

# PUBLIC ACCOUNTANT REVIEW PANELS IN LOUISIANA: LESSONS LEARNED FROM THE FIRST TEN YEARS

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In 1997 the Louisiana State Legislature enacted an Accountant Review Panel procedure which requires all claims against Certified Public Accountants to be reviewed by a panel of three accountants before proceeding to litigation. This article will summarize the primary features of that Act and present an update on the Review Panel system during its first ten years.

## The Review Panel Process

As a result of the 1997 legislation, Louisiana has a unique procedure of screening claims against public accountants. In fact, the law mandates that claims cannot be filed in court without first going through such a procedure, stating:

All claims against certified public accountants or firms, other than claims validly agreed for submission to a lawfully binding arbitration procedure, shall be reviewed by a public accountant review panel established . . .

Under the statute, a request for review is filed with the Society of Louisiana Certified Public Accountants (LCPA). The LCPA is responsible for notifying the accountant or firm that a request for review has been filed and for overseeing the process. Initially, an Attorney Chair of the Panel is appointed. Thereafter, the attorney is responsible for the selection of the other panel members, convening the Panel and expediting the Panel's review.

## Selection of Panel

The Attorney Chair is to be appointed by mutual consent of the parties. If the parties cannot agree, the attorney is selected by the Clerk of the Louisiana Supreme Court from a list of five randomly selected attorneys. Once selected, the attorney serves as Chair of the Panel but has no vote.

The voting members of the Panel consist of three certified public accountants who have held unlimited licenses to practice for at least ten consecutive years. Each party has the right to select any accountant who fits this criteria, and the two selected accountants

are responsible for choosing the third member of the Panel. In the event the parties do not exercise their rights to appoint a panel member, the member is appointed by the Attorney Chair.

In order to assist the process of selecting accountant members, the LCPA maintains a list of those accountants who have volunteered to serve. However, the parties need not rely upon the list in the selection process.

## Disqualification of Accountant Panel Members

The Act disqualifies any accountant who is "affiliated with" a party or an expert for a party. Moreover, the Act specifically requires an accountant to disclose in writing any "employment relationship or financial relationship" with the parties or their attorneys. It is advisable that an accountant make any disclosure that could create an appearance of bias or conflict before the selection process is completed. In fact, a failure to make a disclosure could delay or disrupt the Review Panel process.

Once appointed, panel members are prohibited from discussing the claim with any other panel member or any representative of a party until all evidence has been submitted.

## Responsibility of Panel

The Review Panel is charged with the responsibility of reaching one of the following decisions:

1. The evidence supports the conclusion that the defendant or defendants failed to comply with the appropriate standard of care as charged in the request for review;
2. The evidence does not support the conclusion that the defendant or defendants failed to meet the applicable standard of care as charged in the request for review; or
3. There is a material issue of fact, not requiring expert opinion, bearing on liability for consideration by the court.

The Panel is supposed to reach its

decision based solely upon written documentation submitted by the parties. That documentation may include depositions, affidavits, reports of accounting experts, "and any other form of evidence allowed by the Public Accountant Review Panel." The procedure does not allow for live testimony or for questioning by the panel members; however, in practice, Review Panel members have sometimes been known to request an opportunity to question witnesses, or to allow summary oral arguments to be presented by the attorneys for each side.

## Timing of Review Process

The selection of the panel members is to begin immediately upon the filing of the request for a Review Panel. In fact, regardless of whether an Attorney Chair has been appointed, the claimant is obligated to appoint his choice of a Certified Public Accountant member within thirty days after the certification of filing by the Society. The accountant defendant then has fifteen days within which to name his Certified Public Accountant panelist.

Under the Act, an opinion of the Panel must be made within twelve months after the date of notification of the selection of the Attorney Chair. However, any party to the process has the right to seek an extension through a court of competent jurisdiction.

The Act also specifies that the Panel must render a decision within one hundred eighty days after the selection of the last panel member. There is no specific provision which permits the parties to seek an extension of this time limitation. However, as a practical matter, parties often agree to such an extension.

## Statute of Limitations

The Review Panel process is intended to suspend the statute of limitations established under La. R.S. 9:5604. Under that provision, claims against accountants must be brought within one year of discovery, but no later than three

years from the date of the alleged act, omission, or neglect. The Review Panel procedure must be initiated within those time periods. Thereafter, the claimant has ninety days from the final report of the Review Panel to file an action in a court of law.

The Act specifically allows an accountant defendant to seek a dismissal in a court of law on the basis of La. R.S. 9:5604, without the need for completion of the Review Panel process.

### Applicability of Opinion in Subsequent Court Proceeding

The report of the Panel is admissible as evidence in a subsequent action. Moreover, the Act envisions that members of the Review Panel may be called as witnesses in the subsequent litigation. In such a case, the member is to be reimbursed for the time expended in testifying.

### Compensation

Under the Act, accountant panelists are paid at the rate of \$100.00 per diem, not to exceed a total of \$1,000.00 for all work performed as a member of the Panel. However, in 2006, the Act was specifically amended to provide that the parties may agree on another rate of compensation. Thus, it is important for prospective panel members to raise the issue of compensation at the outset of their appointment.

### Pitfalls of the Review Panel Process

As mentioned above, the Act permits an accountant to raise statute of limitations defenses in a court of law without the need for completion of the Review Panel process. Unfortunately, other defenses which might bar a claim against accountants cannot be raised until the completion of the process. This can be problematic for accountant defendants who have defenses such as lack of privity, lack of causation, or other arguments which would ordinarily be addressed by a court early in the litigation process. Unfortunately, since the Act does not provide an exception for such defenses, courts have been reluctant to interfere until the Review Panel process is complete.

In addition, the Review Panel process can be ineffective when factual issues are hotly disputed. In a litigation context, a court can resolve these issues based on the credibility of the witnesses. Credibility is difficult to address in the Review Panel process since cross-examination of witnesses is not available. In addition, credibility often depends upon the demeanor of witnesses which is impossible to discern from the review of depositions and documents. In such cases the Review Panel often has no choice but to conclude that there is a material issue of fact preventing the Panel from reaching a final conclusion on whether the accountant complied with the applicable standard of care.

Notwithstanding these pitfalls, on the whole, the Review Panel process serves as

a means of forcing the claimant and the accountant to address the standard of care issues on an expedited basis which often results in the early disposition of potential claims.

### Analysis of Claims Submitted

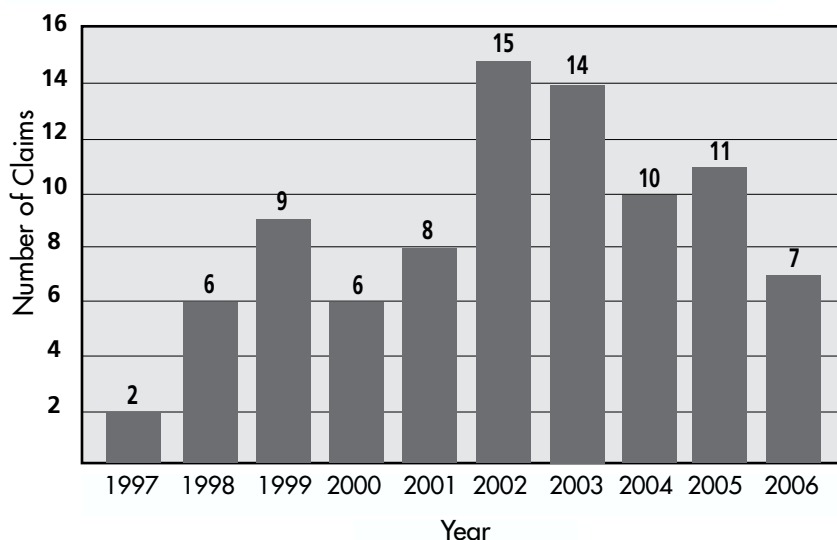
Since the enactment of the statute in 1997, there have been a total of 88 claims filed against Louisiana CPAs or firms that were submitted to the LCPA for adjudication by an Accountant Review Panel.<sup>1</sup> The frequency of claims filed by year is illustrated in Diagram A.

According to Grady Hazel, Executive Director of the LCPA, "The increase in the number of claims filed against CPAs in 2002 and 2003 is likely the result of increased public awareness and scrutiny of the profession in the aftermath of Enron and other scandals. The number of claims filed in 2004 and subsequent years appears to have returned to normalized levels." With the exception of one claim involving a CPA that worked in industry, all of the claims submitted involved CPAs or firms in public practice. These claims spanned the full spectrum of professional service areas, as illustrated in Diagram B

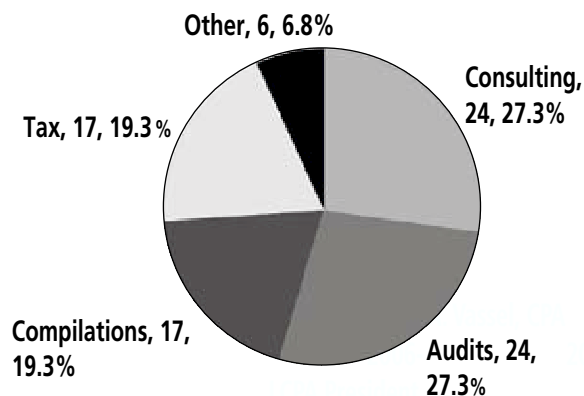
Claims arising from the provision of auditing and consulting services were the most common, with each service area representing 27 percent of the total claims filed. Compilation and tax services generated the second most claims, with each service accounting for 19 percent of the total claims. The remaining

*(Continued on page 11)*

**Diagram A: Accountant Review Panel Analysis of Claims Submitted by Year**



**Diagram B: Accountant Review Panel Analysis of Claims Submitted by Type of Service**



(Review Panels continued from page 9)

claims involved services provided by a CPA as a liquidator or trustee (three (3) claims), financial statement reviews (two (2) claims), and a CPA that worked in industry (one (1) claim). Fifteen (15) of the claims submitted, representing 17 percent of the total, involved alleged failure by the CPA or firm to detect embezzlement by employees or others affiliated with the client.

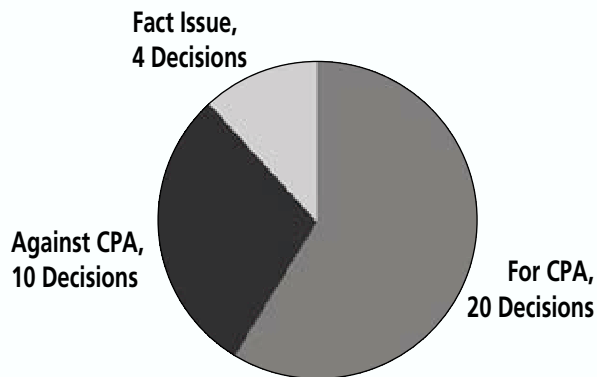
### Analysis of Outcomes

Of the 88 claims submitted the LCPA, 35 claims representing approximately 40 percent of the total were dismissed or settled prior to a decision by a Review Panel. "It is not uncommon," explains Hazel, "for a claim to be dismissed or settled without the need for a Review Panel. The system is working to help weed out those claims with little or no merit, and to foster the resolution of other claims early in the process."

A decision has been rendered by a Review Panel in connection with 34 claims filed since enactment of the statute. Review Panel decisions rendered to date may be summarized and illustrated below in Diagram C.

In 20 of the decisions rendered, representing approximately 59 percent of the total, the Panel ruled that the evidence did not support the conclusion that the defendant(s) failed to meet the applicable standard of care (i.e., a decision in favor of the CPA or firm). In ten (10) of the decisions, accounting for approximately 29 percent of the total, the Panel found that the evidence did support the conclusion that the defendant(s) failed to comply

### Diagram C: Accountant Review Panel Analysis of Decisions Rendered



with the applicable standard of care (i.e., a decision against the CPA or firm). In four (4) cases the Panel ruled that there was a material issue of fact, not requiring expert opinion, bearing on liability for consideration by the court.

One-half of the Review Panel decisions against CPAs related to engagements involving the provision of auditing services. Three of the decisions against the CPA involved consulting services, with compilation and tax engagements each receiving one adverse Panel decision. In the vast majority of the decisions rendered to date, the decision of the Review Panel was unanimous.

Regarding the remainder of the claims filed, 16 claims remain open and awaiting disposition. In two (2) cases to date, the parties agreed to waive the requirement for a Review Panel. In one (1) case the claim was removed to arbitration.

### Lessons Learned

Far from the rubber stamp of approval of CPA misconduct that some feared might result from the statute, the first ten years of experience with the Accountant Review Panel process in Louisiana has taught us otherwise. In approximately 41 percent of the cases decided, the CPA was either found to have violated the appropriate standard of care or the Panel determined that there was a material issue of fact bearing upon liability for consideration by the courts. Claims involving audit services were the most risky for CPAs, with one-half of the Review Panel decisions against CPAs arising from this service area.

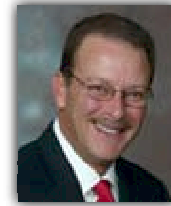
No CPA really likes sitting in judgment on the services rendered by a fellow CPA.

They do it as a service to their profession and to the legal community, and they take the responsibility of serving on a Review Panel very seriously. Louisiana CPAs who find themselves involved in proceedings before an Accountant Review Panel should approach the process with equal seriousness, and not be tempted to assume that the Panel will always see

things their way.

In terms of helping to foster the resolution of claims against CPAs, the Review Panel statute has been a resounding success. Approximately 40 percent of the claims filed against Louisiana CPAs were dismissed or settled without the need for a decision by a Review Panel.

<sup>1</sup> All data utilized in the development of this article was provided by the LCPA, and is current as of December 31, 2006.



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**Editor's Note:** George J. Panzeca, CPA, CMA, CFE is the Director of Litigation and Forensic Accounting Services for Bourgeois Bennett, LLC, headquartered in Metairie, LA. His practice is concentrated in the areas of commercial litigation, bankruptcy, insurance claim disputes, and the prevention and detection of fraud and embezzlement. Mr. Panzeca has provided expert testimony in connection with a variety of commercial disputes in both state and federal courts, and has served previously on Public Accountant Review Panels. He is a member and former chair of the Litigation Services Committee of the LCPA.

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