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Louisiana's Liability Environment: Progress and Opportunities for Legal Reform

U.S. Chamber of Commerce
Institute for Legal Reform

Louisiana has made progress in addressing concerns about excessive liability and lawsuit abuse in recent years. Some goals, however, have not been fully achieved or remain outstanding.

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Introduction and Executive Summary

This paper examines the factors contributing to Louisiana's improving but still imbalanced legal environment, including the prevalence of auto accident claims, fraudulent lawsuits, and nuclear verdicts, alongside the structural incentives that fuel excessive litigation. Recent legislative efforts signal progress, but the work remains unfinished.

As Louisiana seeks to foster a fairer and more predictable legal system, this paper highlights both the advancements made and the significant opportunities for further improvement. Addressing outstanding issues is critical to ensuring that Louisiana becomes a state where businesses and individuals can thrive without the burdens of excessive litigation and liability-related costs.

A Highly Litigious Automobile Accident Environment

Louisiana is known for its litigious environment. The state has the highest frequency of automobile injury claims and second highest litigation rate in the country.[1] While the state is only slightly above the national average for frequency of car accidents, Louisianans show a greater propensity to file a lawsuit after an accident, with a relative claim frequency almost twice the U.S. average.[2] Researchers, truck drivers, business owners, lawyers, and others express concern that Louisiana's legal environment "makes it easy to file bodily injury lawsuits for quick monetary settlements that aren't always warranted."[3]

The high tendency to file claims when an automobile accident occurs and the high rate of litigation contributes to Louisiana's status as the least affordable state for auto insurance, with drivers paying 40 percent above the national average to insure a vehicle, according to a 2024 Insurance Research Council report.[4] This finding is consistent with a recent Bankrate report, which

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found that while the national average cost for full-coverage auto insurance is $2,543 per year, amounting to 3.41 percent of income, Louisiana residents pay $3,618, or 6.53 percent of their income. According to that study, Louisianans pay the third highest premiums in the country, and they spend the largest portion of their income on auto insurance.[5]

One likely contributor to Louisiana's litigiousness is that it is one of a few states with a pure comparative fault system.[6] Until 1979, a Louisiana plaintiff whose conduct contributed to his or her own injury was completely barred from recovery. That year, the legislature swung the pendulum fully in the opposite direction, embracing a system under which a person who is, for example, 90 percent responsible for his or her own injury can still sue and recover 10 percent of the awarded damages from a defendant. That approach provides an incentive for personal injury lawyers to bring, and insurers to settle, extremely weak and meritless cases that would not be brought elsewhere. The vast majority of states have moved to a system, known as modified comparative fault, in which a person who is primarily responsible for his or her own injury (50 or 51 percent) cannot recover damages. Florida, one of the few states that also had pure comparative fault, abandoned it in 2023 as a key component of the state's comprehensive civil justice reform legislation.[7]

Others point to Louisiana's "Housley presumption,"[8] which originates from a 1991 Louisiana Supreme Court decision.[9] This doctrine, which comes into play in auto accident and other personal injury cases, generally presumes that health conditions or disabilities that a plaintiff develops after an accident resulted from that accident. This presumption shifts the burden of proof from the plaintiff, who ordinarily must introduce medical evidence proving causation, to the defendant, who, in Louisiana, must rebut the Housley presumption by showing some other incident or event caused the plaintiff's injury.

Given the state's litigious environment, it comes as no surprise that Louisiana has more than its fair share of lawyers. Only six other states have more lawyers per capita, according to American Bar Association statistics.[10]

Fraudulent Claims

In some instances, lawsuits filed in Louisiana have crossed the line from meritless or frivolous to fraudulent, according to prosecutors, courts, and the state's insurance commissioner.

"Operation Sideswipe" is a prime example. Sixty-three defendants, including law firms and individual attorneys, have been charged in a federal probe alleging that they participated in a conspiracy

to stage auto accidents in New Orleans.[11] The scheme, which began in 2011 and continued for a decade, involved "slammers," who intentionally collided with 18-wheeler tractor trailers then fled the scene while passengers in the vehicles pretended to be drivers.[12] They then allegedly sought unnecessary medical treatment and filed fraudulent lawsuits.[13] Several defendants have pled guilty.[14]

Fraud and misconduct also have been uncovered in Louisiana homeowners' insurance claims. Following a string of hurricanes in 2021 and 2022, Texas mass tort lawyers, apparently backed by Florida hedge funds, spent millions on improperly soliciting Louisiana property owners to sue their insurers.[15] In 2023, a federal judge in the Western District of Louisiana concluded that a law firm had engaged in misconduct through paying an internet marketing company millions of dollars to locate potential clients.[16] It also found the firm engaged in other unethical behavior, including filing lawsuits against insurers that had no policy with the plaintiffs or had already settled the plaintiff's claim.[17] Louisiana's Insurance Commissioner at the time, Jim Donelon, imposed fines totaling $2 million on the firm, for "engaging in unfair trade practices and insurance fraud involving at least 850 Louisiana homeowners and policyholders," calling it "frankly one of the most egregious cases that has ever come through this department."[18]

Nuclear Verdicts

Louisiana has a reputation for high verdicts. It is among the top states for awards of $10 million or more, known as "nuclear verdicts" in personal injury and wrongful death cases. Over a 10-year period between 2010 and 2019, Louisiana hosted the seventh most nuclear verdicts in automobile accident cases, according to an Institute for Legal Reform (ILR) study.[19] Data also indicates that Louisiana was in the top 10 states for nuclear verdicts in 2023.[20] By contrast, Louisiana ranks 25th in population.

This finding is consistent with a study conducted by Marathon Strategies, which found Louisiana courts were home to nearly $10 billion in nuclear verdicts against corporations (in any type of civil action) between 2009 and 2023, the sixth highest total of the states.[21] That study indicates that Louisiana's pharmaceutical, trucking, and oil and gas industries are the most frequent subjects of such awards.[22] In 2023 specifically, Marathon found Louisiana had the eighth highest total nuclear verdicts against businesses, awarding a total of $436.8 million.[23]

Louisiana witnessed this remarkable number of nuclear verdicts despite it being among a few states that do not award punitive damages except in areas specifically authorized by statute. Rather, such amounts primarily stem from general damage awards that include multiple forms of noneconomic damages.

For example, a 2024 trial in St. Landry Parish, in which a paramedic was severely injured when her ambulance struck a business's pickup

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truck that had turned in front of them, resulted in a $220 million verdict. The verdict against the pickup truck driver and his employer included $64 million in economic damages, primarily for future medical care. The verdict form then added seven distinct awards of noneconomic damages totaling $155.5 million. These included $20 million for past suffering, $25 million for future suffering, $20 million for past anguish, $25 million for future anguish, $60 million for loss of enjoyment of life, $5 million for disability, and $500,000 for scarring.[24]

Another striking example emerged early in 2025, when an East Baton Rouge jury returned a $411.7 million verdict in a construction injury case, which the plaintiff's lawyers quickly proclaimed "the largest single-plaintiff injury verdict in Louisiana history."[25] The injury occurred when a coworker accidently caused a 20-pound metal bar to fall from a scaffold, striking the plaintiff below.[26] The February 2025 verdict against the plaintiff's employer included about $17.2 million in damages for medical expenses and lost income. The remainder of the nearly half-billion-dollar award was for various forms of noneconomic damages.[27]

While some states place bounds on noneconomic damage awards,[28] Louisiana does so only in medical liability cases[29] and claims against government entities.[30] Louisiana appellate courts, in some cases, have upheld massive general damage awards,[31] though this situation may improve due to recent Louisiana Supreme Court decisions that have strengthened appellate review discussed later in this paper.

Influence of the Plaintiffs' Bar

Further shaping the liability environment in Louisiana is the influence of the state's powerful plaintiffs' bar. From 2016 to 2024, John Bel Edwards, a former trial lawyer, served as governor. In the years preceding his election as governor, Edwards served as a state representative, during which time he led efforts against civil justice reform proposals. The plaintiffs' bar generously supported his political campaigns.[32] As governor, Edwards vetoed key reforms[33] and controversially hired private lawyers (who were also friends and fundraisers) to bring lawsuits against businesses on behalf of the state.[34] This practice continues today.

Edwards, a Democrat, is no longer governor, but as *The Wall Street Journal* observed in an editorial titled "Louisiana: The Trial-Lawyer State," "politicians from both parties play footsie with trial lawyers."[35] While Governor Jeff Landry has proven more open to legal reform, he too received substantial support from the plaintiffs' bar.[36] One prominent Louisiana plaintiffs' attorney, after meeting with the now-governor during his campaign, commented, "He gave me his word that he

would be a friend to trial lawyers, and they would be a friend to him."[37] In his first year in office, Governor Landry vetoed legislation passed with broad support to rein in inflated damage awards.[38] Other tort reform bills have been killed or watered down, which some attribute to an alliance between Governor Landry and the plaintiffs' bar.[39]

Costs for Louisianans

Louisiana residents and business owners pay the price of the state's excessive litigation. Louisiana has the third highest tort costs in America as a percentage of its state GDP (2.65 percent), according to a recent study conducted by The Brattle Group for ILR.[40] That study, which is based on insurance data, also found that the state's tort costs equate to $4,389 per Louisiana household, the 11th highest amount in the country.[41] Another study, conducted by The Perryman Group for Citizens Against Lawsuit Abuse, estimates that excessive tort litigation in Louisiana results in 40,500 lost jobs statewide.[42]

Negative Legal Climate Perceptions

When asked about the fairness of state liability systems, in-house general counsel, senior litigators or attorneys, and senior executives at major companies have placed Louisiana at the bottom of the list.[43] They name New Orleans in particular as having among the "least fair and reasonable litigation environments" of local jurisdictions.[44]

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Louisiana receives similarly low marks for its overall business environment. U.S. News placed Louisiana 50th overall in its 2024 "Best States" rankings, including 45th for its business environment.[45] The Pelican State did not fare much better in CNBC's "Top States for Business" study (47th overall), and received a C- for its "business friendliness," an element that includes the state's lawsuit and liability climate.[46]

In addition, Louisiana is consistently named in the American Tort Reform Foundation's annual report, which identifies places viewed as especially unfair to businesses and other civil defendants. That said, the state has seen improvement in its liability climate, as it moved from the second worst jurisdiction in the county in which to be sued in 2013 to the 10th worst in the most recent report.[47]

Recent Progress and the Year Ahead

As detailed in this paper, Louisiana has taken important steps toward addressing some of the underlying issues in recent years. It has subjected third-party litigation funding arrangements to discovery and other safeguards, repealed direct actions against insurers, addressed misleading lawsuit advertising, and updated its standard for admission of expert testimony, among other reforms.

The Louisiana Supreme Court, the justices of which are directly elected by the public, also deserves credit for adopting a more effective and objective method of evaluating whether an award is excessive.

Several key reforms, however, have not passed the finish line, such as eliminating Louisiana's unique Housley presumption and stopping the plaintiffs' bar's strategic use of direct negligence claims against employers to bring in prejudicial evidence that leads to higher awards. In addition, legislation to address inflated awards for medical damages, vetoed in 2024, remains an important outstanding issue. Louisiana should complete this unfinished business and consider other opportunities to improve its civil justice system in 2025.

Progress and Setbacks in the Louisiana Legislature

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2024 Achievements

The Louisiana Legislature enacted several bills in the 2024 session that are likely to improve the state's litigation climate.

Third-Party Litigation Funding

In 2024, Louisiana joined a growing number of states that require disclosure of entities or individuals, other than the named parties and their lawyers, who invest in litigation.[48]

Third-party litigation funding (TPLF) has increased dramatically over the past decade. Dedicated commercial litigation finance firms, hedge funds, institutional investors, foreign sovereign wealth funds, and wealthy individuals are investing billions of dollars each year into funding U.S. lawsuits in exchange for a portion of any recovery obtained by a law firm.[49] These TPLF arrangements implicate wide-ranging concerns for which safeguards are needed.

Experts have observed that TPLF is "reshaping every aspect of the litigation process—which cases get brought, how long they are pursued, when are they settled."[50] The money supports lawsuits ranging from mass tort to intellectual property litigation, and sometimes pays for the advertising used to generate claims.[51] Even foreign governments, entities, and individuals are investing in U.S. litigation, potentially for nefarious purposes.[52]

The 2024 Louisiana law subjects litigation financing agreements to discovery and prohibits funders from influencing the litigation or its settlement. The new law, which took effect on August 1, 2024,

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also includes additional disclosure requirements and restrictions when foreign entities fund litigation.[53]

Governor Landry signed the legislation after his predecessor, Governor Edwards, vetoed a stronger version of the bill in 2023 that would have required parties to provide a copy of any TPLF agreement to other parties within 60 days of filing the lawsuit or entering the agreement.[54] The enacted law makes progress, but it remains to be seen how effective it will be at allowing parties to determine, through discovery, whether these funding arrangements comply with the law, as intended.

End of Direct Actions

Louisiana repealed a state law in 2024 that had allowed plaintiffs' lawyers to directly sue a party's insurer, in addition to the person or entity that caused a client's injury.[55] Louisiana was an outlier in following this approach.

This law was prejudicial to defendants, as it suggested to juries that a person or business that had insurance could afford to pay, regardless of its responsibility for a plaintiff's injury. It could also trigger high awards based on negative views of insurance companies. Naming insurers in lawsuits placed additional costs on them, which are passed on to policyholders.

Now, Louisiana law will limit actions that may be brought directly against an insurer to a set of exceptional circumstances provided in the statute, such as when the insured person has filed for bankruptcy, or is insolvent or deceased. Among other provisions, the new law also generally prohibits courts from disclosing the existence of insurance coverage to the jury.

The change was supported by Louisiana Insurance Commissioner Tim Temple, among a package of bills that is expected to lower insurance rates for consumers on both vehicles and property.[56]

Evidence/Junk Science

Louisiana enacted legislation in 2024 that should help combat junk science and avoid the risk that plaintiffs' lawyers will pursue cases in state courts that would not pass muster in federal courts.

In late 2023, the federal judiciary strengthened its rule governing admissibility of expert testimony by making clear that the proponent of expert testimony must "demonstrate to the court that it is more likely than not" that all of the rule's admissibility requirements are met.[57] It made this change in response to courts that had shirked their responsibility to serve as gatekeepers over the reliability of expert testimony and instead took a "send it all to the jury" approach.

The enacted law updates Louisiana Code of Evidence Article 702 to align it with the 2023 amendments to the federal rule.[58] In doing so, Louisiana joined a growing number of states that have updated their laws to continue following the federal approach.[59]

Insurance Litigation

After Hurricanes Laura and Ida, litigation stemming from claims surged against insurers. In 2024, legislators amended the state's "bad faith" insurance laws to "sideline excessive litigation, speed claims payments to property owners, and provide more time to settle disputes without going to court."[60]

The 2024 law extends the insurer's duty of good faith and fair dealing to policyholders and their attorneys when asserting and attempting to settle an insurance claim. Among other provisions, the law sets new time periods for insurers to pay claims involving catastrophic losses to residential and commercial property from a natural disaster, windstorm, or significant weather-related event. It also provides insurers with a 60-day period to address complaints before a lawsuit is filed and repealed a statute that permitted a court to impose double damages on insurers found to have failed to meet their statutory duties.[61]

The new law is expected to foster a more affordable and stable insurance market for Louisiana residents, and to entice additional carriers to write policies in the state.[62]

Offer of Judgment

Louisiana has an "offer of judgment" law that encourages parties to enter reasonable settlements and discourages plaintiffs from overvaluing their cases or going to trial for the chance of winning a jackpot award. Under this type of law, if the outcome of the case is more favorable to the party than the party's rejected settlement offer, that party can recoup certain costs of the litigation incurred after it made the offer.

Before the 2024 legislation, Louisiana law allowed a defendant to recover its costs if the final judgment was at least 25 percent less than its settlement offer. Similarly, a plaintiff could recover its costs if the verdict was at least 25 percent more than its settlement demand.

The 2024 law amends this law to clarify that defendants are entitled to recover their costs not only in situations in which the verdict is 25 percent less than the defendant's offer, but also when a court enters judgment for the defendant.[63]

Other Recently Enacted Reforms

Over the past five years, the Louisiana Legislature has also improved the state's litigation climate in several other areas.

COVID-19 Liability Protections

As the pandemic hit, Louisiana responded with a series of laws providing assurance to already-strained businesses that they would not be hit with a barrage of COVID-19-related lawsuits.

These laws provided that individuals, businesses, and government entities that complied with applicable COVID-19 procedures in their operations were subject to liability only for grossly negligent, reckless, or willful misconduct.[64] Louisiana specifically included liability protection for employers and event planners from lawsuits blaming them for exposure

to COVID-19.[65] In addition, the state limited the liability of schools,[66] those who made or distributed personal protective equipment,[67] operated restaurants,[68] and provided services or products to aid in government's response to the pandemic.[69]

The Civil Justice Reform Act of 2020

Louisiana's enactment of the Civil Justice Reform Act of 2020 made progress in addressing aspects of the civil justice system that had made the state an outlier.[70]

First and foremost, the legislature reduced the jury trial threshold from $50,000 to $10,000. The $50,000 level was the highest in the nation. As a result, in Louisiana, most civil cases, including those stemming from auto accidents, were decided by elected judges rather than juries, which could sometimes lead plaintiffs' lawyers to engage in "judge shopping."[71]

The 2020 law also repealed an archaic prohibition on informing jurors that a plaintiff was not wearing a seatbelt at the time of an accident. As a result, juries can now more properly allocate fault between parties responsible for the plaintiff's injuries.

The law also attempted to address "phantom damages," which is the difference between the amounts that courts award as damages for medical expenses based on billed list prices—which few patients ever pay in full—and the actual amounts that the plaintiffs' healthcare provider accepted as payment for that care from a public or private insurer. The enacted compromise allows judges to adjust awards for past medical expenses to reflect amounts actually paid, but only after the delivery of a verdict, and in many circumstances, the compromise requires courts to increase the award amount to 40 percent above the actual paid amounts. Importantly, during trial, juries must still rely only on the initial billed amounts when computing damages for medical expenses—which can lead to inflated noneconomic or other damages not limited by the enacted compromise.

Finally, the Civil Justice Reform Act provided that evidence of a party's liability insurance is generally inadmissible, a common rule that avoids prejudice to defendants.

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Misleading Lawsuit Advertising

Louisiana enacted laws addressing misleading advertising for legal services in 2022, after Governor Edwards vetoed similar legislation in the prior two sessions.[72]

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That law prohibits commonly used misleading practices such as presenting a legal services ad as a "medical alert," "health alert," "drug alert," or "public service announcement;" incorporating government agency logos; or using the word "recall" when the product at issue has not been recalled. In addition, when ads target FDA-approved prescription drugs or medical devices, the law requires the ads to inform viewers that the product is approved by the FDA unless it has been recalled. Ads must also caution viewers to "consult your physician before making decisions regarding prescribed medication or medical treatment."[73]

Another law enacted in 2022 requires legal services ads containing references to past successes to include a disclaimer that "results may vary" and "past results are not a guarantee of future success." Ads that portray a client or depict an event that is not real must include a disclaimer. Under this law, ads cannot promise results or use a nickname or motto that implies an ability to obtain results in a matter.[74]

An earlier law, enacted in 2020, provides that if a lawsuit ad refers to a monetary settlement or jury verdict, it must also disclose all fees paid to the attorney that are associated with the settlement or award.[75] Some have questioned whether these requirements will be enforced.[76]

Hurricane Lawsuits

In 2023, the legislature revised Louisiana's insurance code by barring class action lawsuits against the Louisiana Insurance Guaranty Association and Louisiana Citizens Property Insurance Corporation (LCPIC).[77] Louisiana courts have applied the law to preclude plaintiffs' lawyers from pursuing class actions stemming from Hurricane Ida claims, while permitting individual lawsuits.[78]

Not All Good News

"Collateral Source" Veto

In 2024, the Louisiana Legislature revisited the limited progress made through the Civil Justice Reform Act of 2020, which, as discussed earlier, still blindfolded juries from learning the actual value of medical expenses (allowing them only to consider billed list prices rather than amounts paid). As noted, that law, while authorizing judges to adjust awards post-verdict, required courts to increase the award by 40 percent above amounts paid by private insurers or Medicare.

As introduced, the 2024 legislation required a plaintiff's damages for past medical expenses to be based on the amount actually paid to the plaintiff's healthcare provider for treatment, eliminating the 40 percent bump-up.[79]

The amended bill that the legislature passed permitted courts to increase the award by up to 30 percent above the amount actually paid to compensate a plaintiff for the cost of premiums to maintain health insurance. It also continued to allow the jury to see only the amounts billed and charged the court with adjusting the award after the verdict.[80]

Despite this relatively modest change, Governor Landry vetoed what he inaccurately[81] characterized as "an attempt to abolish the collateral source rule."[82]

Following Governor Landry's veto announcement, Insurance Commissioner Temple called for a special legislative session to address the state's rising auto insurance costs,[83] which did not occur. The Louisiana Legislature's leadership pledged to continue to work on the issue with the goal of reaching a compromise that can be enacted into law in 2025.[84]

Housley Presumption Remains

As discussed earlier, Louisiana's unique "Housley presumption" factors into the state's litigious climate and high insurance rates. This judicially created doctrine presumes that a plaintiff's injury or condition was caused by an accident if that person was free from the complained-of symptoms before the accident. This doctrine is inconsistent with a plaintiff's duty to prove his or her claims by a preponderance of the evidence. After a veto by Governor Edwards in 2020,[85] legislation to eliminate the Housley presumption and restore a plaintiff's burden of proof to establish the cause of an injury by a preponderance of the evidence passed the Louisiana House of Representatives by a vote of 75-25-5 but failed to reach a vote in the Senate in 2024.[86]

More Time to Sue

The Louisiana Legislature has also enacted laws that expand liability exposure. For example, the legislature doubled the prescriptive period (Louisiana's term for the statute of limitations) for personal injury claims from one to two years of the date the injury or damage is sustained. This new time frame began to apply to claims that arose on or after July 1, 2024.[87] While this expanded time to sue will certainly lead to more lawsuits in Louisiana and thus offsets other progress, the two-year period remains in the mainstream of state limitations periods.

Other Unmet Needs

As discussed earlier, Louisiana is one of a few states that has a pure comparative fault system in which a person who is primarily at fault for his or her own injuries can still recover damages. Louisiana should reduce the incentive to file weak and meritless

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lawsuits, and pressure businesses that did not cause a person's injury into settlement, by moving to modified comparative fault.

In addition, the Louisiana Association of Business and Industry (LABI) has an ambitious legislative agenda to further improve Louisiana's litigation environment.[88] LABI's top priorities include:

- Curbing litigation brought by contingency-fee lawyers on behalf of government entities that harass businesses engaged in lawful activities.
- Supporting transparency, ethics, and efficiency in the budgeting and operations of Louisiana's courts.
- Supporting programs and legislation to improve and modernize the judicial system.
- Medical bill transparency that allows juries to award damages based on amounts actually paid for medical care.

LABI also supports, among other reforms:

- Requiring disclosure of TPLF arrangements at the outset of litigation or upon entering into a funding agreement.
- Setting reasonable limits on suspensive appeal bonds.
- Addressing abusive discovery.
- Adopting asbestos and other product liability litigation reforms.
- Protecting consumers from predatory lawsuit loans.
- Class action, mass joinder, and multi-district litigation reforms.
- Establishing appropriate venue rules for lawsuits, including class action, multi-party, multi-district, and toxic tort cases.
- Regulating appropriate damages in lawsuits related to oil field remediation.
- Permitting use of medical billing experts to evaluate, substantiate, or refute the reasonableness of medical bills pursued alongside litigation.
- Encouraging the use of safety devices by allowing introduction of evidence of their non-use or misuse to establish comparative fault.
- Reforming pre-judgment interest, particularly on future damage awards.

The Louisiana Supreme Court

As the final word on matters of state law, the Louisiana Supreme Court can significantly impact the state's litigation climate. Its recent decisions should lead to more careful and consistent review of nuclear verdicts. The court has also respected the legislature's policymaking authority to curb excessive liability and address lawsuit abuse. On the other hand, the court has sometimes expanded liability and, in 2024, appeared to bow to political pressure by eliminating an established due process safeguard for civil defendants.

An Objective Standard for Evaluating Whether Awards Are Excessive

In two recent decisions, the Louisiana Supreme Court enhanced the ability of lower courts to evaluate whether damage awards are excessive. These decisions should provide a more effective backstop against nuclear verdicts in the future.

Historically, Louisiana appellate courts applied a two-step test for reviewing whether a damage award is excessive. First, a court would consider whether the jury's award is a clear abuse of discretion given the particular injuries, circumstances, and person involved. Then, only after finding an abuse of discretion, a court would consider verdicts in comparable cases to reduce the award to the highest point that a jury could reasonably have reached.

As a practical matter, this test did not permit courts to compare awards in similar cases unless it first found the jury's award out of bounds. Since courts are highly deferential to a jury's verdict, rarely finding an award so high that it "shocks the conscience," they often did not reach the second, more objective step of the analysis.

In 2023, the Louisiana Supreme Court was faced with the question of whether a $10.35 million award in an Orleans Parish asbestos trial was excessive.[89] In *Pete v. Boland Marine and Manufacturing Co.*, a plaintiff who worked as a

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longshoreman at the Port of New Orleans in the 1960s claimed his exposure to asbestos there led to his mesothelioma diagnosis in 2019.

In addition to about $550,000 in damages for past medical expenses, the jury's award included four distinct forms of general (noneconomic) damages totaling $9.8 million. These included $2 million for past and future physical pain and suffering, $2.3 million for past and future mental pain and suffering, $3 million for past and future disability, and $2.5 million for past and future loss of enjoyment of life. The intermediate appellate court summarily affirmed the award, finding the amount within the jury's discretion to compensate the plaintiff for his pain and suffering.

In this context, the Louisiana Supreme Court recognized that a key problem in reviewing whether awards for noneconomic damages are excessive is that "there are no objective guidelines."[90] The court found that the "abuse of discretion" standard, absent a study of prior awards, "is overly subjective and consequently, meaningless."[91] Judges could simply declare that an award does not "shock the conscience" and uphold the award.[92]

To address this issue, the court held that, as part of the first step of review, "appellate courts must look at past general damage awards for similar injuries."[93] After doing so, the Louisiana Supreme Court found that a $5 million general damage award was the highest amount within the jury's discretion.[94]

The Louisiana Supreme Court reaffirmed and applied *Pete* in a 2024 decision in *Barber Bros. Contracting Co. v. Capitol City Produce Co.* That case arose in the context of an $18.9 million award to a man critically injured in an auto accident.[95] The verdict included $10.75 million in general damages to the plaintiff (the sum of seven forms of noneconomic damages), $2.5 million in loss of consortium damages to his spouse, and $1.5 million to each of their two children.[96]

In a 5-2 ruling, the Louisiana Supreme Court found those awards "beyond the pale, being excessive and disproportionate to past awards for truly similar injuries."[97] After comparing the plaintiff's case to similar cases, the court reduced the total general damage award to $5.6 million ($5 million to the plaintiff, $400,000 to his spouse, and $100,000 to each child) as "the highest amounts that could be reasonably awarded."[98]

Louisiana attorneys view the new approach as a "significant change."[99] They observe that "the additional consideration of precedent cases serves to add much-needed objectivity and neutrality to the review process."[100] The comparative approach offers "realistic guidance" to parties as to

their liability exposure,[101] providing them with greater predictability that can aid in reaching reasonable settlements. They also caution, however, that "it remains to be seen how courts will implement this new test in practice."[102]

Respect for Legislative Reforms

The Louisiana Supreme Court, as well as intermediate appellate courts, have typically upheld legislative reforms intended to reduce excessive liability or address lawsuit abuse. Respect for legislative policymaking is particularly important in Louisiana, where the codified civil code is the primary source of law.

The Louisiana Supreme Court has found statutory limits on damages constitutional. In 2012, it reaffirmed precedent finding that a $500,000 limit on damages in medical liability actions, excluding awards for future medical care, is constitutional.[103] In these decisions, the court has recognized that the legislature may place constraints on monetary recovery to advance interests such as lowering insurance costs or facilitating access to affordable healthcare.

More recently, a Louisiana appellate court upheld a law limiting the liability of healthcare providers during a public health emergency to injuries resulting from gross negligence or willful misconduct.[104] That law alleviated the liability exposure of healthcare providers during the COVID-19 pandemic, when, the court observed, "the healthcare system was dangerously overburdened, affecting healthcare facilities and healthcare workers throughout the state."[105]

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Liability Expanding Decisions

Although the Louisiana Supreme Court has reined in excessive verdicts and respected the legislature's authority to constrain liability, it has, in some cases, expanded liability itself.

Pickard v. Amazon.com

A recent example is *Pickard v. Amazon.com*. In that 2024 decision, a 4-3 majority found that Amazon, an online marketplace that provides a platform for third parties to sell their products, could be held liable as a "seller" subject to product liability.[106] As a result, Amazon and businesses like it may now be subject to liability for defective products sold by vendors through its marketplace. The court recognized that the Louisiana Product Liability Act imposes liability on a seller "when it acts as a de facto manufacturer" (influencing the design, construction, or quality of the product).[107] Nevertheless,

the majority found that taking physical possession of a product is sufficient to subject an online marketplace to the Act.[108]

The dissenting justices criticized the majority as "go[ing] around the block to find a possessor [of a product] liable"[109] and observed that Amazon is not a "seller" under the Louisiana civil code "by any stretch of legal imagination."[110]

As an *amicus* brief filed by the U.S. Chamber observed,[111] most state and federal courts have rejected such an expansive interpretation of who qualifies as a product seller.[112] These courts have generally recognized that, unlike true product sellers, an online marketplace never owns the product but merely facilitates its sale. While Amazon may sometimes store vendors' products in its warehouses, as one federal appellate court recognized, it is no more a seller of a product than the U.S. Postal Service or UPS.[113]

The court's decision in the Amazon case may adversely impact small businesses and entrepreneurs who benefit from the availability of online marketplaces to sell their products. Imposing liability on these platforms for the products of others will increase their costs, which will be passed on to sellers and could become prohibitive. The ruling also suggests that the Louisiana Supreme Court may be receptive to other invitations to extend product liability beyond the bounds set by the legislature, a high priority of the plaintiffs' bar.

Martin v. Thomas

Another example of a recent Louisiana Supreme Court decision that increases the risk of liability and unfair trials is *Martin v. Thomas*. Employers are generally vicariously liable for the negligent conduct of employees that is within the scope of their employment. If an employee, while driving a company vehicle, causes an accident, the employer may be financially responsible for the employee's carelessness. A way of resolving such cases, and streamlining trials, is simply to determine whether the driver was negligent.

A tactic used by some plaintiffs' lawyers, however, is to allege direct negligence claims against an employer—that a business was negligent in hiring or supervising an employee or entrusting an employee with a vehicle. They pursue these direct negligence claims even when a defendant stipulates that the driver involved in the accident was its employee, was acting in the scope of his or her employment, and, if that employee's negligence caused the accident, the employer will be liable for the plaintiff's injuries. Plaintiffs' lawyers pursue direct negligence claims to distract the jury from who was actually responsible for an accident and, instead, use it to pull in evidence of completely unrelated accidents or company policies to vilify a company as "an unsafe operator" with a "poor safety culture."

In a 2022 decision, a unanimous Louisiana Supreme Court ruled that plaintiffs can proceed with independent tort claims against a defendant's employer even when the employer stipulates that its

employee was acting within the course and scope of employment at the time of the injury.[114]

As a practical matter, this decision will broaden costly discovery, permit introduction of prejudicial arguments and evidence, unnecessarily complicate trials, and contribute to nuclear verdicts. As a Louisiana law firm observed, the decision will have "far-reaching consequences in litigation involving tractor-trailers and other commercial vehicles" and will "most likely be similarly applied against employers in all industries."[115]

Courts in many other states have not taken this path,[116] and two states—Iowa (2023) and Texas (2021)—legislatively rejected this approach in cases involving commercial vehicles.[117] Similar legislation introduced in Louisiana did not advance in 2022.[118]

Abandoning Due Process Protections Due to Political Pressure

The Louisiana Supreme Court's elimination of established due process protections for civil defendants, which appears to have occurred in response to pressure from the plaintiffs' bar, is also concerning.

After the legislature enacted a three-year window during which plaintiffs' lawyers could file decades-old childhood sexual abuse claims, the court was faced with the issue of whether the Louisiana Constitution permits reviving civil actions after the statute of limitations (known as the prescriptive period in Louisiana) has expired. Such lawsuits, often brought against businesses, nonprofit organizations, schools, and governments, typically allege that organizations negligently hired or supervised employees and are brought after records and witnesses are long gone. The issue has broad importance, as every type of civil claim must be filed within a set period, which provides predictability by assuring businesses and insurers that liability exposure, at some point, ends. It also allows businesses to rely on the law when making decisions, such as setting record retention policies or purchasing insurance.

Initially, in March 2024, a 4-3 majority found reviving time-barred claims "contrary to the due process protections enshrined in our constitution."[119] The court "decline[d] to upend nearly a half of a century's jurisprudence" that benefited both plaintiffs and defendants by precluding laws that retroactively lengthen or shorten the period to file a lawsuit.[120] Like most other states that have considered the issue, the Louisiana Supreme Court found reviving time-barred claims impermissible.[121]

The Louisiana Supreme Court

The Louisiana Supreme Court significantly influences the state's litigation environment. It is the final word on matters of state law, including tort liability and interpretations of state statutes and regulations.

The court is composed of seven justices elected from seven specific districts. Justices serve 10-year terms. Louisiana is one of seven states in which voters elect members of the state high court through partisan elections. After their 10-year term expires, justices must run for reelection if they wish to continue on the court. The justice with the most seniority serves as chief justice. When there is a mid-term vacancy on the court, the other justices may temporarily appoint a replacement until a special election is held for the remainder of that term.

The current members of the Supreme Court include four Republicans, two Democrats, and one Independent. The newest member, Justice Cade Cole, joined the court in 2025 after running unopposed, filling the seat vacated by James Genovese.

The Louisiana Supreme Court has discretionary review (called "supervisory jurisdiction") over all courts. To have an appeal heard by the court, a party must apply for a writ to review the case. In deciding whether to grant a writ, the court will consider factors such as whether there are conflicting decisions in the lower courts, significant unresolved issues of law, a need to overrule or modify a controlling precedent, an erroneous interpretation of a constitutional provision or statute by the lower court, or the lower court has grossly departed from proper judicial proceedings or abused its power.[122] A majority of the justices must agree to hear a case.

The decision sparked a pressure campaign on the court to reconsider its ruling. This included a legislative resolution, transmitted individually to the justices of the Louisiana Supreme Court, criticizing the decision.[123]

Less than three months later, the court made an abrupt about face. After granting a request for rehearing, a new majority re-characterized settled law as "questionable," "logically faulty," and "in most instances … only dicta."[124] The 5-2 court withdrew its prior decision and ruled that the legislature can eliminate vested rights of civil defendants so long as the law has a "rational relationship to a legitimate government interest."[125]

The court's choice to revisit a decision and reverse itself on a matter as significant as the extent of constitutional due process is highly unusual if not unprecedented. Rare rehearings are typically reserved for correcting clear mistakes in an opinion, not "rehashing legal arguments due to political pressure."[126] In addition, the court's decision opens the door to reviving other types of stale claims. Both the process and outcome damage confidence in the objectivity of the court and stability of the state's civil justice system.

State Use of Contingency-Fee Lawyers

There is a history of Louisiana's attorneys general engaging in the problematic practice of hiring private law firms to bring lawsuits on behalf of the state.[127] Louisiana courts are currently revisiting constitutional and statutory constraints on such practices.

These arrangements are troubling because they often stem from entrepreneurial plaintiffs' attorneys pitching cases to state attorneys general rather than being driven by a public need. They incentivize the misuse of state power to target businesses viewed as having "deep pockets" and for the state to seek the highest possible damages or penalties.[128] When firms pursue these lawsuits on a contingency-fee basis, it may make it difficult for the government to abandon a meritless case, enter a reasonable settlement, or agree to nonmonetary remedies.[129]

Pursuing government litigation in this manner also has fiscal implications for the state and its taxpayers. When outside attorneys are paid a contingency fee, a significant portion of the public's recovery—millions or even billions of dollars—is siphoned off by private lawyers. These lawyers often have political or personal connections to the government official who hires them.[130]

Contingency-fee agreements are intended to increase access to courts for individuals with potentially meritorious claims who do not have the resources to

"The court's choice to revisit a decision and reverse itself on a matter as significant as the extent of constitutional due process is highly unusual if not unprecedented."

"When outside attorneys are paid a contingency fee, a significant portion of the public's recovery—millions or even billions of dollars—is siphoned off by private lawyers."

pay an hourly attorney rate, not state governments that have appropriated funds.[131]

In a 1997 decision, the Louisiana Supreme Court ruled that the attorney general (AG) (and other state agencies) cannot hire and pay outside counsel unless specifically authorized to do so by the legislature.[132] Paying private lawyers out of recovery violates separation of powers principles by circumventing the legislature's authority to appropriate funds, the court held.[133]

The legislature codified this decision in 2014 and closed loopholes that Louisiana AG James "Buddy" Caldwell had used to sidestep its holding, hiring outside counsel, many of which were politically connected, in hundreds of cases.[134] That law also requires outside counsel to keep accurate records of the hours worked and expenses incurred when representing a public entity, prohibits outside counsel from incurring fees in excess of $500 per hour, and requires any recovery to be paid directly to the state agency involved in the litigation or to the state treasury, so that the legislature can allocate the funds through the regular appropriations process.

Now, a case before the Louisiana First Circuit Court of Appeal again raises these issues in a lawsuit alleging that a health insurer and its pharmacy benefit manager caused the state to overpay for Medicaid services. The action, filed by then-AG Jeff Landry in April 2022, listed only government attorneys on the petition. In early 2023, however, the AG entered a contract for legal services with a private firm, Salim-Beasley LLC, to litigate the state's claims, which, in turn, retained four other firms through verbal subcontract agreements.[135] The contract provides that the private lawyers are to be paid from the state's court-awarded attorneys' fees or, in the event of a settlement, directly by the defendants. There was no legislative authorization of this arrangement or for this diversion of state funds. Yet, the trial court summarily rejected the defendants' objections and permitted the litigation to proceed though outside counsel.

As the U.S. Chamber observed in an *amicus* brief filed in that case, the AG's retention of private counsel without legislative approval in this and similar matters is, in addition to being a windfall for the plaintiffs' bar, an "end-run around representative government" and "creates a hostile climate for business in Louisiana."[136]

Conclusion

Despite significant efforts in recent years, Louisiana's liability climate remains characterized by excessive litigation and damage awards, which pose a challenge for businesses, residents, and the state's economy. Longstanding, liability-friendly legal doctrines have earned the state a reputation as one of the least favorable environments for civil defendants. These factors contribute to higher insurance premiums, deter business investments, and undermine economic growth.

Louisiana has taken important steps toward addressing some of the underlying issues that make it a challenging liability climate for businesses. Legislative actions in recent years, such as requiring disclosure of foreign-sourced TPLF and providing that other TPLF is discoverable, repealing direct actions against insurers, and strengthening evidence standards, indicate progress in modernizing the state's liability system. These reforms, along with measures to limit excessive litigation in insurance disputes and promote reasonable settlement offers, have laid the groundwork for further improvement. Louisiana has significant opportunities to build on these efforts and foster a more balanced legal environment.

Opportunities for Reform

This paper identifies several areas of unfinished business that are needed to improve Louisiana's litigation climate.

Modified Comparative Fault

Moving from a pure comparative fault system to a modified comparative fault system, under which a plaintiff who is primarily at fault for his or her own injuries is not entitled to recovery, would align Louisiana with the majority of states and reduce incentives to file meritless lawsuits.

The Housley Presumption

Eliminating the "Housley presumption" would restore the plaintiff's burden to prove causation by a preponderance of evidence, ensuring that claims are grounded in factual support.

Revisiting Phantom Damages

Basing compensation for medical expenses on amounts actually paid rather than on inflated list prices is a key reform that would accurately reflect the true value of care.

Curbing Prejudicial Practices

Louisiana should also curb prejudicial practices such as direct negligence claims against employers,

"Looking ahead, Louisiana has the opportunity to transform its legal environment into a model of balance and fairness."

especially when liability can be adequately determined by evaluating employee conduct. Doing so would streamline litigation and reduce the risk of jury bias and nuclear verdicts.

Doubling Down on TPLF Safeguards

Strengthening oversight and transparency in TPLF arrangements would further safeguard the fairness of legal proceedings and prevent external influences from distorting the justice system.

Addressing Fraudulent Claims

Aggressively investigating and prosecuting fraudulent claims, whether in auto accidents, property insurance, or other areas, remains a pressing priority to maintain the integrity of Louisiana's legal framework.

The Role of the Courts

The judiciary also has a vital role to play in fostering predictability and fairness. The Louisiana Supreme Court deserves credit for recent decisions that provide an objective method for reviewing damage awards and should provide a more effective backstop against nuclear verdicts. Concerning rulings, however, such as eliminating certain due process protections for civil defendants, highlight the need for judicial independence and adherence to established principles.

Looking Ahead

Looking ahead, Louisiana has the opportunity to transform its legal environment into a model of balance and fairness. Achieving this will require continued collaboration among policymakers, the judiciary, and the business community to address remaining gaps and implement reforms. By doing so, the state can improve the reputation of its civil justice system and create a more predictable, equitable, and economically favorable climate. A well-calibrated legal system will not only benefit businesses but also provide residents with fairer access to justice and alleviate the burden of inflated costs driven by excessive litigation.

Louisiana's challenges are substantial, but so are its opportunities. With sustained focus and commitment, the state can chart a course toward a litigation climate that is both just and conducive to economic prosperity.

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[114] *Martin v. Thomas LLC*, 346 So.3d 238 (La. 2022).

[115] "Employers Beware: La Supreme Court Opens Line for Direct Negligence Claims from Employee Actions," Adams & Reese LLP, July 7, 2022.

[116] Courts that have ruled that an employer that accepts responsibility for the actions of an employee cannot also face direct negligence claims, following what is sometimes referred to as the "*McHaffie* rule," include *Elrod v. G & R Const. Co.*, 628 S.W.2d 17, 19 (Ark. 1982); *Diaz v. Carcamo*, 253 P.3d 535, 544 (Cal. 2011); *Prosser v. Richman*, 50 A.2d 85, 87 (Conn. 1946); *Clooney v. Geeting*, 352 So. 2d 1216, 1220 (Fla. Ct. App. 1977); *Bartja v. Nat'l Union Fire Ins. Co.*, 463 S.E.2d 358, 361 (Ga. Ct. App. 1995); *Wise v. Fiberglass Sys., Inc.*, 718 P.2d 1178, 1181-82 (Idaho 1986); *Sedam v. 2JR Pizza Enterprises, LLC*, 84 N.E.3d 1174, 1178-79 (Ind. 2017); *Houlihan v. McCall*, 78 A.2d 661, 664-65 (Md. 1951); *Nehi Bottling Co. v. Jefferson*, 84 So. 2d 684, 686 (Miss. 1956); *McHaffie v. Bunch*, 891 S.W.2d 822, 826 (Mo. 1995); *Karoon v. New York City Transit Auth.*, 241 A.D.2d 323, 324 (N.Y. App. Div. 1997); *Plummer v. Henry*, 171 S.E.2d 330, 333 (N.C. Ct. App. 1969); *Jordan v. Cates*, 935 P.2d 289, 293 (Okla. 1997); *LaPlant v. Snohomish County*, 271 P.3d 254. 256-58 (Wash. Ct. App. 2011); *Bogdanski v. Budzik*, 408 P.3d 1156, 1162-64 (Wyo. 2018).

[117] *See* S.F. 228 (Iowa 2023) (codified at Iowa Code § 668.12A); H.B. 19 (Tex. 2021) (codified at Tex. Civ. Prac. & Rem. Code § 72.054).

[118] H.B. 843 (La. 2022).

[119] *Bienvenu v. Defendant 1*, 382 So. 3d 38, 41 (La. 2024).

[120] *Id*. at 49-50.

[121] Colorado, Kentucky, and Utah recently invalidated similar reviver laws. *See Aurora Public Schools v. Saupe*, 531 P.3d 1036 (Colo. 2023); *Thompson v. Killary*, 683 S.W.3d 641 (Ky. 2024); *Mitchell v. Roberts*, 469 P.3d 901 (Utah 2020); *see also Johnson v. Lilly*, 823 S.W.2d 883, 885 (Ark. 1992) ("[W]e have long taken the view, along with a majority of the other states, that the legislature cannot expand a statute of limitation so as to revive a cause of action already barred.").

[122] La. Sup. Ct. Rule X.

[123] Senate Concurrent Resolution No. 26, 2024 Reg. Sess. (La. 2024).

[124] *Bienvenu v. Defendant 1*, 386 So.3d 280, 287, 289 n.8 (La. 2024).

[125] *Id*. at 290.

[126] Tiger Joyce, "Guest Column: The Louisiana Supreme Court's Alarming U-turn," NOLA.com, Sept. 5, 2024.

[127] Sam Karlin, "17 Law Firms Join La.'s Lawsuit Against Opioid Companies," *The Advocate*, July 22, 2019 (discussing controversial hiring of outside counsel by Attorneys General Richard Ieyoub and Buddy Caldwell).

[128] *See generally Bernard Nash et al., Privatizing Public Enforcement: The Legal, Ethical and Due-Process Implications of Contingency-Fee Arrangements in the Public Sector* (U.S. Chamber of Commerce Inst. for Legal Reform, Sept. 2013); Martin H. Redish, *Private Contingent Fee Lawyers and Public Power: Constitutional and Political Implications*, 18 Sup. Ct. Econ. Rev. 77, 79-80, n.4 (2010).

[129] Andrew J. Pincus, *Unprincipled Prosecution: Abuse of Power and Profiteering in the New Litigation Swarm*, at 12 (U.S. Chamber of Commerce Inst. for Legal Reform, Oct. 2014).

[130] *See* Elizabeth Young, "Outside Lawyers Contracted by La. Attorney General Making Millions & Have Close Ties to AG," *Louisiana Record*, Feb. 11, 2013.

[131] Original Brief of *Amicus Curiae* in Support of Defendants by Chamber of Commerce of the United States of America, at 6, *Louisiana v. OptumRx, Inc.*, No. 2024-CA-0543 (La. 1st Cir. Ct. App. filed Aug. 12, 2024).

[132] *Meredith v. Ieyoub*, 700 So. 2d 478, 482-84 (La. 1997); *Ieyoub ex rel. State v. W.R. Grace & Co.-Conn.*, 708 So.2d 1227 (La. App. 3d. Cir. 1998); *see also* La. Legislature Auditor, *White Paper: The Use of Contingency Fee Contracts by the Attorney General, State Agencies, and Commissions* (rev. Aug. 2024).

[133] *See* La. Const. art. VII, § 9(A) ("All money received by the state or by any state board, agency, or commission shall be deposited immediately upon receipt in the state treasury."); *see also* La. Const. art. III, § 16 ("[N]o money shall be withdrawn from the state treasury except through specific appropriation.").

[134] H.B. 479 (La. 2014) (Act No. 796) (codified at La. Rev. Stat. § 42:262(B)) (providing that "[n]o payment of attorney fees shall be made out of state funds in the absence of express statutory authority" and that "[a]ny recovery or award of attorney fees, including settlement, in litigation involving the attorney general or any state agency … belongs to the state and shall be deposited into the state treasury"). It also codifies the extensive precedent; *see also* "Jindal Signs Bill Limiting Attorney General's Use of Contingency Fee Attorneys," *Louisiana Record*, June 25, 2014.

[135] Opening Brief of Appellants at 5, *Louisiana v. OptumRx, Inc.*, No. 2024-CA-0543 (filed July 22, 2024).

[136] Original Brief of *Amicus Curiae* in Support of Defendants by Chamber of Commerce of the United States of America, *Louisiana v. OptumRx, Inc.*, No. 2024-CA-0543, at 3 (La. 1st Cir. Ct. App. filed Aug. 12, 2024).

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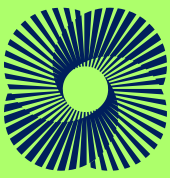

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