

Fifth Circuit Court of Appeal State of Louisiana

No. 26-C-289

**BOUDREAUX'S COLLISION CENTER, LLC &
BOUDREAUX'S COLLISION NOLA CORP.**

versus

**PROGRESSIVE PALOVERDE INSURANCE COMPANY,
PROGRESSIVE SECURITY INSURANCE COMPANY,
ROBERT CHOUEST AND ROBERT LENDLE**

**IN RE BOUDREAUX'S COLLISION NOLA CORP. AND BOUDREAUX'S COLLISION CENTER,
LLC
APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-NINTH JUDICIAL DISTRICT
COURT, PARISH OF ST CHARLES, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE
ROCHELLE C. FAHRIG, DIVISION "D", No. 93,694**

TRUE COPY

October 01, 2026



**LINDA TRAN
DEPUTY CLERK**

Panel composed of Judges Fredericka Homberg Wicker,
Stephen J. Windhorst, and Michael P. Mentz, Pro Tempore

WRIT DENIED

This case centers on a claim under the Louisiana Unfair Trade Practices Act (“LUTPA”) filed by plaintiffs (a business entity consisting of two auto repair shops) against defendants (an insurance company and affiliated parties). Defendants filed an exception of no cause of action on the LUTPA claim, which the trial court sustained. Plaintiffs request that this Court reverse the ruling of the trial court.

FACTS

Boudreaux’s Collision Center, LLC is an automotive repair shop located in Luling, Louisiana and Boudreaux’s Collision NOLA Corp. is an automotive repair

shop located in New Orleans, Louisiana (collectively, “Boudreaux’s” or “plaintiffs”). Boudreaux’s is operated by Rodney and Tish Boudreaux. Much of Boudreaux’s clientele are covered by Progressive Paloverde Insurance Company (“Progressive”). Plaintiffs allege that over the course of several years, the defendants—Progressive, Progressive Security Insurance Company, adjuster Robert Chouset and his supervisor Robert Lindell—have steered Boudreaux’s’ customers away from Boudreaux’s and to Progressive’s chosen automotive repair shops.

Plaintiffs alleged the following conduct on the part of defendants, and specifically the conduct of one adjuster and his supervisor, which included: a) Totaling vehicles that are otherwise repairable and then refusing to pay storage fees and abandoning totaled vehicles at Boudreaux’s; b) Intentionally driving business away from Boudreaux’s by telling customers that Boudreaux’s was “problematic” and that the owners were “crooks,” advising Progressive insureds to have their vehicles repaired elsewhere; c) Intentionally failing to adequately and fairly adjust the insurance claims of Boudreaux’s customers in an effort to delay the repair of customers’ vehicles to sow discord between the customer and Boudreaux’s; d) Intentionally disregarding the opinion of its selected third-party umpire, further delaying and interfering with Boudreaux’s operations; and, e) Sending letters to Progressive insureds advising them that Boudreaux’s is overcharging and that the insured may be responsible for out-of-pocket expenses.

As noted above, the trial court sustained the exception of no cause of action on the LUTPA claim. However, plaintiffs also filed a claim of tortious interference, which was dismissed *without* prejudice by the trial court. Plaintiffs have since filed an amended petition.

In regards to the LUTPA claim, plaintiffs now argue that the statutes governing the action under the purview of the insurance commissioner are specifically conduct between: an insurer and its insured; an insurer and the public

for false and deceptive representations; and conduct between insurers, thus, the conduct alleged does not fall under the jurisdiction of the insurance commissioner. La. R.S. 22:1964.

On the other hand, defendants argue that all of the complained-of conduct falls within the jurisdiction of the insurance commissioner and, therefore, fall under the exceptions to the LUTPA (and, therefore, do not constitute cognizable claim under LUTPA).

LAW AND DISCUSSION

“Because it presents a question of law, the sustaining of an exception of no cause of action is subject to *de novo* review.” *Watson Mem’l Spiritual Temple of Christ v. Korban*, 24-00055 (La. 6/28/24), 387 So.3d 499, 506, *reh’g denied*, 24-00055 (La. 8/2/24), 390 So.3d 277, *and cert. denied*, 145 S. Ct. 1169, 221 L. Ed. 2d 251 (2025), based solely on the sufficiency of the petition. The pertinent question is whether, in the light most favorable to plaintiff and with every doubt resolved in plaintiff’s behalf, the petition states any valid cause of action for relief. *Ramey v. DeCaire*, 03-1299 (La. 03/19/04), 869 So.2d 114, 119.

The core of LUTPA is contained in La. R.S. 51:1409 and its core prohibition is stated in La. R.S. 51:1405(A): “Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.” The statute broadly defines “trade or commerce” to encompass the advertising, offering for sale, sale, or distribution of any services and any property, corporeal or incorporeal, and any other article, commodity, or thing of value, including any trade or commerce directly or indirectly affecting the people of the state. La. R.S. 51:1402.

The Louisiana Supreme Court has held that the range of prohibited practices under LUTPA is extremely narrow, prohibiting only fraud, misrepresentation, and similar conduct—mere negligence is not sufficient. *Quality Env’t Processes, Inc. v.*

I.P. Petroleum Co., 13-1582 (La. 5/7/14), 144 So.3d 1011. To state a claim under LUTPA, the plaintiff must show that the alleged conduct offends established public policy and is immoral, unethical, oppressive, unscrupulous, or substantially injurious. To sustain a cause of action under LUTPA, the Louisiana Supreme Court has promulgated a two-part test: 1) the person must suffer an ascertainable loss; and 2) the loss must result from another's use of unfair methods of competition and unfair or deceptive acts or practices. *Cheramie Servs., Inc. v. Shell Deepwater Prod., Inc.*, 09-1633, p. 10 (La. 4/23/10), 35 So.3d 1053, 1059.

However, businesses remain “free to pursue profit, even at the expense of competitors, so long as the means used are not egregious.” *Reel Pipe, LLC v. USA Comserv, Inc.*, 427 F. Supp. 3d 786 (E.D. La. 2019). For example, negotiating restrictive covenants and normal competitive solicitation of employees do not violate LUTPA. *Carbon Six Barrels, L.L.C. v. Proof Rsch., Inc.*, 83 F.4th 320 (5th Cir. 2023). LUTPA is essentially penal in nature and is therefore subject to reasonably strict construction. *Harp v. Autrey*, 47,749 (La. App. 2 Cir. 8/21/13), 121 So.3d 1260.

A critical threshold issue for Boudreaux's LUTPA claim is contained in La. R.S. 51:1406(1), which provides that LUTPA “shall not apply to . . . actions or transactions subject to the jurisdiction of . . . the insurance commissioner.” Louisiana courts have applied this exemption broadly to insurer conduct involving misrepresentation, false advertising, or false information relating to the business of insurance, finding such conduct falls within the enumerated practices regulated by the Louisiana Insurance Commissioner under La. R.S. 22:1964. *Taxicab Ins. Store, LLC v. Am. Serv. Ins. Co., Inc.*, 17-0004 (La. App. 4 Cir. 7/12/17), 224 So.3d 451.

In this matter, the alleged conduct falls within the jurisdiction of the insurance commissioner: “The commissioner of insurance shall have power to examine and investigate the affairs of every person engaged in the business of insurance,

including violations of R.S. 22:1902 et seq., in order to determine whether such person has been or is engaged in any unfair method of competition or in any unfair or deceptive act or practice prohibited by this Part.” La. R.S. 22:1967. Furthermore, La. R.S. 22:1663 requires people engaged in claims adjustment be registered, and licensed, and, as such, are governed by the Insurance Code. Clearly, the conduct that was allegedly committed by defendants’ insurance adjuster and his supervisor falls under the jurisdiction of the insurance commissioner. Additionally, La. R.S. 22:1968 outlines the procedures for resolving disputes within matters involving the insurance commissioner, including a hearing.

In light of this, the trial court was correct in sustaining the exception of no cause of action on the LUTPA claim: under these facts, the facts being allegedly unfair conduct of two insurance adjusters who share business with Boudreaux’s, plaintiffs cannot amend the petition to make the LUTPA claim viable.

For these reasons, plaintiffs’ writ is denied.

Gretna, Louisiana, this 1st day of October, 2026.

MPM
FHW

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WINDHORST, J., DISSENTS WITH REASONS

I respectfully dissent from the majority's decision. I disagree with the majority position that plaintiffs' LUTPA claim falls under the exclusive jurisdiction of the insurance commissioner pursuant to La. R.S. 52:1406(1). That exclusive jurisdiction of the commissioner is pursuant to the enumerated purposes in R.S. 22:1901:

§1901. Purpose; necessity for regulation

This Part shall be liberally construed and applied to promote its underlying purposes which include:

- (1) Protecting persons seeking insurance in this state.
- (2) Permitting surplus lines insurance to be placed with reputable and financially sound unauthorized insurers under the provisions of this Part.
- (3) Establishing a system of regulation which will permit orderly access to surplus lines insurance in this state and encourage authorized insurers to provide new and innovative types of insurance available to consumers in this state.
- (4) Providing a system through which persons may purchase insurance, other than surplus lines insurance, from unauthorized insurers pursuant to this Part.
- (5) Protecting revenues of this state.
- (6) Providing a system pursuant to this Part which subjects unauthorized insurance activities in this state to the jurisdiction of the insurance commissioner and state and federal courts in suits by or on behalf of the state.

The allegations of the petition in this case do not fall within any of the six enumerated purposes within La. R.S. 22:1901. Admittedly, the list is not exclusive. Nevertheless, the six enumerated purposes are all regulatory in nature, and each states a category which has a “**necessity** for regulation.” Further, La. R.S. 22:1901 specifically states that La. R.S. 22:1902, *et seq*, **shall** be applied to “***promote its underlying purposes.***” [Emphasis added.] The illustrative list of “underlying purposes” are in La. R.S. 22:1901. Adjudication of this case by the commissioner does not promote any of the enumerated purposes or satisfy any “necessity for regulation.” This is simply a tort case which does not fit into any category comparable to the six illustrative purposes of the various provisions of La. R.S. 22:1902, *et seq*, and would not promote these *or similar* “underlying purposes.”

Plaintiffs herein are not insureds, an insurance company, or in an insurance-related business. Plaintiffs are merely business entities performing service repairs for individuals that defendants insure. Plaintiffs do not have an insurance-related relationship with defendants, contractual or otherwise.

Further, defendants’ alleged tortious activity against plaintiffs is not insurance-related. The petition alleges that defendants are intentionally attempting to drive customers away from plaintiffs by making defamatory statements about plaintiffs, refusing to pay or failing to timely pay for work performed by plaintiffs, causing conflict between plaintiffs and their customers, knowingly and intentionally writing unreasonable repair estimates on vehicles, declaring vehicles as total losses despite having minor, repairable problems, and telling

defendants' insureds that plaintiffs are overcharging. As reflected by these allegations, the LUTPA claim focuses on defendants' allegedly intentional actions of interfering with plaintiffs' auto repair businesses. These are common claims and allegations in vehicle accident cases during the squabbling over the amount of property damages which are due, with or without the LUTPA claim, and they don't usually deprive the plaintiff of access to courts of law and relegate him to the administrative process where his procedural rights are significantly reduced.

Defendants rely on Taxicab Ins. Store, LLC v. Am. Serv. Ins. Co. Taxicab Ins., 17-4 (La. App. 4 Cir. 07/12/17), 224 So.3d 451, 455. The Taxicab case involved allegations by one insurance company against another insurance company and its two individual producers that the defendants were working together to solicit business from the plaintiffs' customers by offering illegal insurance policies at unapproved premium rates. The Taxicab case is inapplicable and clearly distinguishable from the present case as that case involved insurance-related activities of marketing and selling insurance policies between two separate insurance companies.

Although I recognize that defendants' alleged activities do involve insurance claims adjusting, the allegations of the petition do not involve adjusting plaintiffs' claim, and plaintiffs and defendants do not have any insurance-related relationship. These claims are not unlike other tort claims adjudicated by a court. The LUTPA cause of action does not fit into any of the purposes in the list of "underlying purposes" in La. R.S. 22:1901, nor does it promote, or is it alleged to promote, any

similar or related other purpose. Adjudication of this case by the commissioner would not genuinely promote any of the enumerated purposes or satisfy any “necessity for regulation.” I therefore see no justification to deprive the plaintiffs of access to the courts and relegate them to the administrative law process, where by law, the purposes are dictated more by the list in La. R.S. 22:1901 (generally supporting a healthy insurance industry in this state), than by the evidence, which will likely be more difficult to come by when considering the lack of ordinary full discovery.

Thus, I would reverse the trial court’s judgment granting defendants’ exception of no cause of action on the LUTPA claim and find plaintiffs have asserted sufficient facts to state a LUTPA cause of action against defendants.

Lastly, the contrary argument in this case seems to rely on the existence of a LUTPA claim. The unfair trade practices claim can be dropped, and plaintiffs’ can proceed with an ordinary tort claim for damages. I therefore further disagree with the majority’s declaration that the petition cannot be amended to cure the objection raised by the no cause of action exception.

SJW

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
STEPHEN J. WINDHORST
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NOTICE OF DISPOSITION CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE DISPOSITION IN THE FOREGOING MATTER HAS BEEN TRANSMITTED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 4-6** THIS DAY **10/01/2026** TO THE TRIAL JUDGE, THE TRIAL COURT CLERK OF COURT, AND AT LEAST ONE OF THE COUNSEL OF RECORD FOR EACH PARTY, AND TO EACH PARTY NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

A handwritten signature in blue ink, reading "Curtis B. Pursell", is written over a horizontal line.

CURTIS B. PURSELL
CLERK OF COURT

26-C-289

E-NOTIFIED

29th Judicial District Court (Clerk)	
Honorable Rochelle C. Fahrig (DISTRICT JUDGE)	
Scott L. Sternberg (Relator)	M. Suzanne Montero (Relator)
Adam P. Massey (Respondent)	Elizabeth L. Lunn (Respondent)
	Graham H. Williams (Relator)

MAILED

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