Dunahoe discussed the Housley presumption and its effect on handling plaintiff cases. Mr. Dunahoe added that Louisiana should not be an outlier on collateral source.

Representative Melerine and Mr. Dunahoe discussed their opposing views of the need for the Housley presumption.

Representative Melerine, Mr. Kleinpeter, and Mr. Dunahoe discussed the use and understanding of legal terminology by doctors, causation of injuries, the weight of a treating physician versus an IME or AME expert, and the issue of referring clients to certain doctors.

The committee recessed at 10:43 a.m. The committee reconvened at 10:45 a.m.

Representative Larvadain and Mr. Dunahoe discussed the Housley presumption and its importance to those who receive catastrophic injuries.

Representative Chenevert, Mr. Dunahoe, and Mr. Kleinpeter discussed the need for the Housley presumption and the litigation climate. Mr. Kleinpeter pointed out that the Housley presumption does not apply only to car accidents but to other torts as well.

Commissioner Tim Temple, Department of Insurance, 1702 North 3rd Street, Baton Rouge, LA 70802, appeared for information only and commented on the cost drivers of bodily injury frequency and bodily injury severity. He added that the industry position is that the Housley presumption is driving excessive loss costs. He stated that the property insurance industry identified several issues with the property crisis, which helped to pass substantial, meaningful property reform, which is going to bring the companies back into the state.

Representative Wyble and Commissioner Temple discussed the impact of medical claims on automobile insurance when there is also health insurance.

Jennifer Eagan, deputy judicial administrator for research and development, Louisiana Supreme Court, 400 Royal Street, Suite 1190, New Orleans, LA 70130, presented data in a PowerPoint presentation entitled "Tort Suit Cover Sheets and Judgments", Exhibit A, which is included in the committee records.

Representative Wright and Ms. Eagan discussed the internal data collection analysis. Ms. Eagan pointed out the limitations of current data collection and suggested purposes for future data collection.

Representative Egan requested that the insurance industry provide specific data as to the reasons Louisiana is considered an outlier.

Representative Muscarello suggested future agenda items include balanced billing, over-treatment, medical billing, and advertising by the insurance industry.

IV. ANNOUNCEMENTS

There were no announcements.

V. ADJOURNMENT

The meeting was adjourned at 11:47 a.m.

Respectfully submitted,

Chair Nicholas Muscarello, Jr.
House Committee on Civil Law and Procedure