

September 7, 2017

Louisiana Department of Insurance
P.O. Box 94214
Baton Rouge, LA 70804-9214

RE: Complaint Against Multiple Bail Companies and Their Insurance Underwriters
For Charging Excessive and Illegal Premiums

Dear Commissioner Donelon:

Every day, most bail companies and their insurance underwriters are charging New Orleans residents bail premiums in excess of what is allowed by state law. The Southern Poverty Law Center (SPLC) conservatively estimates that in the past twelve years, bail companies in New Orleans have collectively overcharged as many as 50,000 people approximately \$5 million in excess premiums. These excessive rates have had a devastating impact on New Orleans's residents. As discussed in more detail below, one exemplary individual that SPLC spoke with sold his truck to make a down payment on his bail premiums and was forced to choose between paying his rent and paying unauthorized bail premiums.

The SPLC submits this complaint against the following bail companies and their insurance underwriters¹ for charging New Orleans defendants excess premiums for a bail bond in violation of state law:

- #1 Bail Bonds & Recovery, LLC (Financial Casualty and Surety, Inc.)
- 21st Century Bail Bonds (Allegheny Casualty Company)
- A-1 Unlimited Inc. (The North River Insurance Company)

¹ The name of the insurance underwriter for the bail bond company is in parenthesis.

- AAAA EZ Credit Bail Bonds
- AAA Bonding of Metairie
- A Associated Bail Bonds (American Surety Company)
- Aback Bonding (American Contractors Indemnity Company)
- About Time (Palmetto Surety Corporation)
- A Affordable Bail Bonds (Financial Casualty and Surety, Inc.)
- A Plus Bail Bonds
- Batiste Bail Bonds (Palmetto Surety Corporation)
- Blair's Bail Bonds (Banker's Insurance Company)
- Budget Bail Bonds
- Brothers Bail Bonds (Continental Heritage Insurance Company)
- Chris Roberts Bail Bonds (American Contractors Indemnity Company)
- Eastbank Bail Bonds
- Jody's Bail Bonds
- Statewide Bail Bonds (Financial Casualty and Surety, Inc.)
- Steve's Bail Bonds
- Tat 2 Bail Bonds
- TNT Recovery

This list is not exhaustive. The SPLC believes that most bail companies and their insurers operating in New Orleans are charging premiums in excess of what is permitted under law.² We request that the Department investigate these illegal practices of the above-named companies, and all other bail companies licensed in New Orleans, and order them and their insurance underwriters to stop charging and collecting premiums in excess of state law. If these companies do not immediately refund the illegal premiums collected and cease charging excessive rates, we ask that the Department suspend or revoke their operating licenses, and impose the maximum fine authorized by statute for engaging in unfair and predatory actions in contracting with the City's most vulnerable populations.

² As noted below on page 6, after an exhaustive search only one company reported that it was following the premium limitation. That company is named "A Better Bail Bonds."

A. Bail Companies Are Systematically Overcharging People in New Orleans for Bail Bonds in Violation of State Law.

In New Orleans, judges generally impose financial conditions of release on any person who is arrested and booked into the jail, other than for municipal offenses under a change in law passed earlier this year.³ In 2015, for example, the district court judges imposed financial conditions of release on nearly 90% of people booked into the jail on felony charges.⁴ Defendants who are able to pay their financial conditions of release have two payment options: they can pay the monetary amount in full or they can purchase a bail bond through a for-profit bail bond agent, also referred to as the “producer.” A bail bond agent offers and sells surety bonds that are backed by an insurer. The surety, in posting bond with the court, agrees to be indebted to the State in the amount of the bond if the person fails to appear, though state law also allows the bail agents to discharge this obligation by bringing the defendant before the court within a certain amount of time.

Most people in Orleans Parish who are released from jail pretrial contract with a bail bond company because they are unable to meet their financial conditions of release in full due to limited access to cash or property. In 2015, nearly 97% of felony defendants released from jail on financial conditions of release purchased a bail bond from a registered bail bond agent and insurer.⁵

³ See New Orleans, La., Code § 54-23 (2017) (eliminating money bail for violations of most municipal offenses).

⁴ Mathilde Laisne, Jon Wool, and Christian Henrichson, *Past Due: Examining the Costs and Consequences of Charging for Justice in New Orleans*, Vera Institute of Justice 5 (2017) (In 2015, “[i]n municipal court, money bail was a requirement for 63 percent of booked defendants, while in district court nearly nine out of 10 defendants (87 percent) faced this substantial hurdle.”), available at <https://goo.gl/PRCqYN>.

⁵ *Id.* at 6 (“Among the 2,352 defendants facing felony charges who were able to post bail [in 2015], nearly all of them (97 percent) did so by buying a commercial bail bond.”).

Bail bond agents charge a non-refundable fee to serve as a surety, composed primarily of a bail premium.⁶ The bail premium is “set and adjusted by” the Louisiana Legislature. La. Stat. Ann. § 22:1443. Under state law, “[t]he rate for all commercial surety underwriters writing criminal bail bonds in the various courts throughout the state of Louisiana . . . [is] twelve percent of the face value of the bond, or one hundred twenty dollars, whichever is greater.” *Id.*⁷ “No insurer or its officer, employee, producer, or other representative shall charge or receive any fee, compensation, or consideration for insurance which is not included in the premium quoted to the insured and the premium specified in the policy delivered to the insured,” with the exception of an additional \$25 fee. La. Stat. Ann. § 22:855(B)(1), (B)(2)(b). The purpose of this limitation is to “avoid excessive, inadequate or unfairly discriminatory practices, thereby making access to bonds fairly available to all. . . .” La. Att’y Gen. Op. No. 05-0171 (May 25, 2006).

However, most insurers are in violation of this law because their agents—the bail bond companies—charge people incarcerated in Orleans Parish a premium of 13% of the face value of the bond—or 1% more than permitted under state law.⁸ The companies retain 10% of the face

⁶ Bail bond agents may also charge a \$25 administrative fee. La. Stat. Ann. § 22:855(B)(2)(b).

⁷ The bail premium is 12.5% in Jefferson Parish. *See* La. Stat. Ann. § 22:1443; La. Stat. Ann. § 13:718(I)(2)(a).

⁸ The bail bond companies and their insurance underwriters are in violation of Louisiana contract law, which prohibits parties from entering into a contract that violates state law. La. Civ. Code Ann. art. 7 (“Persons may not by their juridical acts derogate from laws enacted for the protection of the public interest. Any act in derogation of such laws is an absolute nullity.”); La. Civ. Code Ann. art. 1968 (“The cause of an obligation is unlawful when the enforcement of the obligation would produce a result prohibited by law or against public policy.”).

Louisiana courts have awarded damages to plaintiffs who have been damaged by contracts prohibited by state law. *See* La. Civ. Code Ann. art. 2033 (“An absolutely null contract, or a relatively null contract that has been declared null by the court, is deemed never to have existed. The parties must be restored to the situation that existed before the contract was made. If it is impossible or impracticable to make restoration in kind, it may be made through an award of damages.”); *Moore v. Smith*, 521 So. 2d 742, 744 (La. Ct. App. 1988) (“The plaintiffs,

value of the bond as profit and disburse the additional 3% to the criminal district court, public defender, district attorney, and sheriff in accordance with La. Stat. Ann. § 22:822.⁹ For instance, in the example below, Blair’s Bail Bonds, LLC overcharged “John” \$500 by requiring him to pay a 13% premium on a \$50,000 bond—rather than the 12% authorized under state law:

BLAIR'S BAIL BONDS, LLC		
DEPENDANT'S NAME	John [REDACTED]	
DATE	ISSUED BY	RECEIPT NO.
2-20-17	Korinna	
BOND AMOUNT	50K	
PREMIUM @ 13.0%	6500	
PREMIUM @ 12.5% (JEFFERSON PARISH ONLY)	0	
PREMIUM @ 12.0%	0	
ADMINISTRATION FEE	25.00	
JAIL FEE	54	
TRANSFER FEE (IF APPLICABLE)	0	
TOTAL DUE	6579	

See Blair’s Bail Bonds, LLC’s Bail Bond Contract, attached as Ex. A; see also Appearance Bonds, attached as Ex. B.

however, will not be denied their right to recover the losses they sustained through fulfilling to their detriment an obligation under a contract that was null. . . Since they cannot be restored to their former status as owners in indivision of their mother’s succession, the most appropriate award is one of money damages for what their share was worth.”).

⁹ The fees required under La. Stat. Ann. § 22:822 are referred to by statute as the “criminal bail bond annual licensing fee.” The statute only requires commercial surety underwriters to pay 2% of the bail amount in other parts of Louisiana. In 2005, however, the Legislature increased the annual licensing fee on bail bond companies operating in New Orleans, but did not authorize a premium increase in New Orleans to off-set the fee and profit loss. See Criminal Bail Bonds, 2005 La. Sess. Law Serv. Act 350. Most bail bond companies operating in New Orleans have nevertheless passed off this fee to defendants by charging a 13% premium on each bail bond, a practice which is in clear violation of the law. See La. Stat. Ann. § 22:1404.3 (limiting the premium that a commercial surety underwriter may charge for a bail bond to 12% of the face value of a bond); La. Stat. Ann. § 22:1443 (same).

Similarly, #1 Bail Bonds & Recovery, LLC charged an individual a \$6,500 premium on a \$50,000 bond (13%):

**#1 Bail Bonds New Orleans Office
217 Derbigny Street
Gretna, Louisiana 70056
(504) 392-5245**

**Statement of Account
June 13, 2017**

To:



Defendant:

Posted Date:

11/16/2015

Bond Amount:

\$50,000.00

Account Activity:

Charges	
Bond Fees	\$6,500.00
Misc. Fees	
Accrued Interest	\$1,165.38
Jail Fee CDC 1st Chg	\$54.00
Jail Fee CDC Add. Bond	\$132.00
Misc. Fees Total	<u>\$1,351.38</u>
Total Fees	<u>7,851.38</u>

See #1 Bail Bonds & Recovery, LLC's Bail Bond Contract, attached as Ex. C.

SPLC investigators contacted nearly two dozen bail bond companies operating in New Orleans. All of the companies that gave investigators information about the bail premiums except for one—A Better Bail Bonds—indicated that they charged a 13% premium or 1% more than permitted under state law. Each of the entities named in this complaint indicated that they

charged a 13% premium. On average, these companies have overcharged defendants \$100 for each bail bond underwritten in a felony case.¹⁰

The aggregate amount that bail bond companies have overcharged defendants is staggering. SPLC estimates that bail bond companies overcharged defendants nearly \$500,000 in 2015 alone and have overcharged tens of thousands of people a total of over \$5 million in a 12-year period.¹¹ This amount is substantial in a city where 27% of residents live in poverty—a rate two times higher than the poverty rate nationally.¹² Many people could have used that money to pay for rent, utilities, childcare or other basic necessities. Moreover, almost one-third of all felony defendants remained incarcerated for the duration of their case in 2015.¹³ It is unclear how many of those people could have paid their bail amounts and been released from jail, but for these excessive premiums.

¹⁰ In 2015, the median bail imposed on a felony case was \$10,000. See Mathilde Laisne et al., *Past Due: Examining the Costs and Consequences of Charging for Justice in New Orleans*, *supra* note 4 at 6. Under La. Stat. Ann. § 22:1443, a bail bond company should only charge a 12% premium or \$1,200 on a \$10,000 bond, but most companies have been charging a 13% premium or \$100 more than authorized by state statute.

¹¹ In 2015, New Orleans bail bond companies collected about \$6.3 million from incarcerated people and their families, disbursed about \$1.6 million to government agencies, and retained about \$4.7 million in profits. See Christian Henrichson, et al., *The Costs and Consequences of Bail, Fines and Fees in New Orleans*, Vera Institute of Justice 24 (Jan. 2017), available at <https://goo.gl/ugKeQv>. If the bail companies had charged only a 12% premium—1% less than they “routinely charged”—they would have earned nearly \$500,000 less in profits. See *id.* at n.37. SPLC believes that the bail bond companies have been charging excessive fees since the Criminal Bail Bonds Act went into effect in 2005—about 12 years ago. See Criminal Bail Bonds, 2005 La. Sess. Law Serv. Act 350; see also *supra* note 9. Over a 12-year period, this conservatively amounts to more than \$5,000,000 in unlawful profits.

¹² In New Orleans, 27 percent of residents live in poverty, compared to 13.5 percent nationwide. Census Bureau, American Community Survey 2015 1-year estimates.

¹³ See Mathilde Laisne et al., *Past Due: Examining the Costs and Consequences of Charging for Justice in New Orleans*, *supra* note 4 at 7 (“In district court, where financial bail was a requirement for release in 85 percent of felony cases studied, almost a third of all felony defendants (1,275 people) were held in jail for the duration of their cases because they could not afford to pay bail.”).

The experience of one man we met during our investigation illustrates the harm caused by overcharging. Blair's Bail Bonds charged him a \$5,400 premium on a \$37,500 bond—or \$900 more than permitted under state law.¹⁴ He sold his truck and liquidated his savings to make a \$3,500 down payment on the premium. Because he could not pay the full balance on the premium, Blair's required him to wear and pay for an ankle monitor and make \$300 monthly payments until he paid his premiums in full. Some months he fell behind on his utility and rent obligations to pay his bond premium. One month a bounty hunter that worked for the ankle monitoring company threatened to have him arrested unless he made an immediate \$400 payment in a parking lot adjacent to a fast food restaurant.

B. The Commissioner of Insurance Should Order the Bail Companies to Stop Charging Excessive Premiums, Impose the Maximum Fine Authorized Under State Law, and Suspend Their Operating Licenses.

The regulation of criminal bail bonds falls under the State's insurance laws. La. Att'y Gen. Op. No. 05-0171 (May 25, 2006) ("The criminal bail bonds, as issued by commercial surety underwriters, fall within the scope of the insurance and surety laws of this state. . . ."). The State's insurance laws expressly prohibit charging excessive insurance rates. *See* La. Stat. Ann. 22:1452; *Commercial Union Ins. Co. v. Bernard*, 303 So. 2d 728, 732 (La. 1974) ("[e]xcessive rates are forbidden."). An insurance business may not operate "a business of insurance" if it charges excessive rates. *See* La. Stat. Ann. § 22:3.

State law delegates responsibility for the enforcement and administration of the insurance laws to the Commissioner of Insurance. *See* La. Stat. Ann. § 22:2 (duty of the Commissioner to "administer the provisions of this Code"); *see also Doerr v. Mobil Oil Corp.*, 774 So. 2d 119, 134 (La. 2000) (The Commissioner is charged with "protection of the public interest in the realm

¹⁴ This individual spoke to us on condition of anonymity because of his open criminal case.

of insurance.”). Specifically, the Code provides that “[t]he commissioner of insurance shall have the power to investigate the affairs of every person engaged in the business of insurance . . . 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. . . .” La. Stat. Ann. § 22:1967; *see also id.* §§ 22:1981, 22:1989 (authorizing examinations of insurers and producers and examination of the accounts, records, documents, and transactions of both insurers and producers).

The insurance code defines an unfair trade practice as including “[a]ny violation of any prohibitory law of this state.” La. Stat. Ann. § 22:1214. The Louisiana Supreme Court has held that “[i]t is . . . not reasonable to argue that charging excessive rates is not violative of a prohibitory law. Excessive rates are forbidden Therefore, unless some other statutory provision inhibits the power of the commissioner, he does have the authority to investigate, hold hearings, and prohibit charging excessive rates.” *Bernard*, 303 So. 2d at 732. Indeed, the Supreme Court has held that “[i]f excessive rates are prohibited, and they are, the commissioner is *obligated* to investigate.” *Id.* (emphasis added); *see also Melder v. Allstate Corp.*, 404 F.3d 328, 332 (5th Cir. 2005) (“[T]he Commissioner may investigate rates at any time[.]”).

If the Commissioner determines that the person has engaged in an unfair method of competition or an unfair or deceptive act or practice, the Commissioner shall issue a “cease and desist” order and may order the (1) payment of a monetary penalty of not more than \$1,000 for every violation not to exceed an aggregate penalty of \$100,000, unless the “person knew or reasonably should have known he was in violation” of the statute, in which case the penalty cannot exceed more than \$25,000 for each and every act or violation and may not exceed an aggregate penalty \$250,000 in any 6-month period; and (2) suspension or revocation of the

license of the person if he knew or reasonably should have known he was in violation of the statute. La. Stat. Ann. § 22:1969.

Here, the Department should order the bail bond companies and their commercial surety underwriters to stop charging premiums in excess of state law, suspend or revoke their operating licenses, and impose the maximum fine authorized by statute for engaging in unfair and predatory actions in contracting with the City's most vulnerable populations. The bail bond companies are in clear violation of state law, which limits the premium that a bail bond company and its commercial surety underwriter may charge to 12% of the face value of the bond or \$120. La. Stat. Ann. § 22:1443. Additionally, the bail bond agents and insurers should be subjected to greater monetary penalties because they knew or should have known that they were violating the plain language of the statute because of the prices they were charging. *See Miles v. Kilgore*, 191 So. 556, 559 (La. Ct. App. 1939) ("All persons are presumed to know the law"); *see also Bordelon v. Nat'l Life & Acc. Ins. Co.*, 187 So. 112 (La. Ct. App. 1939) (knowledge of officer or agent of insurer acquired within scope of his duties as to facts material to insurance is imputed to insurer). State law requires a bail bond agent to receive a minimum of eight hours of instruction on "state law and regulations" before being licensed to serve as a bail bond agent, La. Stat. Ann. § 22:1571, as well as 12 hours of continuing education every two years. La. Stat. Ann. § 22:1573; La. Stat. Ann. § 22:1547. There is no excuse for this consistent and flagrant violation of state law which has generated millions of dollars of illegal profit for the bail industry.

We respectfully request that you move quickly to end this systematic fleecing of the economically disadvantaged in New Orleans and to restore the property that has been wrongfully taken from them.

Sincerely,

Micah West

Micah West