

**STATE OF LOUISIANA**  
**COURT OF APPEAL, FIRST CIRCUIT**

PATRICIA BERGERON, GEORGE  
BERGERON, JR., AND WENDY  
BERGERON, INDIVIDUALLY AND  
ON BEHALF OF HER MINOR  
CHILD, ALEXIS BERGERON AND  
JENNIFER TUTTLE HOPKINS,  
INDIVIDUALLY AND ON BEHALF  
OF HER MINOR CHILD, ABBIGAIL  
TUTTLE AND WILLIAM TULAK AND  
HEATHER TULAK INDIVIDUALLY  
AND ON BEHALF OF THEIR MINOR  
CHILDREN, MACKENZIE TULAK  
AND IAN TULAK

NO. 2013 CW 2104

VERSUS

LANIER JAMES SOUDELIER,  
POWER TORQUE SERVICES, LLC,  
AMERICAN STATES INSURANCE  
COMPANY, AMERICA FIRST  
INSURANCE COMPANY AND  
LIBERTY MUTUAL INSURANCE  
COMPANY

**APR 08 2014**

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In Re: First Mercury Insurance Company, applying for  
supervisory writs, 32nd Judicial District Court,  
Parish of Terrebonne, No. 167907.

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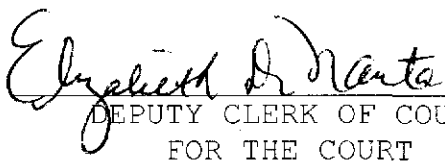
**BEFORE: PARRO, GUIDRY, AND DRAKE, JJ.**

**WRIT DENIED.**

**RHP**  
**EGD**

**Guidry, J.**, dissents, in part, and would reverse the trial court's judgment insofar as it prohibits relator from arguing to the jury that exemplary damages are unfair or not appropriate in this case because they will be paid by the insurer, rather than the tortfeasor, who was driving while intoxicated. The award of exemplary damages pursuant to La. Civ. Code art. 2315.4 is subject to a fact-driven determination that is within the unique province of the jury. See Mosing v. Domas, 2002-0012 (La. 10/15/02), 830 So.2d 967. See also Khaled v. Windham, 94-2171 (La. App. 1st Cir. 6/23/95), 657 So.2d 672.

COURT OF APPEAL, FIRST CIRCUIT

  
DEPUTY CLERK OF COURT  
FOR THE COURT