

19TH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

JAMES DONELON, COMMISSIONER OF	*	NUMBER:
INSURANCE FOR THE STATE OF	*	
LOUISIANA	*	DIVISION:
	*	
VERSUS	*	
	*	
ALLSTATE INSURANCE COMPANY,	*	
STATE FARM FIRE AND CASUALTY	*	
COMPANY, NATIONAL ASSOCIATION	*	
OF MUTUAL INSURANCE COMPANIES,	*	
AMERICAN PROPERTY CASUALTY	*	
INSURANCE ASSOCIATION,	*	
ENCOMPASS INSURANCE COMPANY,	*	
ESURANCE INSURANCE COMPANY	*	

PETITION FOR DECLARATORY JUDGMENT

Petitioner, James Donelon, Commissioner of Insurance for the State of Louisiana (“Commissioner”), through undersigned counsel, seeks a Declaratory Judgment, as described herein. Named as defendants are the following associations and insurers, to wit: Allstate Insurance Company, State Farm Fire and Casualty Company, Encompass Insurance Company, Esurance Insurance Company, National Association of Mutual Insurance Companies, and American Property Casualty Insurance Association. Pursuant to La. C.C.P. art. 1871, et seq., Commissioner seeks a declaratory judgment declaring the proper statutory interpretation and application of Act 61 of the 2017 Regular Session of the Louisiana Legislature as to policies of insurance issued or delivered in this State that provide coverage for the peril of fire.

1.

The Commissioner requests that the Court declare the rights and obligations of the parties as to the interpretation and application of Act 61 of the 2017 Regular Session of the Louisiana Legislature, codified as La. R.S. 22:1460(I)(1)(c).

2.

Jurisdiction is proper pursuant to Article V, Section 16 of the Louisiana Constitution. Venue is proper pursuant to Article 42 of the Louisiana Code of Civil Procedure.

3.

Petitioner is:

James Donelon is the duly elected Commissioner of Insurance for the State of Louisiana. He is charged with regulation of the insurance industry in all its phases in this State. Act 61

of 2017 is legislation that regulates fire insurance premium calculations. Thus, Commissioner Donelon is the proper person to bring this action.

Defendants are:

1. Allstate Insurance Company (“Allstate”), a foreign insurer authorized to do an actually doing business in Louisiana and which issues policies of insurance covering, among other things, fire as a peril.
2. State Farm Fire and Casualty Company (“State Farm”), a foreign insurer authorized to do and actually doing business in this State and which issues policies of insurance covering fire as a peril;
3. American Property Casualty Insurance Association (“APCIA”), a national trade association whose members are insurance carriers, many of which are authorized to do business in Louisiana and which are subject to regulation by the Commissioner, and who issue policies of insurance covering, among other things, fire as a peril;
4. National Association of Mutual Insurance Companies (“NAMIC”), a national trade association comprised of property insurers, as well as insurers offering comprehensive commercial and personal lines coverage, whose members are insurance carriers, many of which are authorized to do business in Louisiana and which are subject to regulation by the Commissioner, and who issue policies of insurance covering, among other things, fire as a peril;
5. Encompass Insurance Company (“Encompass”), a foreign insurer authorized to do and actually doing business in Louisiana and which issues policies of insurance covering, among other things, fire as a covered peril.
6. Esurance Insurance Company (“Esurance”), a foreign insurer authorized to do and actually doing business in Louisiana and which issues policies of insurance covering, among other things, fire as a covered peril.

4.

APCIA and NAMIC have advocated before the Commissioner and in other forums on behalf of their member insurers for an interpretation and application of Act 61 of 2017 that differs materially from the interpretation and application of the Commissioner. Both associations have argued that they have standing to do so and, consequently, their members (to the extent that they have not yet complied with the provisions of Act 61) should be bound by any judgment rendered by this Court in these proceedings. Alternatively, and to the extent either association may object to their members being bound by any judgment rendered by the Court, the Commissioner reserves the right to name as defendants any and all members of such association who are subject to regulation by the Commissioner who have not yet complied with Act 61.

5.

State Farm, Allstate, Esurance, and Encompass, are authorized to do business in this State. All are subject to regulation by the Commissioner. All issue or deliver policies of insurance in this State that include fire as a covered peril. Accordingly, they should be bound by any judgment rendered by the Court in these proceedings.

6.

This cause of action is brought pursuant to the provisions of La. C.C.P. art. 1871 and 1872, which provide, among other things, that a plaintiff “whose rights, status, or other legal relations are affected by a statute” may seek the determination of “any question of construction or validity arising under ... the statute ... and obtain a declaration of rights, status or other legal relations thereunder.” Declaratory judgment may be rendered “whether or not further relief is or could be claimed.” La. C.C.P. art. 1871. The function of a declaratory judgment is to establish the rights of the parties or express the opinion of the court on a question of law without ordering anything to be done. *ANR Pipeline Company v. Louisiana Tax Commission*, 01-2594, p. 9 (La. App. 1st Cir. 3/20/02), 815 So.2d 178, 185, *affirmed and remanded*, 02-1479 (La.7/2/03), 851 So.2d 1145. Precisely such questions are presented in this suit.

7.

In the 2017 Regular Session, the Legislature enacted Act 61 which provides as follows:

AN ACT to enact R.S. 22:1460(I)(1)(c), relative to fire insurance rates; to provide for the determination of fire insurance rates; to prohibit certain methods of determination; and to provide for related matters.

Be it enacted by the Legislature of Louisiana: Section 1. R.S. 22:1460(I)(1)(c) is hereby enacted to read as follows:

(c) No insurance company shall combine a higher classified public fire protection area with a lower classified public fire protection area for the purpose of determining the fire insurance rate for the combined public fire protection areas.

(A copy of Act 61 is attached to this Petition.)

8.

The practice addressed in La. R.S. 22:1460(I)(1)(c) is known as “grouping.” Act 61 prohibits insurers from applying the same factor for the calculation of a premium for a policy covering the peril of fire for any two fire protection areas or classifications.

9.

Additionally, La. R.S. 22:1460(I)(1)(a) requires that: “Every insurance company authorized to write fire insurance in this state shall adhere to the rates promulgated by the Property Insurance Association of Louisiana (“PIAL”) and approved by the commissioner of insurance in accordance with Subsection A of this Section ...” The phrase “authorized to write fire insurance,” includes, by its own terms, all insurers authorized to write policies that cover the peril of fire and, by extension, all policies that include fire as a covered peril.

10.

PIAL has created ten fire classification areas (or “fire protection areas” as that term is used in Act 61) and uses those classifications to develop, and submit to the Commissioner for approval, rates for policies that include fire as a covered peril.

11.

Consistent with the Commissioner’s interpretation, PIAL’s ten fire classifications properly comply with Act 61. The rates submitted for approval by, and approved by, the Commissioner do not incorporate or utilize the practice of “grouping.” The PIAL rate filing draws a distinction between each of the ten fire classifications.

12.

Many insurers that issue policies including fire as a covered peril have adopted the rates developed by PIAL and submitted to the Commissioner for approval and are in compliance with Act 61.

13.

Some insurers which issue policies of insurance that include fire as a covered peril submit proposed rates that deviate from the rates promulgated by PIAL. The Commissioner contends, and requests a declaration, that any such deviation must not include the practice of “grouping” fire protection areas or classifications as such would not comply with Act 61.

14.

Some insurers which issue policies of insurance that include fire as a covered peril, but that also include other coverages (such as liability), contend that Act 61 does not apply to such policies. The Commissioner contends that this interpretation is legally incorrect and requests a declaration that Act 61 applies to any policy of insurance issued or delivered in this State that includes fire as a covered peril.

15.

Although many insurers who issue or deliver fire policies, including homeowners’ and other lines of insurance that include fire as a covered peril, have complied with the Commissioner’s interpretation of Act 61, a dispute has arisen between the Commissioner on one hand and the defendants (and in the case of the trade associations, some of their members) on the other as to the proper interpretation of Act 61. Thus, there is a justiciable controversy among the parties.

16.

The Commissioner's interpretation of Act 61 as to the policies to which it applies is supported by the Insurance Code, which lists "Kinds of Insurance." The statute provides that homeowners' policies include fire and allied lines. La. R.S. 22:47(15) provides:

(15) Homeowners' insurance. A policy of insurance on a one- or two-family owner-occupied premises, **which combines fire and allied lines with any one or more perils of casualty**, liability, or other types of insurance within one policy form at a single premium, where the insurer's liability for damage to the premises under said policy is determined with reference to the replacement value of the premises.

Accordingly, homeowners' insurance is a "hybrid" policy that combines fire and allied lines with one or more peril of casualty. All insurers authorized to write homeowners' insurance are "authorized to write fire insurance" as contemplated by La. R.S. 22:1460(I)(1)(a), and all such policies are subject to the provisions of Act 61.

17.


The Commissioner requests that this court render a declaratory judgment as to the proper interpretation (as described herein) of Act 61 insofar as the practice of "grouping" is concerned and declaring that Act 61 applies and extends to all policies of insurance issued or delivered in this State that provide coverage for the peril of fire.

WHEREFORE, James Donelon, in his capacity as Commissioner of Insurance for the State of Louisiana, respectfully prays that each of the defendants named herein be cited and served and ordered to appear and answer and that after all legal delays and due proceedings had, there be judgment:

1. Declaring that Act 61 of 2017 prohibits the practice of "grouping" and requires that the factors applied to fire protection areas or classifications distinguish between each classification; and
2. Declaring that Act 61 of the 2017 applies to all policies of insurance issued or delivered in this State that include fire as a covered peril; and
3. For all additional relief warranted herein as may be just and equitable.

Respectfully submitted,

TAYLOR, PORTER, BROOKS & PHILLIPS L.L.P.

By 

Harry J. "Skip" Philips, Jr., Bar # 2047
Michael A. Grace, Bar # 38240
450 Laurel Street, 8th Floor (70801)
P.O. Box 2471
Baton Rouge, LA 70821-2471
Telephone: (225) 387-3221
Facsimile: (225) 346-8049

**Attorneys for James Donelon, Commissioner of
Louisiana Department of Insurance**

PLEASE SERVE:

1. National Association of Mutual Insurance Companies
Via Louisiana Long-Arm Statute
3601 Vincennes Road
Indianapolis, IN 46268

AND

20 F Street NW
Suite 510
Washington, DC 20001

2. American Property Casualty Insurance Association
Via Louisiana Long-Arm Statute
555 12th Street, NW, Suite 555
Washington, DC 20004-1264

AND

8700 West Bryn Mawr, Suite 1200S
Chicago, IL 60631-3512

3. Allstate Insurance Company
Through its agent for service of process:
Louisiana Secretary of State
8585 Archives Avenue
Baton Rouge, LA 70809
4. Encompass Insurance Company
Through its agent for service of process:
Louisiana Secretary of State
8585 Archives Avenue
Baton Rouge, LA 70809
5. Esurance Insurance Company
Through its agent for service of process:
Louisiana Secretary of State
8585 Archives Avenue
Baton Rouge, LA 70809
6. State Farm Fire and Casualty Company
Through its agent for service of process:
Louisiana Secretary of State
8585 Archives Avenue
Baton Rouge, LA 70809