

COST OR Amt. \_\_\_\_\_

STATE OF LOUISIANA  
NINETEENTH JUDICIAL DISTRICT COURT  
PARISH OF EAST BATON ROUGE

STATE  
FILED  
BY \_\_\_\_\_  
BY CLERK OF COURT

DOCKET NO. 50 2311

SECTION

**SEC. 21**

J. ROBERT WOOLEY  
IN HIS CAPACITY AS ACTING COMMISSIONER OF INSURANCE  
STATE OF LOUISIANA

VERSUS

STATE FARM FIRE AND CASUALTY INSURANCE COMPANY,  
HONORABLE MURPHEY J. FOSTER IN HIS CAPACITY AS GOVERNOR OF  
LOUISIANA, ANNE WISE IN HER CAPACITY AS DIRECTOR OF THE  
DIVISION OF ADMINISTRATIVE LAW, AND ALLEN REYNOLDS IN HIS  
CAPACITY AS DIRECTOR OF THE DEPARTMENT OF STATE CIVIL  
SERVICE

PETITION FOR PRELIMINARY AND PERMANENT  
INJUNCTIONS  
AND PETITION FOR DECLARATORY JUDGMENT

NOW INTO COURT, through undersigned counsel, comes J. Robert Wooley, in his official capacity as Acting Commissioner of Insurance, acting in the stead of a duly elected executive head of the Department of Insurance for the State of Louisiana, who respectfully represents as follows:

I.

The Commissioner of Insurance (hereinafter "COI" or "Agency") is designated by law to represent the public interest in matters pertaining to the regulation of the business of insurance, including the regulation of policy forms to assure compliance with law.

II.

*JURISDICTION*  
This action for declaratory judgment and injunctive relief is brought pursuant to the Louisiana Code of Civil Procedure, including but not limited to, Articles 1871, et seq., and 3601, et seq. among others.

III.

Made Defendants herein are:

- A. State Farm Fire and Casualty Insurance Company, an insurance company duly licensed to do and doing business in Louisiana;
- B. Murphy J. Foster in his official capacity as Governor of Louisiana who is charged by the Constitution to execute the laws enacted by the Legislature;

- C. Anne Wise, in her official capacity as Director of the Division of Administrative Law who is charged with the duty to implement and administer the laws creating the Divisions of Administrative Law; and,
- D. Allen Reynolds, in his official capacity as the Director of the Department of State Civil Service, State of Louisiana who is charged by law with oversight and administration of divisions housed within the Department of State Civil Service.

IV.

On or about February 23, 1996 State Farm Fire and Casualty Insurance Company (hereinafter "State Farm") filed a Rental Condominium Unitowners' policy form (hereinafter "RCU") with the Commissioner of Insurance (hereinafter "COI"), Petitioner herein, for his review and approval as required by LSA-R.S. 22:620.

V.

The form was reviewed by a staff-member of the Louisiana Department of Insurance's Property & Casualty Forms Review Section (hereinafter "LDI" or "Agency") as authorized by LSA-R.S. 36:681B. By letter, dated April 19, 1996, State Farm was advised that the filing had been disapproved for use in Louisiana.

VI.

LSA-R.S. 22: 621 mandates that the COI disapprove any form "if it is in any respect in violation of or does not comply with law". The RCU filing was disapproved, *inter alia*, because the Representations and Warranties provision in the policy does not comply with the applicable sections of the Insurance Code governing such provisions, as interpreted and applied by the Commissioner in carrying out his duties under §621.

VII.

State Farm requested the LDI to reconsider its opinion in regards to the sections of the Insurance Code governing the Representations and Warranties provision.

VIII.

Several meetings were held between State Farm representatives and LDI staff members over a period of several months, following which, on or about January 8, 1998, State Farm was informed by letter that the form was still disapproved for use in Louisiana.

IX.

On or about February 8, 1998 State Farm requested a hearing on the grounds that it was aggrieved by the disapproval of its form filing.

X.

Pursuant to State Farm's request, an adjudicatory hearing was held before and Administrative Law Judge (hereinafter "ALJ") employed by the Division of Administrative Law, Department of State Civil Service (hereinafter "DAL").

XI.

On or about June 5, 1999, the ALJ issued an order finding that the Agency had erred as a matter of law in disapproving State Farm's RCU policy and further ordered the Agency to approve the form. (A copy of the order is attached hereto and made a part hereof as if recited in its entirety herein.)

XII.

The COI filed a Petition for Judicial Review of the order of the ALJ.

XIII.

On June 22, 2001 the Court of Appeal, First Circuit, issued a ruling finding (1) that pursuant to Acts 1999, No. 1332, amending and reenacting LSA-R.S. 49:964 and 49:992, the COI as the agency-party to the proceeding before the DAL does not have a right to seek judicial review of an adverse ruling, even for those matters, such as this, that involve questions of law and (2) that the COI has an adequate remedy at law in that he can file a Declaratory Judgment action challenging the statutory scheme creating the DAL and request an order enjoining the order of the ALJ ordering him to approve the State Farm RCU policy.

XIV.

Act. No. 739 was adopted in the 1995 Regular Session of the Louisiana Legislature. This Act, which enacts Chapter 13-B of Title 49 Sections 991 through 999, creates the DAL, an agency within the Department of State Civil Service.

XV.

The DAL is headed by Director Ann Wise, defendant herein, in her official capacity only. As the Director, she is authorized to employ administrative law judges.

There is no requirement that to be employed as an ALJ that the person have expertise or experience in regards to a particular area of regulation.

The ALJ's as employees of the DAL, Department of State Civil Service have civil service status with all of its attendant rights and privileges.

XVI.

Pursuant to Section 992 of the Act, with the exception of certain expressly named agencies, all adjudicatory functions of the various state agencies were transferred to the Division of Administrative Law effective October 1, 1996.

XVII.

Each agency subject to the provisions of the Act is expressly divested of its authority to issue final decisions or orders, and may not override the decision of an administrative law judge employed by the Division of Administrative Law.

XVIII.

In 1999 the Legislature enacted Act 1332 in order to bar an agency-party to a proceeding held before the DAL from seeking judicial review of an adverse ruling, including cases such as the one at bar, which only involve questions of law.

XIX.

An administrative agency is part of the Executive branch of government. Each administrative agency is responsible for implementing and enforcing specific areas of law. In addition to the need for the agency's expertise, final adjudicatory decisions or orders frequently involve elements of policymaking and an exercise of the discretion committed to the administrative agency in administering and enforcing the laws for which it is responsible.

XX.

An administrative agency in carrying out its regulatory duties must of necessity render decisions and issue orders. Because of due process concerns, the formalities accompanying the issuance of such orders and/or decisions by an administrative agency has taken on some of the aspects of judicial proceedings. The basis for the exercise of quasi-judicial power by the executive branch is based upon the need for an agency's specialized knowledge and expertise in the area subject to its regulatory jurisdiction. While an agency or agency head may delegate the duty of conducting an adjudicatory

hearing to a Hearing Officer, the agency or the agency head is responsible for making the final decision. The agency head is either an elected official or is appointed by the Governor. Therefore, the final decision maker remains responsive to the electorate.

XXI.

Act 739 of 1995 creates an insular body of civil service employees with the authority to render final adjudicatory decisions or orders in areas of regulatory law where they have no experience, specialized knowledge or expertise. Further, because the ALJ's in the DAL are civil service employees, they are not accountable to the electorate for the decisions they make in deciding cases that come before them.

XXII.

As of October 1, 1996, the ALJ's employed by the DAL have been vested with all of the authority previously held by an agency or the agency head to issue final decisions or orders. (La. R.S. 49:994D(3).)

XXIII.

The office of the Commissioner of Insurance is a constitutionally created office. The Commissioner of Insurance is vested with the power and the obligation to regulate the business of insurance and to enforce all of the provisions of the Insurance Code in the public interest.

Petitioner is vested with the power to take all necessary steps to protect the public interest. The public interest is not protected if insurers are allowed to offer to the public policies that contain provisions that do not comply with the law. Further, the public interest is not protected if the decision as to whether a policy complies with the law is finally decided by an executive court, and not by the judicial branch as required by our form of government.

XXIV.

Petitioner is aggrieved by the order issued by the ALJ ordering him to approve a policy that contains provisions in violation of the law, contrary to his sworn duty to uphold the law and administer the provisions of the Insurance Code for the protection of the public interest. (LSA-R.S. 22:2 and 36:681)

XXV.

Petitioner is aggrieved by and has suffered irreparable injury as a result of the diminution of the power conferred upon the office of the Commissioner of Insurance by virtue of the transfer of power by Act 739 to nonelected civil service employees to render final decisions or orders in matters involving the regulation of the business of insurance.

XXVI.

Petitioner alleges that Act 739 of 1995 is unconstitutional and in violation of the following provisions of the Louisiana Constitution of 1974, in the following non-exclusive particulars:

- A. The act violates the separation of powers article, Article II, Section 1 and Section 2, which expressly provides that the powers of government are divided among three branches: the executive, the legislative and the judicial branch; and further, that no one branch, nor any person holding office in one of them, shall exercise any of the power belonging to the other branches, by vesting judicial power in executive branch employees.
- B. The act violates Article V, Section 22, which mandates an elected judiciary, by providing for the hiring of non-elected judges.
- C. The act divests the districts courts of original jurisdiction in violation of Article V, Section 16 by creating a new and independent judiciary within the executive branch without any limitation on the matters which may be heard by the civil service employees employed as judges. More particularly, the act divests the judicial branch of its inherent power to decide matters involving questions of law.
- D. The act violates Article V, Section 1, which provides that the judicial power of the State is to be vested in the Supreme Court, Courts of Appeal, District Courts and other courts as may be authorized by the constitution, by the unfettered transfer of judicial power to the executive branch.
- E. The act further violates Article V, Section 1 by the creation of a court, the DAL, which is not "a court authorized by the constitution". Therefore, its creation is beyond the scope of powers vested in the Legislature.
- F. The act confers power vested in an elected official and holder of a constitutionally created office to a non-elected administrative law judge.

The divestiture of power delegated to the Commissioner of Insurance is a violation of Article IV, Section 1B which provides in pertinent part that the functions, powers, duties and responsibilities allocated by the constitution to the Commissioner of Insurance shall not be affected or diminished except as authorized by Article IV, Section 20. Section 20 does not provide for the transfer of any of the powers of the Commissioner of Insurance to a division of the Department of State Civil Service.

- G. The power of the Legislature to enact laws is controlled by the parameters set forth in the Constitution. By enacting Act 739, the Legislature has usurped powers belonging to the judicial branch and transferred those powers to the executive branch. The Legislature is not empowered to enact acts that diminish the power of a co-equal branch of government. Therefore, Act 739 is ultra vires and any actions taken pursuant to its provisions are null and void.

## XXVII.

Petitioner alleges that Act 1332 of 1999 is unconstitutional and in violation of the following provisions of the Louisiana Constitution of 1974, in the following non-exclusive particulars:

- A. The act violates the separation of powers article, Article II, Section 1 and Section 2, which expressly provides that the powers of government are divided among three branches: the executive, the legislative and the judicial branch; and further, that no one branch, nor any person holding office in one of them, shall exercise any of the power belonging to the other branches, by vesting judicial power in executive branch employees.
- B. The act is in violation of Article II, Section 1 because it does not provide for a check on the powers exercised by the executive court, by making its rulings nonreviewable by the judicial branch, in those circumstances involving a ruling that is adverse to the agency-party.

- C. The act is in violation of Article II, Section 1 and Section 2 because it diminishes the power of the judicial branch to decide matters involving questions of law.
- D. The act is in violation of Article V, Section 2 because it strips the judicial branch of its inherent power to issue writs of certiorari and review if the person seeking review of an erroneous ruling is the agency-party to the administrative proceeding.
- E. The act is in violation of Article I, Section 2, Article I, Section 3 and Article I, Section 22 in that it denies the citizens and insurance-buying consumers of Louisiana, through the party duly elected to represent and protect their interests and to take all steps necessary thereto, access to the courts, a right not denied to foreign insurers.

XXVIII.

Petitioner, in his capacity as the Acting Commissioner of Insurance, acting in the stead of the duly elected Commissioner of Insurance, shows that he will suffer irreparable injury should an administrative law judge, employed by the Division of Administrative Law, unlawfully attempt to render decisions or issue orders on matters relating to the regulation of the business of insurance. Discretionary authority is intrinsic to the office of the Commissioner of Insurance; the power to render decisions and issue orders is not only expressly granted to the Commissioner of Insurance but is an inherent power of this constitutionally created, elective office. Petitioner has no other adequate remedy at law and, therefore, seeks a preliminary injunction against the Allen Reynolds, Director of the Department of State Civil Service, State of Louisiana and Anne Wise, Director of the Division of Administrative Law and any and all administrative law judges employed by said Division, and any and all agents, employees, and others acting under color of its authority in carrying out and implementing the provisions of Act. No. 739; or, from in any manner attempting to usurp the power and authority constitutionally vested in the office of the Commissioner.

XXIX.



Petitioner moves for a declaration of this court under the provisions of La. C.C.P. Art. 1871 through 1883, declaring that Act No. 739 of the 1995 Regular Session of the Louisiana Legislature is unconstitutional and as such is null and void and without legal effect.

XXX.

Petitioner moves for a declaration of this court under the provisions of La. C.C.P. Art. 1871 through 1883, declaring that Act No. 1332 of the 1999 Regular Session of the Louisiana Legislature is unconstitutional and as such is null and void and without legal effect.

XXXI.

Petitioner moves for a preliminary injunction enjoining the Order issued by the ALJ in the administrative matter captioned In Re State Farm Fire and Casualty Insurance Company, and in due course a permanent injunction, permanently enjoining Acts 1995, No. 739.

XXXII.

Petitioner further moves for a preliminary injunction, and in due course a permanent injunction, enjoining the enforcement of Acts 1999, No. 1332.

XXXIII.

Petitioner moves for a declaratory order declaring that the ruling of the ALJ in the underlying administrative matter was issued pursuant to a "power not conferred" in that the law purporting to grant such power is unconstitutional, and therefore the ruling is null and void and of no effect.

XXXIV.

Petitioner hereby gives notice, pursuant to *Rule VII of the Local rules of the 19<sup>th</sup> Judicial District Court*, that he reserves the right, upon proper notice, to adduce testimony into evidence at any hearing on the preliminary or permanent injunction or any hearing conducted on this matter.

XXXV.

**WHEREFORE**, Petitioner, J. Robert Wooley, in his capacity as the Acting Commissioner of Insurance, acting in the stead of the duly elected Commissioner of Insurance, prays that this Honorable Court:

1. Direct the Clerk of Court to prepare a certified copy of these pleadings and a citation directing the Defendants as named above in Paragraph I. of this petition, to appear and show cause, on a day and time to be fixed by this Honorable Court, if any they have or can, why a preliminary injunction should not issue enjoining from carrying out, implementing, or enforcing the provisions of Acts 1995, No. 739 and Acts 1999, No. 1332 in general, and specifically as regards the office of the Commissioner of Insurance;

2. Issue a judgment in the form of a preliminary injunction in favor of Petitioner and against Defendant State Farm enjoining State Farm's from using the RCU form until it is in compliance with law and has been approved by a lawful order of the COI, or a final decision by the judicial branch on the underlying question of law;

3. Issue a judgment in the form of a preliminary injunction in favor of Petitioner and against the Defendants quashing and enjoining the unlawful attempt to divest and transfer power constitutionally vested in the Commissioner of Insurance;

4. Issue a judgment in the form of a preliminary injunction in favor of Petitioner and against the Defendants quashing and enjoining the ruling issued by the ALJ in the underlying administrative matter that orders the Commissioner to approve the RCU policy;

5. Render a Declaratory Judgment under La. C.C.P. Art. 1871 through 1883 in favor of Petitioner and against the Defendants declaring that Act. No. 739 of the 1995 Regular Session of the Louisiana Legislature is unconstitutional, null and void;

6. Render a Declaratory Judgment under La. C.C.P. Arts. 1871 through 1883 in favor of Petitioner and against the Defendants declaring that Act. No. 1332 of the 1999 Regular Session of the Louisiana Legislature is unconstitutional, null and void;

7. Render a Declaratory Judgment under La.C.C.P. Arts. 1871 through 1883 in favor of Petitioner and against the Defendants

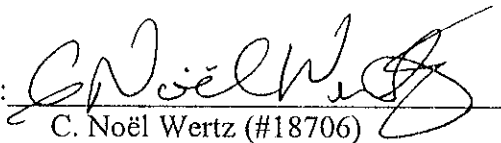
same substance as the preliminary injunction prayed for above;  
and,

9. Grant Petitioner such other general and equitable relief to which they may be entitled, along with all costs of these proceedings.

RESPECTFULLY SUBMITTED:

J. ROBERT WOOLEY, ACTING  
COMMISSIONER OF INSURANCE  
STATE OF LOUISIANA

BY:



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**CIVIL**

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| <input type="checkbox"/> 02-CONTRACT              | <input type="checkbox"/> 12-PUBLIC SERV. COMM.     |
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