

LOUISIANA BAR JOURNAL

June / July 2020

Volume 68, Number 1

Business Interruption Claims and COVID-19

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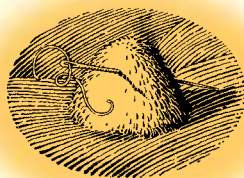


Also Inside:

- Stay-At-Home: Coronavirus and Its Impact on the Right to Intrastate Travel
- Cursory Review of the Remote Online Notarization Procedures
- Louisiana Health Care Provider Liability During a Pandemic



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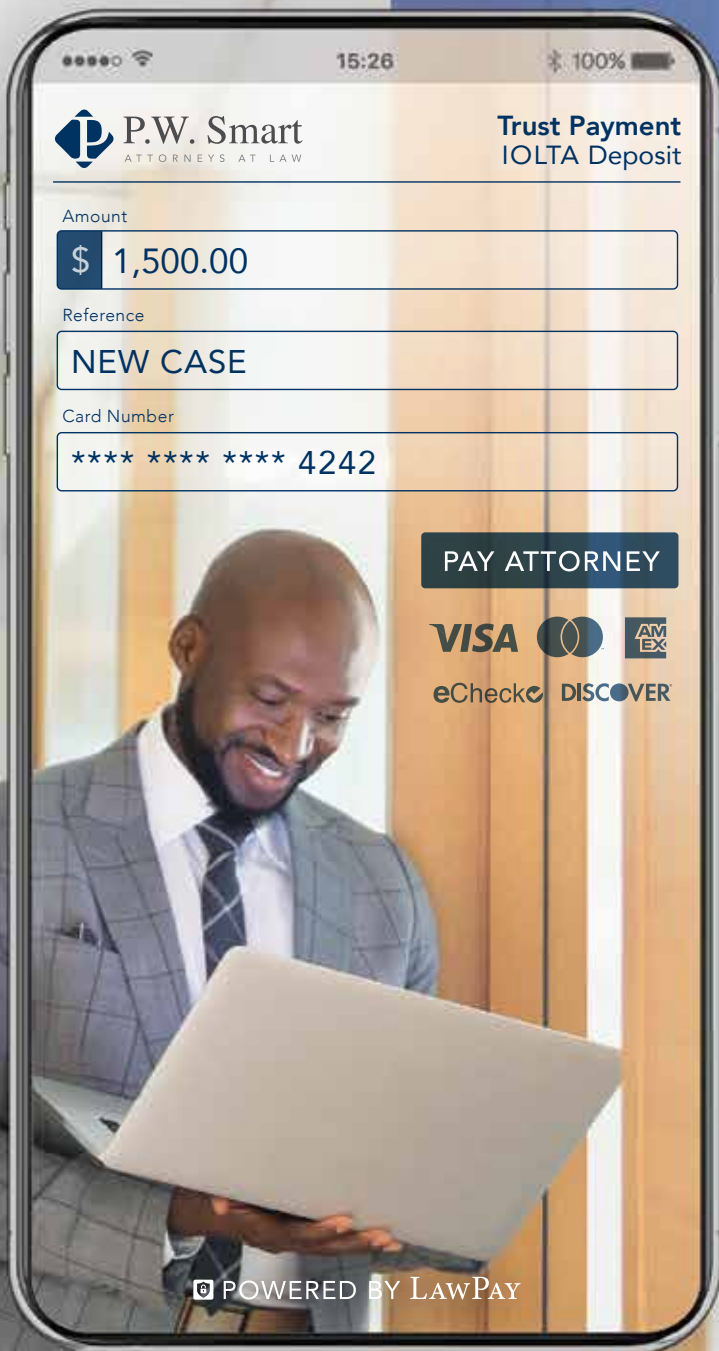
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Departments

Editor's Message 6
President's Message 8
Association Actions 28
Practice Management..... 34
Lawyers Assistance..... 36
Focus on Professionalism 38
Focus on Diversity 40
Puzzle..... 41
Discipline Reports..... 42
Recent Developments 46
Young Lawyers..... 56
Judicial Notes 60
People 62
News..... 66
Classified 70
The Last Word..... 72

Also Inside

Online CLE Programs 8
Pro Bono Hero..... 11
SOLACE..... 41
ADR Directory..... 54
Expert Directory..... 58
Advertisers' Index..... 71

Features

Thanks, Bob!
By Barry H. Grodsky..... 10

Business Interruption Claims and COVID-19 Roadblocks:
Is it "Reasonable" to Expect Any Coverage After This Disaster?
By Frederic Theodore Le Clercq and Francis J. Barry, Jr. 12

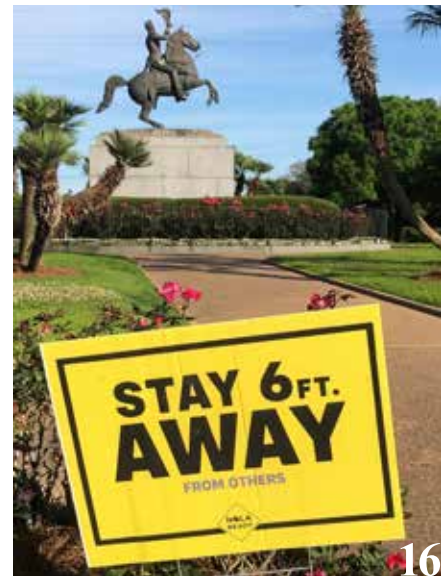
Stay-At-Home: Coronavirus and Its Impact on the Right to Intrastate Travel
By Mitchell F. Crusto 16

Cursory Review of the Remote Online Notarization Procedures Included in Emergency Proclamation 37-JBE-2020: What They Authorize, and More Importantly, What They Don't
By Justin B. Schmidt and Richard G. Passler..... 20

Louisiana Health Care Provider Liability During a Pandemic
By L. Adam Thames 24



12



16



20



24

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By Patrick A. Talley, Jr.

From A to Zoom: Lessons and Experiences in This “New Normal”

“Yes, it’s a different world today, and though what the coming weeks will bring is uncertain, a measure of our excellence will be shown in how we adapt to these challenges and changing circumstances.” Those were my words, written two months ago, an unexpected Editor’s Message in the last issue of the *Louisiana Bar Journal*, written just days after the Governor issued the initial stay-at-home order. Since then, we have faced and experienced pandemic, isolation and economic collapse, and “normal” no longer has the same meaning for us.

From A to Z, we’ve experienced changes we could not have expected or even imagined two months ago. Definitions have changed and what defines us as a community and a legal profession has changed. We have learned to practice law differently. Beginning with A, we have experienced what it means to be Alone. Even though most of us have not literally been by ourselves, we have been alone in the sense that we have been separated while our offices and the courts have been closed, and we have not been able to socially or professionally interact with colleagues, friends and even family in some cases. We now social distance, which means we don’t shake hands with each other or embrace. Face-to-face means we speak to each other from opposite sides of a room. All of that, in some sense, leaves us isolated and Alone. I won’t take you through the entire alphabet, but jumping to Z, we now “Zoom,” which is the way we handle meetings, depositions and, in some cases, even hearings. We have, indeed, learned to adapt to the new normal in the practice of law.

“Resilience also has become our definition. In Louisiana, we’ve always been resilient people, having faced and come back stronger... Today, resilience defines us even more...”

Now, some two months later, as I write this Editor’s Message today (May 15), we are experiencing a little normalcy once again for today is the first day of Phase I “reopening.” Oh, happy day! Being a resident of Orleans Parish, I have to wait one more day. But tomorrow will be my first restaurant experience in over two months, and my wife and I are going back to the same place we had our last dinner out on March 13. We can’t wait! Except, actually, in the new normal, we can wait because we have waited for months. Waiting has required a lot of patience. In this respect, the stay-at-home order has its virtues; I think we have learned to be a little more patient. Patience defines us and the new normal. No longer do we particularly mind being stuck in a line. Now, we are content just to sit and wait patiently, while the line moves along ever so slowly, because we really don’t have any place else to go, other than back home.

Resilience also has become our defi-

inition. In Louisiana, we’ve always been resilient people, having faced and come back stronger from devastating hurricanes and floods. Today, resilience defines us even more because it means continuing on without a loved one or a friend. As of today, there have been more than 2,400 deaths attributable to COVID-19 and we all are affected by this sobering statistic. Personally, I will greatly miss the smiling faces of Daniel Walker at Clancy’s and Tommy O’Brien, a friend of mine in the Ancient Order of Hibernians. For others, resilience means rebounding from a business that has been virtually shuttered for two months. For many of our fellow LSBA colleagues, it means rebuilding a law practice. For all of us, we have experienced cancellations of numerous important events and activities, like graduations and weddings. After three long years of hard work, my son and his classmates graduated from Louisiana State University Paul M. Hebert Law Center on May 15, without ceremony, pomp and circumstance. We all can think back to our law school graduations and deeply understand what they missed. As a Bar Association, we have been disappointed with the cancellation of the Louisiana Bar Foundation Gala and the LSBA Annual Meeting and Joint LSBA/Louisiana Judicial College Summer School in Destin, all important events to our profession and activities that we enjoy with each other. There have been other cancellations as well (I count 17 for me alone), but through it all, we have shown resilience, accomplishing what we need to do in other ways. “Stay at home” has been effec-

Continued next page

A to Zoom continued from page 6

tive against the spread of the virus, but it hasn't stopped us from moving forward.

Lastly, we also are now defined by what we are doing to help those in greater need. As one example, read the article below about L.I.G.H.T. (Lawyers' Initiative Giving Hospitals Thanks). At my firm, Phelps Dunbar LLP, managing partner Marshall Redmon, one of the founders of L.I.G.H.T., has enhanced the program to include purchasing restaurant gift cards to use for meetings and client entertainment, offering individual in-office lunch orders from local restaurants for employees working in the office, and

offering gift cards for personal use, with all of the proceeds going to L.I.G.H.T. This is just one small example of lawyers giving back in this time of pandemic and economic crisis. The list goes on and I'm sure you've seen other examples as well. Yes, we've experienced many changes from A to Z over the past two months, and certainly the new normal is still being defined as we begin Phase I of reopening. As we look forward to getting back to normalcy and leaving behind things like Alone, hopefully some aspects of the "new normal" will stick around, like patience, resilience, helping others and, of course . . . Zoom.

How Are You Giving Back to Your Community During the COVID-19 Pandemic?

The *Louisiana Bar Journal* is interested in hearing how Louisiana lawyers, law firms, local and specialty bars and other legal organizations are giving back to their communities during this pandemic. Whether contributions assist healthcare workers, first responders, other frontline workers or the public at large, the *Journal* wants to hear your story. Email your information to Publications Coordinator Darlene M. LaBranche, dlabranche@lsba.org. Information compiled will be included in future issues of the *Journal*.

New Orleans Law Firms Team Up to Provide L.I.G.H.T.

As New Orleans battles COVID-19, many of the city's prominent law firms began looking outside courtrooms and conference rooms for ways to help. Their new program, L.I.G.H.T. (Lawyers' Initiative Giving Hospitals Thanks), raised more than \$150,000 to feed frontline healthcare workers and support New Orleans' food and music industries.

"It began as a weekly brainstorming call among law firm leaders about how to protect employees, stabilize firms and ensure that legal services would continue unhindered. But when New Orleans became a hotspot, the consensus quickly pivoted from protecting our own people to helping the community as a whole," said Phelps Dunbar's Marshall M. Redmon, a founding member of L.I.G.H.T.

The group turned to the Krewe of Red Beans and its Feed the Frontline NOLA Project to turn money into meals. Donations allowed the nonprofit to serve thousands of meals to healthcare workers in area hospitals. More than two dozen restaurants counted on daily orders to keep their doors open, while out-of-work musicians served as delivery drivers.

"The L.I.G.H.T. initiative is keeping our

effort alive as our city enters the most crucial phase of our battle against COVID-19. All the hospital heroes will be fed like the champions they are, and our whole community is united in supporting them as they fight to save us," said Devin De Wulf, founder of the Krewe of Red Beans.

L.I.G.H.T., now including more than 30 law firms, wants to expand its support for essential frontline healthcare workers. To join the project, email Ann Theriot at ann.theriot@phelps.com. Participating firms, to date, include:

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Persevering Through the Challenges of Our “New Normal”



By Alainna R. Mire

We are all living in what is being called “our new normal,” brought on this time by the COVID-19 pandemic. As a Bar (and as Louisiana citizens), we have heard this phrase too many times before. Yes, the LSBA has faced challenges before and we will prevail over this one, too. The LSBA’s resilience, ability to adapt and reinvent, and determination in overcoming hurdles, as quickly, efficiently and lasting as possible, are the common threads that will propel us to the light at the end of this tunnel.

Our LSBA leadership structure is set up to provide a seamless line of governance. And governance will go on in this “new normal” world.

So far this year, the COVID-19 pandemic has cancelled most of our major events and projects (the Annual Meeting/Summer School, the Conclave on Diversity in the Legal Profession, to name just two). But as the pandemic closed the physical doors of the Louisiana Bar Center, the LSBA’s day-to-day business progressed with staff working remotely and with the impressive acceleration of free COVID- and practice-related webinars. The pandemic forced our Bar to rethink, retool and reassess some of

our programming, all the while planning for new methods and procedures to handle our basic functions for the rest of the year.

For my term as president, I will continue these efforts at innovation and connection with our members. My focus is to engage the entire membership in areas outside of the state’s major metropolitan areas. As an attorney who was born and raised in Scott, attended college and law school in Baton Rouge and moved to Alexandria to practice law, I know firsthand the difference in resources throughout the state. The creation of the interstate transportation system connected the entire state by making it logistically easier to get from one end to the other, but it did not connect the people. People are our greatest resource as a profession, yet there is a disconnect between those in our profession. The disconnect is based on resources and areas of practice. My goal is to bring together all members of our profession to create a more cohesive LSBA by bringing LSBA resources to smaller communities with few than 50,000 people.

As we have learned during this pandemic, technology is truly the way to bridge the gap between all people. I will encourage more LSBA and statewide

CLE programs, either in-person or virtually. My focus is not only on diversity in its traditional terms of gender and race but on locale as well.

Our plans for the year will continue in some form or fashion. That’s my commitment to you, the members who have placed their trust in me to continue working for the betterment of the legal profession and, in turn, for the residents we serve.

You may notice that this June/July *Journal* is different. Normally, we would have introduced our incoming Bar leadership on the cover and in interviews, profiles and photos. But the pandemic altered that as well. As we are planning a ceremony for the Bar leadership to be formally installed in August (barring any further pandemic-related developments), it was decided to introduce everyone in the August/September *Journal* instead.

This issue of the *Journal* includes several COVID-related features which we hope you find timely and informative.

Until we meet again, stay safe and healthy, persevere in your daily lives and law practices, and believe that we will all see the other side of this pandemic soon. The LSBA will always be here to help you during this challenge and beyond.

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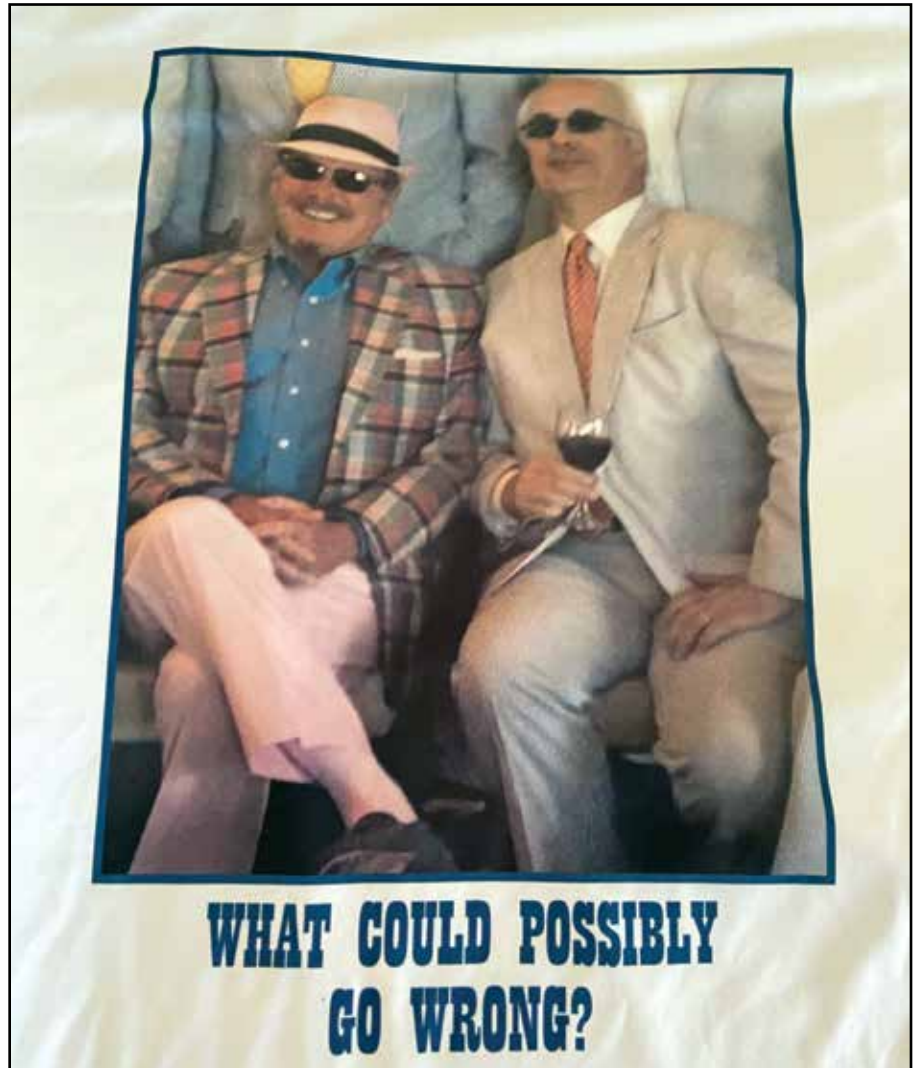
Thanks, Bob!

By Barry H. Grodsky

Just by happenstance, I sat next to Bob Kutcher at a Louisiana State Bar Association (LSBA) function years ago for a group photo. Later, when Bob received the nomination as the next president-elect, and I was the current president-elect, I took a close-up of the two of us in that photo and gave him a framed copy. When I did, I said, “When you look at us coming into Bar leadership, what could possibly go wrong?” Bob later took that photo and the question and printed it on T-shirts. I have reflected quite a bit on that question in terms of what Bob has gone through in his tenure as president. Indeed, what could possibly go wrong?

Either by superb timing or sheer good luck, my term as president had very few problems. What I would have considered a major issue would have been little more than a speed bump in Bob’s year. Still, there were concerns, decisions and worries and I realized quickly that, when Bob was president-elect, I had a trusted confidante I could turn to. I had by then known Bob for years and was comfortable as I relied on him greatly. When things were calm, we spoke about three times a week; when not so calm, often three times a day. Bob’s institutional knowledge of the Bar and its operations was evident then just as it is now. He offered great advice and suggestions.

Those involved in the Bar knew we were in good hands as he took over leadership. Little did we know, however, back in June 2019 just how quickly those leadership skills would be tested. Seemingly within weeks of Bob taking office, the LSBA was sued, challenging our mandatory status. Bob was quick to respond. He guided the organization through the intricacies of the lawsuit, sought input and advice, and gave the Bar extraordinary guidance during this unprecedented event. His background as a seasoned litigator played a key role and fewer were happier than Bob when



T-shirt displaying LSBA Presidents Bob Kutcher, left, and Barry Grodsky. “What could possibly go wrong?”

the ruling was announced that the lawsuit was dismissed. Very few realized how critical Bob was to the process and his efforts should be recognized.

As the weeks and months rolled on, Bob dealt with more than his share of problems, complaints, issues and concerns. It seemed something new came up every day. He handled these issues professionally and head on. When a problem arose, he directly addressed it. Like all successful leaders, Bob never “knee jerked” a response. His actions were de-

liberate and well thought out. He would reach out to others involved in the Bar, asking questions, running ideas and identifying results. It seemed that he was always dealing with a disgruntled lawyer, a problem in a committee, an issue with an affiliated group, or even dealing with those outside of the profession such as testifying before the State Legislature. Despite these troubling issues, Bob addressed every one.

In this process, he showed a true sign of a great leader; he involved many

people and was a consensus builder. His manner was both firm and persuasive. It may be simplistic to say “he knew how to get the job done” but it is true. Coupled with his personality, it was easy to follow Bob as the Bar’s leader.

Of course, his rocky path became even rockier with the COVID-19 crisis causing problems for everyone, including the Bar. Bob’s leadership was integral in leading the Bar during these troubled times. It seemed that each day brought new questions and few really knew of Bob’s devotion to the Bar in addressing such issues and keeping us on a steady path. His input and guidance during this pandemic will no doubt continue as he becomes the immediate past president and we are all the better for it.

As president, Bob maintained an excellent relationship with our Supreme Court and judges throughout the state, relationships which cannot be understated. He crisscrossed the state to promote the Bar and truly enjoyed talking to lawyers and judges about what the Bar does and can do. Bob was comfortable in any setting, whether speaking to a couple of lawyers, in a conference with hundreds of attendees or addressing a large crowd.

It is quite a gift.

Certainly, there were some disappointments which became unavoidable. With Judge Ricky Wicker and Minor Pipes, Bob has been the driving force in our Summer School and Annual Meeting. But due to COVID-19, it could not go on this year. Undaunted, Bob tackled each day’s problems to improve the Bar and we know he will enjoy his role with Summer School again.

Even when Bob disagreed with someone, he was responsive, respectful and professional. Coming into this job, no one said it would be easy, and Bob clearly dealt with tougher problems and issues than his predecessors.

Bob’s belief in, and his support of, our mandatory Bar is not only important but also is recognized as a vital basis to keeping our Bar vibrant and offering the most for its members. Bob truly understands the importance of taking those steps to enable the Bar to best serve its members and he exemplifies our motto of “serving the public and serving the profession.”

Bob continuously worked tirelessly and his efforts and achievements came during a very critical and demanding year, yet his good spirits, dedication to

office and leadership never wavered. He truly is a great ambassador of our organization. Bob took great pride in the office and we all owe him much gratitude. He always maintained a wonderful disposition in every setting and was never unprepared for any task.

We are fortunate also that Bob’s demonstrative leadership will be passed to our new president, Alainna Mire. She will, no doubt, benefit from Bob’s accomplishment and we are confident in her leadership as she takes the helm in the coming months.

In my position, I witnessed and truly appreciated what Bob faced and how our Bar made it through an unprecedented year better for it because of his leadership. Our members should be very grateful. Personally, I have known Bob for many years and, frankly, his success while facing such adversity is no surprise. Speaking for countless others, I am very proud of all he has accomplished during his tenure as president. Thanks, Bob!

Barry H. Grodsky, a partner in the New Orleans firm of Taggart Morton, L.L.C., served as the 2018-19 president of the Louisiana State Bar Association. (bgrodsky@taggartmorton.com; Ste. 2100, 1100 Poydras St., New Orleans, LA 70163)



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Business Interruption Claims and COVID-19:

Is It “Reasonable” to Expect Any Coverage After This Disaster?

By Frederic Theodore Le Clercq and Francis J. Barry, Jr.



We have seen a shadow of this fight before. It was Katrina. Was it “reasonable” for homeowners policies to cover flood claims by recasting the meaning of that policy language? Now is the time for the wave of litigation on business interruption claims from COVID-19, like the creative one brought by New Orleans lawyer John Houghtaliang in *Cajun Conti, L.L.C. v. Certain Underwriters at Lloyd’s, London, et al.*, Civil District Court, Orleans Parish, No. 2020-02558, March 16, 2020. We submit the result, though painful to policyholders, should be similar to those Katrina flood claims — that there is no coverage for business interruption claims without “physical loss.” The fact that the COVID-19 virus is generally “present” at a business is also not enough to overcome a virus exclusion. Like Homer’s Odysseus, and his struggle with the superficially beautiful call from the sirens, courts must resist the immense temptation of the equities and enforce the insurance contract.¹

The COVID-19 pandemic will engender a huge number of business interruption insurance claims in Louisiana.² The insurance coverage issues will vary depending on the policy language, the exclusions in each policy and the circumstances and losses of each insured. There are several issues that may occur frequently, and these are discussed below.

Most business interruption insurance includes the condition that the insured premises must suffer physical damage, and many policies since 2006 contain the specific Insurance Services Office (ISO) form CP 01 40 07 06, titled “Exclusion for Loss Due to Virus or Bacteria.” These two provisions should usually end the COVID-19 business interruption claims. However, the economic tragedy unfolding has spurred Louisiana lawyers to lead the effort to gut these contract provisions.

In the lawsuits filed subsequent to the pandemic closure of restaurants in the United States — a suit filed in New Orleans, *Cajun Conti, L.L.C. v. Certain Underwriters at Lloyd’s, London, et al.*, Civil District Court, Orleans Parish; and *French Laundry Partners, L.P. d/b/a The French Laundry, et al v. Hartford Fire Insurance Co., et al.*, filed in Superior

Court, Napa County, California — the policyholders assert that the respective governmental closure orders and the general contamination of the premises by the virus provide a basis for coverage, regardless of any limitations or exclusions in the policy language. *Cajun Conti’s* treatment of “physical loss” attempts to bend beyond recognition the policy language. While understandable in the face of such economic suffering, it should be unsuccessful.³ Likewise, lawsuits of the Chickasaw and Choctaw Nations in Oklahoma for business interruption coverage are asserted to be covered claims notwithstanding policy language to the contrary.⁴ This is but the start of the wave.⁵

Most business interruption forms say they will pay for actual loss of business income due to “suspension” of “operations” while there is a “period of restoration.” The “suspension” must be caused by “direct physical loss.” Covered loss ends when the property is repaired or business resumed elsewhere. For instance, the policy coverage may state that there must be “direct physical loss or damage to property at a premises which are described in the Declarations.”

One national law firm often representing insureds argues⁶ “nothing in these often unedifying terms rules out the possibility of damage caused by the presence of microscopic organisms or requires that loss or damage be visible to the naked eye, or even visible at all.” If the premises of the insured’s business are flooded or damaged by fire, or building collapse, then the policy condition and definitions of “damage” would be satisfied. But what if there is no physical damage to the property of the insured, and the business interruption is caused by some type of governmental shutdown order sparked by the COVID-19 pandemic?

There is case law holding that some type of physical damage to the insured’s premises must occur before business interruption coverage is triggered. In *Mama Jo’s, Inc. v. Sparta Ins. Co.*, No. 17-23362, 2018 WL 3412974 (S.D. Fla. 6/11/18), involving nearby roadwork which caused dust and debris contamination of the restaurant, the court held damage to the property meant that actual damage or alteration to the property requiring

repairs would be needed in order to trigger the policy coverage. In *Mastellone v. Lightning Rod Mutual Insurance Co.*, 175 Ohio App. 3d 23, 40-41, 2008 Ohio 311, 884 N.E. 2d 1130 (1/31/08), the court held that mold could be removed by cleaning so it did not affect the structural integrity of the building and, therefore, did not trigger business interruption coverage. In *Source Food Tech, Inc. v. USF&G*, 465 F.3d 834 (8 Cir. 2006), applying Minnesota law, the court held that beef imports banned for mad cow disease did not amount to “physical loss or damage.” In *Newman Myers Kreines Gross Harris, P.C. v. Great American Insurance Company*, 17 F. Supp. 3d 323 (S.D.N.Y. 2014), the court held that a power shutoff in advance of Super Storm Sandy approaching did not amount to physical loss or damage. In *Universal Image Products v. Chubb Corp.*, 703 F. Supp. 2d 705 (E.D. Mich. 2010), the court held that mold and bacteria in the HVAC system was not physical damage to the property that was needed to trigger the insurance coverage.

On the other hand, there is case law supporting the inventive *Cajun Conti* argument that “non-altering” physical damage is present at the insured premises if there is “contamination” at the location, even if the contamination does not physically cause property damage.

For example, in *Gregory Packaging Inc. v. Travelers Property and Casualty Co. of America*, No. 12-04418, 2014 U.S. Dist. Lexis 165232 (U.S.N.J. 11/25/14), the court held that a release of an unsafe amount of ammonia in a facility amounted to a “direct physical loss,” and that property can sustain a physical loss or damage without experiencing structural alteration. In *Wakefern Food Corp. v. Liberty Mutual Fire Ins. Co.*, 406 N.J. Super. 524, 968 A. 2d 724 (2009), the court held that property can be “just temporarily unfit” and trigger coverage.

Even if governmental shutdown orders close the insured’s business, traditional business interruption coverage sections on policies usually still require the trigger of a physical damage or loss.

The commentary on COVID-19 business interruption insurance coverage has focused upon the 2006 ISO Form, Virus Exclusion. ISO Form CP 01 40 07 06 is

titled “Exclusion for Loss Due to Virus or Bacteria” and provides we will not pay for loss or damage caused by or resulting from any virus, bacterium or other microorganism that induces or is capable of inducing physical stress, illness or disease” The exclusion goes on to state that it applies to business income, and it is reportedly found in many first-party property insurance policies since 2006.

Despite such an apparently clear exclusion for business interruption due to a virus pandemic, there have been suggestions that such an exclusion may be avoided either by arguing that the governmental closure order is the cause of the damage and not the contamination by the virus or by arguing the often used “reasonable expectations” doctrine.

At least in Louisiana, however, the reasonable expectations doctrine asserted by insureds was not successful in the Hurricane Katrina litigation, and those cases may be of interest here.

In *Vanderbrook v. UniTrin Preferred Ins. Co. (In Re Katrina Canal Breaches Litig.)*, 495 F.3d 191 (5 Cir. 2007), the U.S. 5th Circuit Court of Appeals considered the claims by numerous homeowners in the New Orleans area regarding flood damage being excluded from their homeowners policies. Counsel for the insured homeowners advanced the “reasonable expectation” doctrine, as well as the “concurrent cause” argument, and alleged ambiguities in the insurance policy flood exclusions. The 5th Circuit upheld the flood exclusions in the policies (for those claims in which the hurricane force winds did not cause damage to the properties but only for damage caused by the flooding resulting from the collapse of the levees of the drainage canal in New Orleans).

With respect to the reasonable expectations argument advanced by counsel for the insureds, the 5th Circuit stated:

The plaintiffs finally contend that the reasonable expectations of homeowners insurance policy holders would be the damage resulting from man-made floods would be covered. “[A]scertaining how a reasonable insurance policy purchaser would construe



Grffiti mural of Louis Armstrong wearing blue gloves and a face mask on his trumpet by Louisiana artist Josh Wingerter on boarded-up shops in New Orleans during the emergency declaration. Photo by Barbara Baldwin.

the clause at the time the insurance contract was entered” is one way that ambiguity in an insurance clause may be resolved. *L.A. Inc. Gaur. Ass’n. v. Interstate Fire and Casualty Company*, 630 So.2d at 764 (La. 1994). But “Louisiana Law . . . precludes use of the reasonable expectations doctrine to recast policy language when such language is clear and unambiguous.” *Coleman v. Sch. Bd. of Richland Parish*, 418 F.3d 511, 522 (5 Cir. 2005). As we have explained, the flood exclusions in the policies are unambiguous in the context of the specific facts of this case; thus, we need not resort to ascertaining a reasonable policyholders expectations. 495 F.3d at 219.

The 5th Circuit was not swayed by the argument that the homeowners policy contained coverage for hurricanes, and that the hurricane was a concurrent cause of the levee breaches due to construction faults and engineering deficiencies.

The 5th Circuit explained the policyholders’ arguments regarding efficient proximate cause and anti-concurrent causation clauses in the policies. It found that the case did not represent a combination of forces that caused damage and it was not analogous to cases from Hurricane Katrina with damage through both wind and water. Instead it affirmed the district court in finding that, in this case, the cause conflates to the flood, meaning that the alleged negligence in design, construction or maintenance of the levees and the resulting flood were not separate causes of the plaintiffs’ losses.

Consequently, the court concluded that the anti-concurrent causation clauses need not be addressed because they were not applicable.

It is also possible that pollution exclusion clauses might be a basis for denial of coverage. In *Westport Ins. Corp. v. VN Hotel Group, L.L.C.*, 761 F. Supp. 2d 1337 (M.D. Fla. 2010), the court held that legionella bacteria are not pollutants and thus the policy exclusion did not apply; and in *Johnson v. Clarendon National Insurance Company*, 2009 W.L. 252619, (California Court of Appeal 2/4/09), the court held that a pollution exclusion did not apply to mold and “likely would not apply to viral infections because the Court reasoned that the language of the pollution exclusion was unclear and would be interpreted in favor of coverage.”

There are cases out there to the contrary. In *First Specialty Insurance Corp. v. GRS Management, Inc.*, No. 08-81356, 2009 W.L. 254613 (S.D. Fla. 8/17/09), the court held that the virus was a pollutant. The specific ISO Form “exclusion for loss due to virus or bacteria” provides that “we will not pay for loss or damage caused by or resulting from any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease” The ISO circular dated July 6, 2006, used as part of its filings with State Regulatory Authorities, references rotavirus, SARS, influenza (such as avian flu), legionella and anthrax.

The ISO Form CP 00 30 10 12, titled “Business Income (and Extra Expense) Coverage Form,” provides that the insurer will pay for the actual loss of business income sustained due to the necessary suspension of operations during the period of restoration. The suspension must be caused by direct physical loss of or damage to property at premises which are described in the declarations and for which a business income limit of insurance is shown in the declarations. The loss or damage must be caused by or result from a covered cause of loss. The form provides “with respect to loss of or damage to personal property in the open or personal property in a vehicle, the described premises include the area within

100 feet of such premises.”

ISO Form PROP 12 19 09 17, titled “Ordinance or Law Coverage,” includes the provision that “coverage under this endorsement applies only if: a) the building sustains only direct physical damage that is covered under this policy and is a result of such damage, you are required to comply with the ordinance or law”

Finally, some legislatures, notably New Jersey, Louisiana, Massachusetts and South Carolina, have either considered or enacted legislation to undo the insurance contract’s restrictions on COVID-19 coverage. There is a persuasive argument that these political fixes to gut the insurance contract are unconstitutional.⁷ The New Jersey Legislature is considering a bill to force insurers to pay COVID-19 business interruption claims despite the ISO Form Virus Exclusion used in the policies issued to the insureds in New Jersey with businesses of less than 100 employees. The proposed legislation contains language to the effect that “notwithstanding the provision of any other law, rule, or regulation to the contrary, every policy of insurance insuring against loss or damage to property, which includes the loss or use of occupancy of business interruption enforced in this state . . . shall be construed” to include coverage for COVID-19 business interruption losses. Similar legislation may be proposed in other states, but, of course, all such litigation will be subject to constitutional challenge.

Conclusion

Courts will struggle with the equities of huge losses from business owners in the COVID-19 pandemic. There will be a siren appeal to listen to the creative and innovative arguments put forward to avoid the plain contractual meaning that blocks coverage for such claims. Courts must hold fast, like Odysseus, and not die on the rocks listening to this sweet sounding siren song.

FOOTNOTES

1. There are staggering business losses from COVID-19 shutdowns as businesses close on every block in every neighborhood. Some estimates

put United States business losses for those with fewer than 100 employees at \$431 billion per month. Over two months, those losses exceed the total amounts for domestic insurers reserved for every kind of risk. The Paycheck Protection Program total funding for small business forgivable loans is approximately \$600 billion as of this writing. The cost of the cure, requiring unprecedented business closure leading to financial ruin and failure, may exceed the cost to have done nothing.

2. The impact of the post COVID-19 Cares Act Legislation that provides for forgivable loans to small business is not discussed in this article except to note that such loans, which turn into grants, may decrease an insured’s business interruption loss to some extent but not erase it.

3. “Any effort to deny the reality that the virus causes physical damage and loss would constitute a false and potentially fraudulent misrepresentation that could endanger shareholders and the public.” *Cajun Conti* Petition.

4. The Chickasaw Nation case seems to just assume physical loss: “as a result of this pandemic the nation’s property sustained direct physical loss or damage” *Chickasaw Nation v. Lexington Insurance Company*, Case No. CV-20-35 (Oklahoma Dist. Ct., Pontotoc County) (2020).

5. The U.S. Congress is already working on what happens for business interruption claims in the next pandemic, and it may look like the risk sharing now used for terrorist insurance coverage. Those changes would not apply to the COVID-19 fights. “Insurers Oppose Pandemic Liability Plan,” *Wall Street Journal*, B-10, May 15, 2020.

6. Jenner & Block newsletter, March 12, 2020, by David Kroeger and Elin Park, <https://jenner.com/system/assets/updates/1508/original/kroeger%20park%20March%201LU%20March%2012%202020.pdf?1585603708>.

7. See United States Constitution, Article 1, Section 10 (No state shall pass a law impairing the obligations of contract).

Frederic Theodore (Ted) Le Clercq is a partner in the New Orleans office of Deutsch Kerrigan, L.L.P. He chairs the Commercial Litigation Department. He has been practicing law for 28 years. (ted@deutschkerrigan.com; 755 Magazine St., New Orleans, LA 70130-3629)



Francis J. (Frank) Barry, Jr. is a partner in the New Orleans office of Deutsch Kerrigan, L.L.P. He practices maritime and oil and gas litigation and insurance coverage law. He is a graduate of Tulane Law School. (fbarry@deutschkerrigan.com; 755 Magazine St., New Orleans, LA 70130-3629)



STAY-AT-HOME:

Coronavirus and Its Impact on the Right to Intrastate Travel

By Mitchell F. Crusto



Signs in Jackson Square in New Orleans urging residents to socially distance and stay at least six feet away from others. *Photo by Barbara Baldwin.*

On March 11, 2020, Louisiana Gov. John Bel Edwards declared a statewide Public Health Emergency¹ in response to the coronavirus (COVID-19) pandemic.² Just 10 days later, he issued a statewide stay-at-home order for “all individuals within the state of Louisiana” (hereinafter Order) “to protect the health and safety of the public, to mitigate the impact of the virus, and to disrupt its spread.”³ As authority for the Order, the Governor cited a Louisiana state statute, which provides, “During a state of public health emergency, . . . the governor may . . . control ingress and egress to and from a disaster area, *the movement of persons within the area*, and the occupancy of premises therein” (emphasis added).⁴

This article analyzes whether Gov. Edwards’s Order negatively impacts the right of persons to travel within the state of Louisiana, “the right to *intrastate* travel.”⁵ Parenthetically, it recognizes that there are also issues relative to *interstate* travel,⁶ and it acts as a thoughtful guide as the government contemplates travel restrictions.

Do We Need an “Emergency Constitution”?

An “emergency constitution” refers to a scholarly debate on whether civil liberties should be suspended in times of emergency.⁷ The question of an emergency constitution was raised during the Hurricane Katrina crisis.⁸ Facing the government’s response to the COVID-19 pandemic, the question should be revisited: Should there be an emergency constitution that suspends civil liberties during emergencies?

In assessing the constitutionality of Gov. Edwards’s stay-at-home Order, it must be determined whether there is a constitutional right to intrastate travel. If such a right exists, we can evaluate how the Order stacks up against a constitutional standard. If there is a constitutional violation, we can ask whether it is permissible to suspend rights under the concept of an emergency constitution.

A Fundamental/ Constitutional Right to Intrastate Travel?

First, it is helpful to provide an overview of the constitutionality of the “right to travel” in general. Over the years, the U.S. Supreme Court has stated that the right to travel is fundamental, but has viewed this in many different ways, depending on the context of the case.⁹ In doing so, the Court has *not* provided a broad-based, all-encompassing, comprehensive right to travel.¹⁰ While many of the Court’s decisions related to the right to travel apply to legal issues that are relevant to the COVID-19 pandemic, several are outside the scope of this article.

Does a Person Have the Right to Travel Among States?

The Supreme Court has stated on several occasions that there is a fundamental right to *interstate* travel.¹¹ In *Saenz v. Roe*,¹² Justice John Paul Stevens, writing for the majority, stated that the Constitution protects three aspects of interstate travel: 1) the right to enter one state and to leave another (historically protected in the Articles of Confederation); 2) the right to be treated as a welcomed visitor, rather than a hostile stranger (protected by the Privileges and Immunities Clause in Article IV, §2); and 3) the right for permanent residents in a state to be treated equally to native-born citizens (protected by the 14th Amendment’s Privileges and Immunities Clause).¹³ Further, in *Shapiro v. Thompson*,¹⁴ the Court recognized that both the nature of the Federal Union and the constitutional concept of personal liberty require that all citizens have an unfettered right to travel through the “length and breadth of our land uninhibited by statutes, rules, or regulations which unreasonably burden or restrict this movement.”¹⁵

Does a Person Have the Right to Travel Within a State?

One might logically conclude that the right to interstate travel implies or requires the right to intrastate travel. However, the Supreme Court has not clearly stated this. In *Bray v. Alexandria*

Women’s Health Clinic,¹⁶ the Court considered whether anti-abortion protesters who obstructed abortion clinics violated the Civil Rights Act of 1871 by conspiring to deprive women seeking abortions of their right to interstate travel. The Court concluded that the activities of Operation Rescue only restricted intrastate travel, noting that “intrastate travel is devoid of constitutional protection.”¹⁷ Some note that “the Supreme Court has expressly declined to rule on [the intrastate travel] issue, although in *Bray*, the Court indicated that the right [to travel] may be confined solely to interstate travel.”¹⁸

Thus, the Supreme Court has never expressly declared that intrastate travel is a fundamental right,¹⁹ leaving the issue to interpretation by the federal Circuit Courts.²⁰ Some Circuit Courts contend that the rights to interstate and intrastate travel are so interrelated that the constitutional source applies to both.²¹ However, others have rejected this conclusion.²² This split in case law leaves open the question: Is the right to intrastate travel a fundamental or constitutional right? It has been suggested that, for various legal and policy reasons, the answer should be, “yes.”²³

One Circuit Court presented a comprehensive analysis of Supreme Court travel-related cases and made a compelling argument for a fundamental right to intrastate travel.²⁴ The 3rd Circuit, in *Lutz v. York*, held that the Due Process Clause established a fundamental substantive due process right to localized intrastate travel. In *Lutz*, the plaintiffs challenged a city ordinance outlawing “cruising,” on the grounds that such a statute violated their constitutional right to travel. Stating that “dicta from the recent [Supreme Court] travel cases is largely unhelpful on this score,” the 3rd Circuit discussed several justifications for the right to travel precedent and noted that a “right of localized intrastate movement” could only derive from the Due Process Clause of the Constitution.²⁵ Adopting Justice Scalia’s “narrowest” concept of substantive due process advanced in *Michael H. v. Gerald D.*,²⁶ the 3rd Circuit concluded that “the right to move freely about one’s neighborhood or town, even by automobile,

is indeed” a substantive due process right.²⁷ However, the 5th Circuit drew a different conclusion in the context of a state of emergency.

Does a Person Have the Right to Travel Within a State During an Emergency?

Relative to its response to the COVID-19 pandemic, the government can learn a lot from its response to Hurricane Katrina in 2005. One key case, *Dickerson v. City of Gretna*,²⁸ speaks to the right to travel during an emergency following the controversial City of Gretna Police Department’s barricade of the Crescent City Connection Bridge. That barricade denied pedestrians the ability to comply with a mandatory evacuation order to leave the flooding of New Orleans during Katrina.²⁹ Hundreds of those who were denied the right to travel sued the City of Gretna in federal district court, claiming, *inter alia*, a violation of their constitutional rights to travel from New Orleans to a neighboring parish. The District Court denied this claim, noting that the U.S. Supreme Court had not decided whether the Constitution protects a right to intrastate travel³⁰ and relying on the U.S. 5th Circuit’s decision in *Wright v. City of Jackson*.³¹ The plaintiffs appealed this interim ruling to the 5th Circuit, which upheld it.

As noted, the *Dickerson* court relied on *Wright v. City of Jackson*, which affirmed the dismissal of Jackson, Miss., firefighters’ complaint that the city’s residency requirement abridged their fundamental right to intrastate travel. The *Wright* court stated that “nothing in *Shapiro* or any of its progeny stands for the proposition that there is a fundamental constitutional ‘right to commute’ which would cause the compelling government purpose test in *Shapiro* to apply.”³² Through a narrow interpretation of the right to travel, the 5th Circuit, in both *Wright* and *Dickerson*, effectively rejected the claim that there was a constitutionally protected right to intrastate travel.

In summary, within the jurisdiction of the U.S. 5th Circuit (Louisiana, Mississippi and Texas), there is no right to travel *within* a given state. The 5th

Circuit’s decisions reference a lack of any Supreme Court decision expressly providing for a right to intrastate travel. Although this is a reasonable, principled approach in use of precedent, some would argue that it is illogical; clearly, past Supreme Court decisions have *implied* that there is a right to intrastate travel. It would have been just as correct for the 5th Circuit to read between the lines, to err on the side of finding such a right, as did the 3rd Circuit.³³

Yet, the 5th Circuit’s opinions denying a right to intrastate travel are not conclusive. That authority is in the hands of the Supreme Court. Until that Court decides one way or another, one within the state of Louisiana must assess the Order from the current 5th Circuit decisions denying a fundamental or constitutional right to intrastate travel. However, if the Supreme Court were to decide that this is a constitutional right, then Gov. Edwards’s Order would have to meet a rational-basis test.³⁴

The Constitutionality of Louisiana’s Stay-at-Home Order

Does Gov. Edwards’s Order violate the U.S. Constitution? To answer this question, we will conduct two lines of analysis: the first using the 5th Circuit’s interpretation that there is *no* right to intrastate travel, and the second using the proposition that such a right *does* exist. Under the first line of analysis, in light of the 5th Circuit decisions, the Governor’s Order has a low constitutional hurdle to overcome. If there is no right to intrastate travel, the Order is valid and does not violate the U.S. Constitution.

Under the second line of analysis, the Governor’s Order must meet rational-basis scrutiny.³⁵ We must ask: Is the Order, along with its underlying statutory authority, tailored to achieve its stated goal to address a public health crisis, with minimal impact on people’s right to intrastate travel? The enabling statute leaves room for concern due to its breadth: during a public health emergency, the Governor is authorized to control “ingress and egress to and from

a disaster area, the movement of *persons* within the area, and the occupancy of premises therein”³⁶ (emphasis added). This language is open-ended and could be interpreted to apply to *all movement*, including that for protected purposes, such as travel to attend worship or to exercise the right to vote. Further, the term “persons” is not specifically defined in this part of the statute. If the restriction applied to emergency, health and public safety personnel, it would defeat the stated purpose of the Order, which is to protect public health and safety. Additionally, the statute might apply to citizens of other states, which might violate the right to interstate travel.³⁷ Therefore, the enabling authority appears to be constitutionally suspect.

However, in light of the state’s need to address public health and safety, we must consider: Does the Order itself violate the right to intrastate travel? Under the rational-basis test, the first question is this: is the scope of the Order too broad, when it expressly applies to “all individuals within the state of Louisiana”? The Order might run afoul of the protected right to *interstate* travel, as it restricts the ability of citizens of states other than Louisiana to travel to their home state or to other states, under the Privileges and Immunities and Commerce Clauses.³⁸

This leads to the second question under the rational-basis test: Is the Order too restrictive, so as to absolutely prohibit travel by everyone? In its language, the Order does not violate constitutional rights. Mindful of the need for certain classes of persons to perform essential tasks, the Order expressly provides a notable exception, that is, “unless [a person is] performing an essential activity.”³⁹ An open-ended travel restriction reasonably allows for practical exceptions and supports compliance with rational-basis scrutiny.

Parenthetically, the Order does not speak to the unique challenges that vulnerable members of our community face. The stay-at-home directive is nonsensical to unsheltered, homeless people who have no place to stay.⁴⁰ Further, it does not speak to other at-risk populations for whom the Order very

likely increases their risk of contracting COVID-19, including prisoners who generally are not permitted the luxury of social distancing⁴¹ and undocumented immigrants in ICE custody.⁴²

In summary, despite the broad authority provided in the enabling statute, Gov. Edwards's Order meets both the 5th Circuit standard and the rational-basis test. The Order is a measured, reasonable response to a public health emergency. Louisiana's stay-at-home Order meets the rational-basis test: it is not an overbroad means to achieve its stated purpose, and it provides notable exceptions that respect people's right to intrastate travel. By comparison, there are other jurisdictions whose travel restrictions might come closer to infringing on civil liberties when they are accompanied by strict civil and criminal penalties.⁴³

Conclusion

When there is a severe health care emergency, as that of the current COVID-19 pandemic, the government may decide to restrict people's intrastate travel as a strategy to save lives by controlling the spread of a deadly virus. In doing so, the government should take careful measures to minimize its infringement and tread lightly, mindful of our civil liberties. Gov. John Bel Edwards should be commended on his administration's sensitivity to the Constitution. Louisiana's Order is a model for the nation.

FOOTNOTES

1. See State of La., Executive Dept., Proclamation No. 25 JBE 2020, "Public Health Emergency- COVID-19" (March 11, 2020), <http://gohsep.la.gov/portals/0/News/25-JBE-2020-COVID-19.pdf>.

2. See generally La. Dept. of Health, Public Health, Coronavirus (COVID-19), <http://ldh.la.gov/coronavirus/>.

3. See State of La., Executive Dept., Proclamation No. 33 JBE 2020, "Additional Measures for COVID-19 Stay at Home" (March 22, 2020), <https://gov.louisiana.gov/assets/Proclamations/2020/JBE-33-2020.pdf>. It took effect on Monday evening, March 23, 2020.

4. See La. R.S. 29:766 D(7).

5. The "right to intrastate travel" is defined as travel within a state. See generally Mitchell F.

Crusto, "Enslaved Constitution: Obstructing the Freedom to Travel," 70 U. Pitt. L. Rev. 233 (2008).

6. "Interstate travel" is defined as travel among the states, that is, from one state to another state. See, Saenz v. Roe, 526 U.S. 489 (1999).

7. The debate followed the 911 attacks on the World Trade Centers and the enactment of the PATRIOT Act. See, e.g., Amanda L. Tyler, "Suspension as an Emergency Power," 118 Yale L.J. 600, 694 (2008), and Bruce Ackerman, Essay, "The Emergency Constitution," 113 Yale L.J. 1029 (2004).

8. See, e.g., Mitchell F. Crusto, "State of Emergency: An Emergency Constitution Revisited," 61 Loy. L. Rev. 471 (2015) (recommending that the emergency statutes of state governments be amended to expressly protect civil liberties during emergencies).

9. See, generally *supra*, note 6, Saenz v. Roe.

10. See Memorial Hosp. v. Maricopa County, 415 U.S. 250, 255-56 (1974).

11. See *supra*, note 8.

12. 526 U.S. 489 (1999).

13. *Id.* at 500.

14. 394 U.S. 618 (1969).

15. *Id.* at 629.

16. 506 U.S. 263 (1993).

17. Gregory B. Hartch, "Comment, Wrong Turns: A Critique of the Supreme Court's Right to Travel Cases," 21 Wm. Mitchell L. Rev. 457, 465 (1995).

18. "Search and Seizure-Automobile Exception-Search of Passengers' Belongings," 113 Harv. L. Rev. 255, n.59 (1999).

19. Kathryn E. Wilhelm, Note, "Freedom of Movement at a Standstill? Toward the Establishment of a Fundamental Right to Intrastate Travel," 90 B.U.L. 2461, 2463 (2010).

20. Nicole I. Hyland, "Note, On the Road Again: How Much Mileage is Left on the Privileges or Immunities Clause and How Far Will It Travel?," 70 Fordham L. Rev. 187 (2001).

21. See *supra*, note 17, at 470.

22. See *infra*, note 24, and *supra*, note 19.

23. Kia Rahnama, "The Right to Move Freely: How We Lost It, and Why It Matters," Slate (Jan 13, 2020, 9 a.m.), <https://slate.com/news-and-politics/2020/01/right-to-free-movement.html>.

24. Lutz v. York, 899 F.2d 255 (3 Cir. 1990).

25. *Id.* at 259.

26. *Id.*, (citing 491 U.S. 110 (1989), that the Due Process Clause substantially protected unenumerated rights "so deeply rooted in the traditions and conscious of our people as to be ranked as fundamental.")

27. 899 F.2d at 268.

28. 2007 U.S. Dist. LEXIS 29460 (E.D. La. March 30, 2007). Or, No. 05-6667, 2007 WL 1098787, at *1-3 (E.D. La. March 30, 2007).

29. *Id.* See also Mitchell F. Crusto, *Involuntary Heroes: Hurricane Katrina's Impact on Civil Liberties*. Durham, N.C.: Carolina Acad. Press, (2015).

30. *Id.* at *5, 11.

31. 506 F.2d 900 (5 Cir. 1975).

32. *Id.*

33. See *supra* note 24.

34. Lutz, 899 F.2d at 256.

35. To pass the rational-basis test, the statute or ordinance must have a legitimate state interest,

and there must be a rational connection between the statute or ordinance's means and goals. http://www.law.cornell.edu/wex/rational_basis_test.

36. La. R.S. 29:766 D(7).

37. See *supra* Part II, B.

38. Lutz, 899 F.2d at 262.

39. See *supra*, note 3. The Louisiana declaration lists six such activities: 1) obtaining food, medicine or other similar goods, 2) obtaining non-elective medical care and treatment, 3) going to and from an individual's workplace to perform a job function necessary to provide goods or services . . . or otherwise deemed essential worker functions, 4) going to and from the home of a family member, 5) going to and from an individual's place of worship, or 6) engaging in outdoor activity, provided individuals maintain a distance of six feet from one another and abide by the 10-person limitation on gathering size.

40. See generally CDC, "Interim Guidance for Responding to Coronavirus Disease 2019 (COVID-19) among People Experiencing Unsheltered Homelessness," <https://www.cdc.gov/coronavirus/2019-ncov/community/homeless-shelters/unsheltered-homelessness.html>.

41. See, e.g., Paige St. John, "Prison Lawyers Seek Emergency Order on Coronavirus, including Release of Inmates," L.A. Times (March 25, 2020 8:57 p.m.), <https://www.latimes.com/california/story/2020-03-25/prison-lawyers-emergency-order-releases-coronavirus>.

42. See, e.g., Ariane de Vogue, "Federal Judge Orders Release of Some Immigrants in Detention due to Coronavirus Outbreak, Blasts ICE," CNN.com (last updated March 27, 2020, 1:54 p.m.), <https://www.cnn.com/2020/03/27/politics/ice-release-immigrants-in-detention-coronavirus/index.html>.

43. The City of El Paso, Texas, established civil penalties, a misdemeanor, with a fine up to \$1,000 and up to 180 days in jail, in an otherwise reasonable "stay home, work safe" order, which excludes essential personnel. See Aaron Montes, "El Paso Officials Issue 'Stay Home, Work Safe' Order to Battle the Spread of Coronavirus," El Paso Times (last updated March 24, 2020, 6:29 p.m.), <https://www.elpasotimes.com/story/news/2020/03/24/el-paso-considering-shelter-in-place-to-slow-coronavirus/2905827001/>.

Mitchell F. Crusto is the Henry F. Bonura, Jr.

Distinguished Professor of Law at Loyola University New Orleans College of Law. He joined the faculty in 1995. He received a JD degree from Yale Law School and a MA degree from Oxford University (Marshall Scholar).

Following law school, he served as a law clerk to Judge John Minor Wisdom of the U.S. 5th Circuit Court of Appeals. He also served as the associate deputy administrator for the U.S. Small Business Administration. Special thanks to Loyola law students Lindsey Freihoff and Emily Welch. (mfcrus-to@loyno.edu; 7214 St. Charles Ave., Box 901, New Orleans, LA 70118)



Cursory Review of the Remote Online Notarization Procedures Included in Emergency Proclamation 37-JBE-2020:

What They Authorize, and More Importantly, What They Don't

By Justin B. Schmidt and Richard G. Passler

During mandated social distancing in Louisiana, “The pen [stroked before a notary and two witnesses, still appears to be] mightier than the sword.”

With the announcements of extended stay-at-home and/or social distancing orders, it appears that we will need to continue to adapt to life with little or no personal contact. Of course, some of life’s necessary activities such as doctors’ appointments and certain business and legal transactions still require a minimum amount of face-to-face contact with others. In Louisiana, these include the execution of certain types of testamentary instruments and transactions involving immovable (real) property, where the operative documents are required to be in a certain form and executed *in the presence* of witnesses and a notary public.

This article is not intended to comprehensively address all of the laws surrounding electronic signatures in Louisiana (as may be temporarily modified by the Governor through his various emergency proclamations and executive orders), but instead is written to serve as a practitioner’s guide to assist with the continued practice of law during the current pandemic.

The statutory framework authorizing electronic or “e-signatures” in Louisiana is found in the Uniform Electronic Transactions Act (UETA).¹ The UETA is based on the Uniform Electronic Transactions Act (1999) by the National Conference of Commissioners on Uniform State Laws, which has been adopted by 47 states. The UETA also follows the Electronic Signatures in Global

and National Commerce Act, also known as the “E-Sign Act,” which is the UETA’s federal corollary.²

La. R.S. 9:2607 states:

(a) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.

(b) A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.

(c) If a law requires a record to be in writing, an electronic record satisfies the law.

(d) If a law requires a signature, an electronic signature satisfies the law.

La. R.S. 9:2603(b) makes the UETA applicable to all electronic records and electronic signatures relating to a transaction, *except*:

(1) A transaction to the extent it is governed by a law governing the creation and execution of wills, codicils, or testamentary trusts.

(2) A transaction to the extent it is governed by the provisions of Title 10 of the Louisiana Revised Statutes of 1950, other than R.S. 10:1-107. . . .

(4)(a) A law governing adoption, divorce, or other matters of family law, with the exception of a temporary restraining order issued pursuant to Domestic Abuse Assistance, R.S. 46:2131 et seq., or Protection from Dating Violence Act, R.S. 46:2151.

(4)(b) Any notice of any of the following:

(i) The cancellation or termination of utility services, including water, heat, and power.

(ii) Default, acceleration, repossession, foreclosure, or eviction, or the right to cure, under a credit agreement secured by, or a rental agreement [lease] for, a primary residence of an individual.

(iii) The cancellation or termination of health insurance or benefits or life insurance benefits, excluding annuities.

(iv) Recall of a product, or material failure of a product that risks endangering health or safety.

(4)(c) Any document required to accompany any transportation or handling of hazardous materials, pesticides, or other toxic or dangerous materials.

(4)(d) Publications required by law to be published in the official journals provided for in Chapter 2, 4 or 5 of Title 43 of the Louisiana Revised Statutes of 1950.

La. R.S. 9:2603(D) also provides: “A transaction subject to this Chapter is also subject to other applicable substantive law.”

La. R.S. 9:2611 reiterates one of the major exceptions set forth in section 2603(B), by restating: “If a law requires a signature or record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record.”

What does this mean? What is an example of “other applicable substantive law?” What exactly constitutes the universe of

“all other information required to be included by the other applicable law” that is required to be “attached to or logically associated with the signature or record?” More problematic, although technically not part of the law, is the somewhat gratuitous official comment following section 9:2611 that states: “This Section does not provide any guidance for how electronic notarization can be achieved.” If we can’t look to this provision in the UETA, where should we look?

Louisiana Civil Code article 1833 defines “authentic act” as “a writing executed before a notary public . . . in the presence of two witnesses, and signed by each party who executed it, by each witness, and by each notary public before whom it was executed.” The authentic act is the preferred form of conveyance for real estate practitioners.

When reading La. R.S. 9:2611 in conjunction with article 1833, it is safe to say that the signatures of two qualified witnesses and a duly commissioned notary public who personally witnessed the appearer sign the document are examples of “other information required to be included by the other applicable law” (here, La. Civ.C. art. 1833) to be “attached to or logically associated with the signature or record.”

This conclusion appears to have been confirmed by the Louisiana 1st Circuit in *Eschete v. Eschete*, where that appeals court affirmed the trial court’s invalidation of an *inter vivos* donation of an immovable property³ interest when the donor did not actually sign the act of donation in the physical presence of both witnesses, although one of the witnesses was merely 12 feet away in the copy room making copies and came back into the signing room immediately after the donor had signed.⁴ Accordingly, under normal conditions, following *Eschete*, the UETA, by itself, would not grant any relief to this failed authentic act even under these times of mandated physical separation.

Notwithstanding the exceptions in section 2603(b) of the UETA and the substantive law regarding authentic acts that the *Eschete* court acknowledged, Gov. John Bel Edwards recognized that the local- and state-mandated home-isolation orders would present significant barriers to the continuation of commerce. Thus, like many other governors around the country, and with the intent of keeping businesses running as best as possible under the

present conditions, he signed Emergency Proclamation No. 37-JBE-2020 (EP 37),⁵ which, in addition to addressing other measures in response to the threats posed by COVID-19, declared in Section 6:

(A) During this emergency, a regularly commissioned notary public who holds a valid notarial commission in the state of Louisiana, including a person who is licensed to practice law and commissioned by the Secretary of State, may perform notarization for an individual not in the physical presence of the notary public if:

(1) the individual, any witnesses and the notary public can communicate simultaneously by sight and sound through an electronic device or process at the time of the notarization;

(2) the notary public:

(a) has reasonably identified the individual; and

(b) either directly or through an agent:

(i) creates an audio and visual recording of the performance of the notarization, and

(ii) retains such recording as a notarial record for at least 10 years from the date of execution unless a law of the State requires a different period of retention, and if any laws of the State govern the content, retention, security, use, effect, and disclosure of such recording and any information contained therein such recording shall be subject thereto.

(c) The person appearing, all witnesses and the Notary Public can affix their digital signatures to the act in a manner that renders any subsequent change or modification of the remote online notarial act to be evident.

(B) If a State law requires an individual to appear personally before or be in the physical presence of a notary public at the time of a notarization, that requirement shall be satisfied if the individual and the notary public are not in the physical presence of each other but can communicate simultaneously by sight and sound through an electronic device or process at the time of the notarization; except for the laws pertaining to testaments, trust instruments, donations *inter vivos*, matrimonial agreements,

acts modifying, waiving or extinguishing an obligation of final spousal support and authentic acts.

(C) During this emergency, the recorder (as used in La. Civ.C. art. 3344) shall not refuse to record a tangible copy of an electronic record on the ground that it does not bear the original signature of a person if a notary public or other officer before whom it was executed certifies that the tangible copy is an accurate copy of the electronic record.

EP 37(8) further stated that its provisions were “effective retroactively to the beginning of this emergency on Wednesday, March 11, 2020, to Monday, April 13, 2020;” they were extended to April 30, 2020, by Emergency Proclamation No. 40-JBE-2020(5)(C) (EP 40).⁶

For the month of April, it appears that EP 37 and EP 40 provided some relief to the execution of notarized documents that the substantive law requires be executed before a notary public (with or without witnesses), except for those documents specifically excluded in EP 37(6)(B) and EP 40(5)(C)(2), namely “testaments, trust instruments, donations *inter vivos*, matrimonial agreements, acts modifying, waiving or extinguishing an obligation of final spousal support and authentic acts,” including authentic acts purporting to convey real property.

Louisiana Civil Code article 1839 provides that “transfer of immovable property must be made by authentic act *or* by act under private signature.”⁷ Louisiana Civil Code article 1836 states that “[a]n act under private signature is regarded prima facie as the true and genuine act of a party executing it when his signature has been acknowledged, and the act shall be admitted in evidence without further proof.” It provides that the act “may be acknowledged by a party to that act by recognizing the signature as his own before a court, or before a notary public, or other officer authorized to perform that function, in the presence of two witnesses” or “in any other manner authorized by law.”

There it is! Because Civil Code article 1839 allows for the transfer of real property by “authentic act or by an act under private signature” and the emergency proclamations exclude only authentic acts

and are otherwise silent as to acts passed under private signature, it appears that the proclamations at least temporarily facilitated Remote Online Notarization, where all of the parties to the act, including the appearers, the witnesses and the notary public, need not be physically in the presence of one another, so long as:

(1) the appearers, “any witnesses and the notary public can communicate simultaneously by sight and sound through an electronic device or process at the time of the notarization;”

(2) the notary has reasonably identified the parties executing the document; and

(3) the notary public either directly or through an agent creates an audio and visual recording of the notarization, and keeps the recording as a notarial record for at least 10 years from the date of execution unless a state law requires a different retention period.

With respect to the transfer of real property, it appears that even though Civil Code article 1836 stipulates that “acts under private signature may be acknowledged by a party to that act by recognizing the signature as his own before a court, or before a notary public . . . in the presence of two witnesses,” EPs 37(6)(A) and 40(5)(1) dispose of the requirement of a “physical presence” for acts under private signature, which is not later excluded in Section 6(B) of EP 37 or Section 5(2) of EP 40.

Although EPs 37 and 40 may provide a work-around to the strict requirements of authentic acts through the use of an act under private signature when handling the transfer of immovable property, it does not address the practical reality that, in the majority of transfers of immovable property, the sale of immovable property, be it vacant land or land with a home or commercial building on it, typically also includes some type of financing where a mortgage is granted to secure the financing used for the acquisition, such as a purchase-money mortgage.

Louisiana Civil Code Art. 3287, Conventional Mortgage, states: “A conventional mortgage may be established only by written contract. No special words are necessary to establish a conventional mortgage.” Civil Code art. 3288 sets forth the requirements of a contract of mortgage, specifically that “a contract of mortgage must state precisely the nature and situation of each of the immovables or other property over which it is granted; state the amount of the obligation, or the maximum

amount of the obligations that may be outstanding at any time and from time to time that the mortgage secures; and be signed by the mortgagor.”

These two code articles and the subsequent articles in this chapter of the Civil Code are silent as to the “form” of a mortgage and do not require that a mortgage be in the “authentic” form required of Civil Code art. 1833.

However, although many lenders, especially those issuing second mortgages or home equity lines of credit secured by a mortgage on their borrower’s principal residence, have dispensed with the practice of requiring that the mortgage granting the lender security for its loan be in the form of an authentic act in order to compete with other nontraditional lenders entering the market, lenders/mortgagees should remember that in order to avail themselves of executory process, the security instrument must be in authentic form.

Louisiana Code of Civil Procedure Art. 2631, Use of Executory Proceedings, states: “[E]xecutory proceedings are those which are used to effect the seizure and sale of property, without previous citation and judgment, to enforce a mortgage or privilege thereon *evidenced by an authentic act* importing a confession of judgment, and in other cases allowed by law” [emphasis added].

Attorneys should know the implications of accepting a mortgage that is not in authentic form and explain the same to the lender so the lender can conduct the standard cost-benefit analysis weighing the benefits of getting a mortgage that is not in authentic form quickly and efficiently, with the downside risk of not being able to avail the lender with a fast-track foreclosure through the use of executory process.

Conclusion

It is important to point out to those individuals who take advantage of these relaxed signing procedures during this current state of emergency that the emergency proclamations do place a few “elephants in the closing room.”

First and foremost, Section 6(A)(2)(a) (ii) of Emergency Proc. No. 37-JBE-2020 requires the notary public conducting the remote online notarization to retain the video recordings of the remote signing “as a notarial record for *at least 10 years* from the

date of execution unless a law of the State requires a different period of retention, and if any laws of the State govern the content, retention, security, use, effect, and disclosure of such recording and any information contained therein such recording shall be subject thereto.”

Second, while many other states around the country have passed legislation adopting remote online notarization in similar form and condition to those set forth in the emergency proclamations, to date, the Louisiana Legislature has been slow (and possibly reluctant) to adopt the procedure on a permanent basis. But two bills addressing remote online notarization are pending in the Louisiana Legislature (House Bill No. 122 by Rep. Gregory Miller and House Bill No. 274 by Rep. Raymond E. Garofolo, Jr.).

FOOTNOTES

1. La. R.S. 9:2601-2621, enacted in 2001.

2. 15 U.S.C. § 7001-7031, enacted in 2000.

3. Louisiana Civil Code art. 1541 mandates that a “donation *inter vivos* shall be made by authentic act under penalty of absolute nullity, unless otherwise expressly permitted by law.”

4. 10-2059 (La. App. 1 Cir. 2/27/14), 142 So.2d 985.

5. <https://gov.louisiana.gov/assets/Proclamations/2020/37-JBE-2020-Provision-for-First-Responder-Rulemaking.pdf>.

6. <https://gov.louisiana.gov/assets/Proclamations/2020/41-JBE-2020-Stay-At-Home-Extended.pdf>. The provisions of Section 6 of EP 37 and Section 5(C) of EP 40 are virtually identical.

7. Emphasis added.

Justin B. Schmidt is a partner in the New Orleans office of Breazeale, Sachse & Wilson, L.L.P. His principal area of practice is centered in real estate where he focuses on land use and a variety of zoning-related matters. He also has 20 years of experience in commercial transactions, mortgage lending and other types of financing, real and personal property tax issues, and landlord/tenant negotiations. (justin.schmidt@bswllp.com; Ste. 1500, 909 Poydras St., New Orleans, LA 70112)



Richard G. Passler is a partner in the New Orleans office of Breazeale, Sachse & Wilson, L.L.P. For 25 years, his practice has focused on complex commercial litigation with extensive experience in healthcare-related litigation, admiralty/maritime matters and governmental ethics issues. (rgp@bswllp.com; Ste. 1500, 909 Poydras St., New Orleans, LA 70112)



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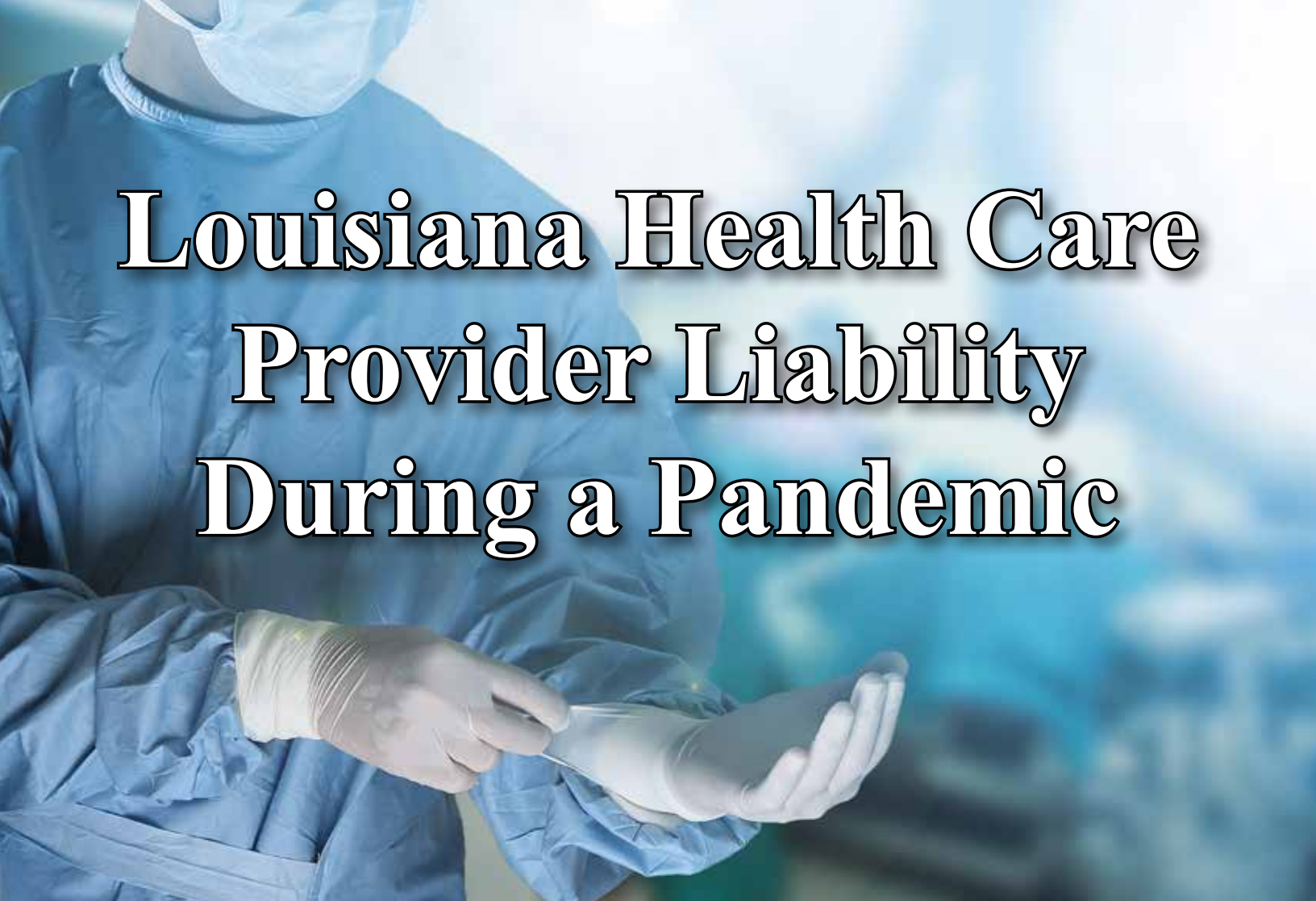
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Louisiana Health Care Provider Liability During a Pandemic

By L. Adam Thames

Hospitals and individual health care providers have faced, and overcome, many obstacles in caring for patients during the coronavirus pandemic. The complexities of treating this novel disease, coupled with, in some instances, the lack of access to direct medical care for those suffering from unrelated conditions, raise many liability questions for health care providers and their insurers. While the Louisiana Medical Malpractice Act imposes a statutory cap on a qualified health care provider's financial exposure for professional negligence, Louisiana law further insulates health care providers from civil liability when medical treatment is provided during the course of a public health emergency.

The Louisiana Health Emergency Powers Act, La. R.S. 29:760, *et. seq.*

(LHEPA), allows the governor to declare a state of public health emergency if he or she determines, after consultation with public health authorities, that an occurrence or imminent threat of an illness is believed to be caused by the appearance of a novel infectious disease that poses a high probability of a large number of deaths, serious or long-term disabilities and/or widespread exposure to an infectious agent that poses significant risk of substantial harm to a large number of people.¹ As a general rule, Louisiana law places civil liability on health care providers when they fail to exercise reasonable care and skill, along with their best judgment, in treating a patient's condition.² LHEPA, however, provides that, during a state of public health emergency "any health care providers shall not be found civilly liable for causing the death

of, or, injury to, any person or damage to any property except in the event of *gross negligence* or *willful misconduct*."³

Gross negligence is not defined anywhere in LHEPA. The Louisiana Supreme Court has noted that "[g]ross negligence has been defined as the 'want of even slight care and diligence' and the 'want of that diligence which even careless men are accustomed to exercise'." Gross negligence has also been termed the "entire absence of care" and the "utter disregard of the prudence (sic), amounting to complete neglect of the rights of others." Additionally, gross negligence has been described as an "extreme departure from ordinary care or the want of even scant care." "There is often no clear distinction between such [willful, wanton, or reckless] conduct and 'gross' negligence, and the two have tended to

merge and take on the same meaning.”⁴

There is only one reported case concerning the gross negligence standard under LHEPA. In *Lejeune v. Steck*, the trial court found that the plaintiff failed to prove that a spine surgeon leaving a foreign body (*i.e.*, sponge) in his patient during a surgical procedure in the aftermath of Hurricane Katrina rose to the level of gross negligence or willful misconduct.⁵ The patient’s claims were dismissed entirely prior to trial and the ruling was affirmed on appeal.⁶

On March 11, 2020, Louisiana Gov. John Bel Edwards issued Proclamation Number 25 JBE 2020, titled “Public Health Emergency-COVID-19.” The proclamation, citing statistics from multiple world health agencies, declares that the coronavirus is a new respiratory disease that may be spread among the population by various means of exposure, therefore posing a high probability of widespread exposure and a significant risk of substantial future harm to a large number of Louisiana citizens. The Governor’s Order was signed into law on March 11, 2020, and remained in effect through at least May 15, 2020. This Order triggers the immunity protections under LHEPA.

Following Gov. Edwards’ emergency declaration, many health care providers voiced concerns to their local leaders and legislators about the pressures they faced in prescribing certain medications without further proof of its efficacy and side effects. Understandably, many health care providers also questioned whether Louisiana’s immunity laws were as strong as the New York laws that garnered so much attention by the national media during New York Gov. Cuomo’s daily press conferences. On April 7, 2020, Louisiana Attorney General Jeff Landry issued a memorandum to the Louisiana State Board of Medical Examiners addressing those concerns and his opinions on the scope of Louisiana’s immunity laws should be welcomed news to Louisiana health care providers.

Hydroxychloroquine and Zithromax have been pushed aggressively by certain sectors of the government to combat the virus pending a vaccine, but many providers have openly questioned whether

these drugs would be safe and effective in treating patients with this novel disease. Attorney General Landry’s memorandum states that any doctor who prescribes Hydroxychloroquine and Zithromax to patients in Louisiana in connection with the COVID-19 epidemic, and pursuant to FDA approval guidelines, *should* fall within the immunity statutes in Louisiana protecting health care providers from liability, absent “gross negligence.” Attorney General Landry does limit his opinion, to some extent, by stating that the facts and circumstances of each case must still be considered. Attorney General Landry also makes it clear that immunity under Louisiana law does not necessarily protect a provider from federal law claims concerning the use of these medications.

While it may be true that Louisiana law does not insulate a provider from a federal law claim, it is important to note that the U.S. Department of Health and Human Services (HHS) issued a Declaration, effective Feb. 2, 2020, that limited liability for companies and providers engaged in medical countermeasures against this pandemic. Specifically, the HHS Declaration provides “liability immunity to certain individuals and entities (Covered Persons) against any claim of loss caused by, arising out of, relating to, or resulting from the manufacture, distribution, administration, or use of medical countermeasures (Covered Countermeasures), except for claims involving ‘willful misconduct’ as defined in the Public Readiness and Emergency Preparedness Act.” Licensed physicians are included within the definition of “Covered Persons” and, under the HHS Declaration, licensed physicians sued for negligence for allegedly prescribing the wrong dose of a drug to combat COVID-19 is a specific example of an action entitled to immunity. Thus, the HHS Declaration and the Public Readiness and Emergency Preparedness Act may, under certain circumstances, offer protection to Louisiana health care providers on the front lines who are later sued for negligence under federal law.

Attorney General Landry’s memorandum also makes a strong case for why Louisiana immunity laws are actu-

ally more favorable for Louisiana health care providers than those recently put into effect in New York. The differences between Louisiana’s and New York’s immunity laws are subtle but very important. For instance, LHEPA provides that, during a state of public health emergency, “any health care providers shall not be found civilly liable for causing the death of, or, injury to, any person or damage to any property except in the event of gross negligence or willful misconduct.” By comparison, New York’s health care liability law states in pertinent part that, “all physicians, physician assistants, specialist assistants, nurse practitioners, registered nurses, and practical nurses shall be immune from civil liability for any injury or death sustained directly as a result of an act or omission by such medical professional in the course of providing medical services in response to the COVID-19 outbreak, unless it is established that such injury or death was caused by gross negligence.”

While both state laws require a showing of “gross negligence” to prevail in a civil suit, Attorney General Landry’s memorandum makes it clear that Louisiana law protects all health care providers as opposed to only the six categories of health care providers listed in New York’s law. Secondly, Attorney General Landry’s memorandum points out that New York’s law is only triggered by or related to a health care provider’s treatment in response to COVID-19 whereas Louisiana’s law is written more broadly to protect all providers performing any kind of medical treatment during the duration of the public health emergency. Third, Attorney General Landry’s memorandum points out that Louisiana law extends to injury, death and property damage whereas New York’s law only extends to injury or death. Lastly, Attorney General Landry’s memorandum states that any attempt to alter the current immunity statutes, either through statute or executive order, during the course of the public emergency could be challenged as unconstitutional.

What has not been covered as much, but what is equally concerning, is that the stay-at-home orders and governmental mandates to cease all non-emergent care

did delay or otherwise affect medical care for those with many serious conditions unrelated to COVID-19. For example, from March 11 through April 27, 2020, all “elective” surgeries were put on hold; clinic appointments were either canceled or moved to telemedicine; and imaging and test results were delayed. While the reasons for doing so may have been to aid a greater cause, direct patient care for many serious health conditions was adversely affected through no fault of the patients or their health care providers. It is reasonable to assume that some of these patients will not have as good of an outcome as they otherwise would have enjoyed but for this public health emergency. Incidentally, Attorney General Landry’s memorandum recognizes the most important distinction between Louisiana and New York immunity laws, that being that Louisiana provides immunity to all providers treating patients for any condition — not just those treating COVID-19. Attorney General Landry’s opinion is consistent with the only reported decision under LHEPA, *Lejeune v. Steck*,⁸ where the court explained that LHEPA “does not provide for a limited set of health care providers, nor does it limit its application to only those medical personnel rendering emergency assistance voluntarily due to the emergency in the area.”⁷

Louisiana’s Good Samaritan Law, La. R.S. 37:1731, may also shield health care providers from civil liability during this pandemic, but the circumstances and protections are more limited than LHEPA. The statute provides, in pertinent part, that health care providers who in good faith (1) gratuitously render emergency care or services at the scene of an emergency or (2) respond to a life-threatening situation in a hospital or medical facility when their job duties did not require them to respond to such emergency shall not be liable for any civil damages as a result of their negligence in rendering such care or failure to act to provide or arrange for further medical treatment, unless the damage or injury was caused by *willful or wanton misconduct* or *gross negligence*.⁸

Similarly, House Bill 826, an “immunity bill” proposed in the current legis-



lative session, as currently drafted, precludes recovery of civil damages against, among others, a person who gratuitously renders emergency care, first aid or rescue aid relating to COVID-19 unless such damages were caused by gross negligence or willful or wanton misconduct of that person.

Louisiana’s Good Samaritan Law and House Bill 826 (if passed) offer greater protections than normal to health care providers who come to the aid of distressed patients outside of the hospital setting or health care providers who respond to patients facing an emergency in a hospital room or the ICU when it is otherwise outside of their job duties. These limitations of liability for in-patient emergency treatment, however, do not apply to any health care providers who were the attending or consulting providers prior to decline in the patient’s condition which invoked the need for an emergent response.⁹ The hole in those statutes, however, may well be closed by the language in LHEPA that arguably covers all medical care provided by all health care providers.

In sum, the Louisiana Legislature, in particular through LHEPA and the Good Samaritan Law, has gone to great lengths to protect individual health providers who treat patients during this public health emergency. House Bill 826, if passed into law, will further these protections. These “immunity” laws do not prevent a health care provider from being sued in civil court or provide a way to have the case immediately thrown out. However, as explained by the Louisiana Supreme Court and reiterated by Attorney General Landry, absent evidence of an “extreme

departure of ordinary care,” a patient’s medical malpractice claim against a health care provider for treatment rendered for COVID-19, or otherwise during a government-recognized public health emergency, faces an uphill battle in the courts. Lastly, it is important to note that, even if there is a showing of gross negligence, qualified health care providers are still protected by the statutory limits of liability under the Louisiana Medical Malpractice Act.

FOOTNOTES

1. See La. R.S. 29:766(A) and La. R.S. 29:762(12).
2. La. R.S. 9:2794.
3. La. R.S. 29:771(B)(2)(c).
4. *Rabalais v. Nash*, 06-0999 (La. 3/9/07), 952 So.2d 653, 658.
5. 13-1017 (La. App. 5 Cir. 5/21/14), 138 So.3d 1280.
6. *Id.* at 1285.
7. *Id.* at 1283.
8. La. R.S. 37:1731(A)(1)-(2)(a).
9. La. R.S. 37:1731(2)(b).

L. Adam Thames is a partner at Taylor, Porter, Brooks & Phillips, L.L.P., in Baton Rouge and a member of the firm’s Healthcare Practice Team. He devotes a significant portion of his practice to representing physicians, hospitals, dialysis clinics, nurses and other healthcare providers in medical malpractice and other professional liability claims. He has extensive experience litigating class action, products liability, personal injury and insurance defense claims. He is ranked by his peers among the Louisiana Super Lawyers’ “Rising Stars.” (adam.thames@taylorporter.com; 450 Laurel St., Flr. 8, Baton Rouge, LA 70801)



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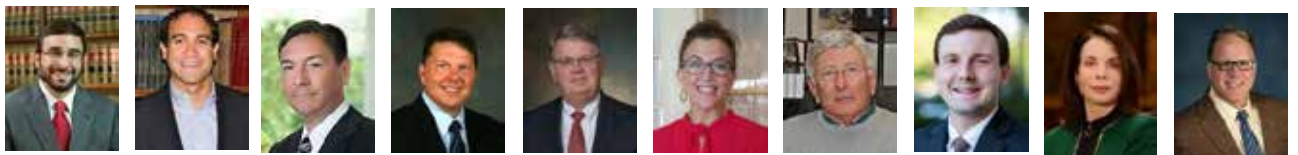
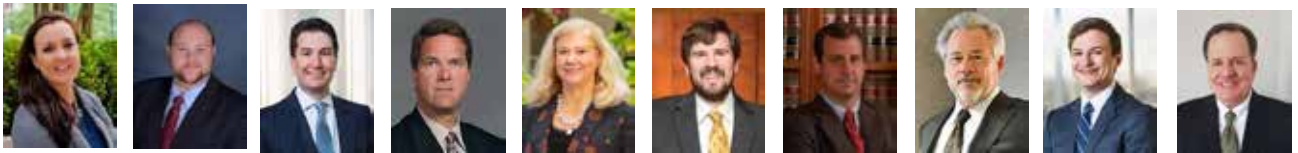
SEPTEMBER 18, 2020 – NEW ORLEANS



Richard J. Arsenault, Seminar Chair

Please join respected members of the Bench and Academia, along with experienced Admiralty practitioners from both sides of the “V” as they provide unique insight into key maritime issues.

Featured Speakers Have Included:



Hon. Jane Triche Milazzo • Hon. John W. deGravelles • Hon. Dee D. Drell
Hon. Daniel E. Knowles III • Hon. Jay Zainey • Hon. Richard T. Haik, Sr. (ret.)
Prof. Tom Galligan • Lindsey Cheek • Dustin Carter • Blake David
Jeff Tillery • Darleen Jacobs • J. Neale deGravelles • Steve Herman • Alan Breaud
Jerome Moroux • Jean Paul Overton • Richard T. Haik, Jr. • J. Christopher Zainey, Jr.
Kenneth Engerrand • Wesley J. Gralapp • Richard Stanley • Peggy Giglio • Leslie Schiff
Chase Gore • Lynn Luker • Michael S. Koch • John Yadamec •
J. Michael Veron • Special Master Gary Russo • Val Exnicios • Hal Broussard
Charles Plattsmier • Ginger Susman • Scott Freeman • Blake Deady • Will Shapiro
Judge Carl Barbier • Prof. Martin Davies • Prof. Nick Davrados • Judge Eldon Fallon
Prof. Robert Force • Judge Glenn Norton • Prof. Dean Sutherland

For more information and to register online, please visit: www.lsba.org/CLE

Deadline Extended to Aug. 1 for Payment of 2020-21 LSBA Dues, LADB Assessment

Due to the COVID-19 pandemic and its impact, the Louisiana Supreme Court and the Louisiana State Bar Association (LSBA) have extended the deadline for payment of the 2020-21 LSBA dues and the Louisiana Attorney Disciplinary Board (LADB) assessment and filing of the Attorney Registration Statement and the Louisiana Supreme Court Trust Account Disclosure and Overdraft Notification Authorization Form. The new deadline is Aug. 1, 2020. Postcards mailed to all Louisiana lawyers in May reflected the due date of Aug. 1 rather than the usual July 1.

New for this year's dues cycle is the category of emeritus status for lawyers who only handle pro bono work or uncompensated work for family members (both subject to certain guidelines and restrictions) and who meet age and practice criteria. Prior to making the dues and assessment payments, lawyers should review the emeritus status guidelines and restrictions for possible election. Review the "Emeritus Status Guidelines and Restrictions and Notice of Application" at: www.lsba.org/Members/EmeritusStatus.aspx.

LSBA members have the option to pay their LSBA dues and LADB assessment by ACH electronic check, credit card, or download and mail their Attorney Registration Statement and checks for the payment of fees. Members are encouraged to pay and file electronically, as this access will be available 24/7, including times when the Bar Center is closed or if mail service is disrupted due to inclement weather. Further, electronic payment gives members more control over their information in the database and allows for more timely updates to their member records. To complete and file Attorney Registration

Statements and pay annual dues and the assessment online, go to: www.lsba.org/goto/MemberDues.

Filing electronically can be a quick and simple process, utilizing the online member accounts that participants have relied on for years to register for CLE seminars and to access Fastcase. If an attorney has not yet set up a member account, one can easily be created at: www.lsba.org/Members/memberaccts.aspx. This webpage also allows members to edit their existing accounts and reset a lost or forgotten account password.

After member data is confirmed but before the payment/filing process begins, members will be advised that they also need to go to www.LADB.org to complete the Louisiana Supreme Court Trust Account Disclosure and Overdraft Notification Authorization Form and will be asked to confirm that they understand this requirement.

The collection schedule will be the same as in prior years. In lieu of mailing a statement to each member, in mid-May, the LSBA will mail to each member a postcard, which will provide instructions to go online to www.LSBA.org to complete the registration process, and to go online to www.LADB.org to complete the Trust Account Form. ***This is the only mailing members will receive prior to the Aug. 1, 2020, extended due date; attorney registration statements will NOT be mailed.***

With the email address, compliance@lsbmembership.com, the LSBA will email reminders throughout the dues collection period. Members are encouraged to add this email address to their contact list to avoid missing important communications. Members should not reply to this email address, but rather direct questions to processing@lsba.org.

Once members have electronically filed their Attorney Registration Statements (including any necessary changes and/or updates) and made the required payments, they will receive email confirmations. The filing and payment deadline has been extended to Aug. 1. The LSBA will continue to mail delinquency and ineligibility notices to those who fail to meet the deadlines.

Members who elect to pay by electronic check will continue to pay the following fees:

- ▶ LSBA dues (practicing more than three years): \$200;
- ▶ LSBA dues (emeritus status): \$100; and
- ▶ LSBA dues (practicing three years or less): \$80;
- ▶ LADB assessment (practicing more than three years): \$235;
- ▶ LADB assessment (emeritus status): \$117.50; and
- ▶ LADB assessment (practicing three years or less): \$170.

Those who are planning to pay by electronic check should contact their financial institutions to confirm that their accounts allow payment by this method. If your account is Positive Pay Protected, update the Company ID 1016207445.

As was the case last year, processing fees of 3%, plus a .20 transaction fee, will be passed along to those choosing to pay by credit card. Total amounts, including credit card processing fees, are as follows:

- ▶ LSBA dues (practicing more than three years): \$206.20;
- ▶ LSBA dues (emeritus status): \$103.20; and
- ▶ LSBA dues (practicing three years or less): \$82.60;
- ▶ LADB assessment (practicing more than three years): \$242.25;
- ▶ LADB assessment (Emeritus

Continued next page

Dues continued from page 28

Status): \$121.23; and

▶ LADB assessment (practicing three years or less): \$175.30.

Bar staff members will be available to answer questions and provide assistance to members. All questions and concerns should be directed to:

▶ Email — processing@LSBA.org

▶ Telephone — (504)566-1600 or (800)421-LSBA; ask for Payment Processing.

Check-Off Boxes for Donations

Using either the online payment/filing procedure, or via the downloadable form, LSBA members may make voluntary, tax-deductible contributions to the Louisiana Bar Foundation Access to Justice Fund, the Louisiana Bar Foundation, the Louisiana Center for Law and Civic Education and the Judges and Lawyers Assistance

Program, Inc.

▶ **Louisiana Bar Foundation Access to Justice Fund.** Donations benefit Louisiana's justice community efforts in statewide technology, intake and referral, and disaster response. Include a separate check made payable to the "Louisiana Bar Foundation Access to Justice Fund."

▶ **Louisiana Bar Foundation.** *Funding civil legal aid and promoting access to justice.* Help the LBF ensure justice is a reality for everyone. Donations support a network of nonprofit organizations providing free civil legal aid services for the poor. Include a separate check made payable to "Louisiana Bar Foundation."

▶ **Louisiana Center for Law and Civic Education (LCLCE).** As the public education partner of the LSBA, the LCLCE's mission is to assist people to develop an understanding of, and respect for, the law and legal system. Donations will be used to fund operations and support programs that bring lawyers and

judges into the classroom and provide free professional development for social studies teachers and free civics education for adults. Include a separate check made payable to the "Louisiana Center for Law and Civic Education." For more information, contact the LCLCE at (504)619-0134 or email peggy.cotogno@lsba.org.

▶ **Judges and Lawyers Assistance Program, Inc. (JLAP).** JLAP is a nonprofit corporation that cannot effectively operate without generous contributions from outside sources. Donations will directly further JLAP's mission of providing *confidential* life-saving assistance to lawyers, judges and their family members who suffer from alcohol/drug abuse, depression, gambling addiction, or any other mental impairments. JLAP's efforts also help attenuate or prevent the harm that impaired lawyers and judges may cause to both the public and the reputation of the legal profession. Include a separate check made payable to "JLAP, Inc."

Application Deadline is June 26 for Leadership LSBA 2020-21 Class

Louisiana State Bar Association (LSBA) President Alainna R. Mire is currently seeking applications from young lawyers for the Leadership LSBA 2020-21 Class. Deadline for return of applications, along with a CV or résumé, is Friday, June 26.

The program, created in 2002 by then-LSBA President Larry Feldman, Jr., provides exposure on how the LSBA functions as well as on the pressing issues facing the association and the legal profession. Participants also receive information on the responsibilities of volunteer leaders. Through at least one class project, the program further develops young attorneys' leadership skills and provides them with opportunities for statewide networking. (Previous projects included a 5K benefiting the Lawyers Assistance Program, Inc., a legal aid hackathon and a special issue of the *Louisiana Bar Journal*.)

Mire's goal is to appoint 14 members.

By conclusion of FY 2020-21 (ends in June 2021), participants will be required to:

▶ attend one meeting of the Board of Governors;

▶ attend one meeting of the House of

Delegates;

▶ attend one meeting of the Young Lawyers Division Council;

▶ attend one Budget Committee meeting;

▶ attend one meeting of the Access to Justice Committee;

▶ attend one meeting of an LSBA committee of their choice;

▶ work with the class to develop and implement a class project with the help of staff; and

▶ commit to serve on an LSBA committee for 2021-22.

Expenses for attendance at meetings and activities will be reimbursed in accordance with LSBA policies.

Interested candidates should submit applications, along with a CV or résumé, by the June 26 deadline to: Danielle E. Boveland, LSBA Communications Coordinator/Online Media, 601 St. Charles Ave., New Orleans, LA 70130; fax (504)566-0930; or email danielle.boveland@lsba.org. To download an application, go to: www.lsba.org/goto/classapplication2020.

Supreme Court Lifts Online CLE Limit for 2020

The Louisiana Supreme Court on April 28 issued an order lifting the cap on self-study mandatory continuing legal education credits for calendar year 2020. The limitation on "self-study" credits (as defined in Rule 3(d) of Supreme Court Rule XXX) shall be increased to 12.5 hours annually (for 2020). Carryover hours for 2021, however, are still limited to in-person CLE attendance. For more information on mandatory CLE, go to: www.lsba.org/mcle.



Supreme Court Amends Rule XVIII to Create Emeritus Status, Effective FY 2020/2021

The Louisiana Supreme Court on April 9 issued an order amending Rule XVIII to allow for emeritus status for lawyers meeting the following criteria — an active member of the Louisiana State Bar Association in good standing; 50 years of age or older; and actively practiced law in Louisiana for a minimum of 10 years.

Lawyers electing emeritus status shall pay 50 percent of the annual bar dues and disciplinary fee for lawyers practicing three years or more. A lawyer electing emeritus status will restrict his/her activities to the following:

- ▶ engage in pro bono practice of law through a program established, sponsored

or recognized by the LSBA's Access to Justice Program, www.lsba.org/ATJ;

- ▶ participate in any mentoring program established by the LSBA, www.lsba.org/mentoring;

- ▶ engage in the uncompensated representation of immediate family members, as defined in La. R.S. 42:1102;

- ▶ serve on LSBA committees, www.lsba.org/BarGovernance/Committees.aspx; and

- ▶ serve on receivership team panels, www.lsba.org/Transitioning.

The Louisiana State Bar Association's (LSBA) House of Delegates approved a resolution in January 2020 to amend the

LSBA's Bylaws to create emeritus status and to recommend to the membership that it approve corresponding amendments to the Association's Articles of Incorporation. The members approved the Articles amendments in February.

Attorneys will be able to elect emeritus status and pay the reduced fees beginning with Fiscal Year 2020/2021.

Prior to making the dues and assessment payments, lawyers should review the Emeritus Status guidelines and restrictions for possible election. Review the "Emeritus Status Guidelines and Restrictions and Notice of Application" at: www.lsba.org/Members/EmeritusStatus.aspx.

Thanks to the 2019-20 LSBA Committee on Diversity in the Legal Profession

The Louisiana State Bar Association (LSBA) would like to thank the 2019-20 members of the Committee on Diversity in the Legal Profession and its Subcommittees. Your service was greatly appreciated.

The mission of the Committee on Diversity is to assess the level of racial, ethnic, national origin, religion, gender, age, sexual orientation and disability diversity within all components of the legal profession in Louisiana; to identify barriers to the attainment of full and meaningful representation and participation in the legal profession by persons of diverse backgrounds; and to propose programs and methods by which the LSBA can most effectively work to remove the barriers and achieve greater diversity.

Committee members included:

Denia S. Aiyegbusi, Co-Chair
Kenneth R. Barnes
Rashida D. Barringer
Troy N. Bell
Roland L. Belsome
Katia D. Bowman
William C. Bradford
Dominique R. Bright-Wheeler
George W. Britton

Christine T.C. Bruneau
I.J. Clark-Sam
J. Tyler Clemons
J. Dalton Courson, Co-Chair
Ashley A. Chandler
Sandra Diggs-Miller
John C. Enochs
Dean Thomas C. Galligan, Jr.
Lauren E. Godshall
Demarcus J. Gordon
Lezlie Griffin
Scherrri N. Guidry
Senae D. Hall
Francesca L. Hamilton-Acker
Joseph H. Hart
Nicholas J. Hite
Hon. Bernette Joshua Johnson
Adria N. Kimbrough
Arlene D. Knighten
Robert E. Lancaster
Dean Madeleine M. Landrieu
Jeffrey M. Landry
Susan R. Laporte
Quintillis K. Lawrence
Wayne J. Lee
Luis A. Leitzelar
Misha M. Logan
Lynn Luker
Sowmya Mandava

Janell M. McFarland-Forges
Dean David D. Meyer
Ne'Shira D. Millender
Pamela S. Moran
Jared E.A. Nelson
Barbara B. Ormsby
Courtney H. Payton
Ezra Pettis, Jr.
Chancellor John K. Pierre
Deidre D. Robert
Andrea L. Rubin
Rachel M. Scarafia
Ronald J. Sholes
Kimberly Silas
Chantell M. Smith
Scott J. Spivey
Justin W. Stephens
Hon. Karelia R. Stewart
Heidi H. Thompson
Hon. Max N. Tobias, Jr.
Dan L. Tran
James T. Tran
Joseph D. Tran
Monica M. Vela-Vick
Michael B. Victorian
Angela White-Bazile
Sharonda R. Williams
John A. Womble, Co-Chair
Micah C. Zeno

LBSL Accepting Certification Applications in Bankruptcy Law

The Louisiana Board of Legal Specialization (LBSL) is accepting applications for certification in business bankruptcy law and consumer bankruptcy law through Sept. 30, 2020.

In accordance with the Plan of Legal Specialization, a Louisiana State Bar Association member in good standing who has been engaged in the practice of law on a full-time basis for a minimum of five years may apply for certification. Further requirements are that, each year, a minimum percentage of the attorney's practice must be devoted to the area of certification sought, and the attorney must pass a written examination to demonstrate sufficient knowledge, skills and proficiency in the area for which certification is sought and provide five favorable references. Peer review is used to determine that an applicant has achieved recognition as having a level of competence indicating proficient performance handling the usual matters in the specialty field. Refer to the LBSL Rules and Regulations and standards for the applicable specialty for a detailed description of the requirements for application: www.lsba.org/specialization.

With regard to applications for business bankruptcy law and consumer bankruptcy law certification, although the written test(s) is administered by the American Board of Certification, attorneys should apply for approval of the LBSL simultaneously with the testing agency to avoid delay of board certification by the LBSL. Information concerning the American Board of Certification will be provided with the application form(s).

Anyone interested in applying for certification should contact LBSL Specialization Director Mary Ann Wegmann to request an application packet, email maryann.wegmann@lsba.org, or call (504)619-0128.

LSBA Files Brief in Response to Challenger's Appeal

The Louisiana State Bar Association's (LSBA) legal team on May 1 filed the appellee's brief with the U.S. 5th Circuit Court of Appeals in response to the plaintiff's appeal in his challenge to the Bar's mandatory status (*Boudreaux v. Louisiana State Bar Association, Louisiana Supreme Court et al*).

On Jan. 13, Judge Lance M. Africk of the U.S. District Court for the Eastern District of Louisiana dismissed the lawsuit against the Louisiana State Bar Association, the Louisiana Supreme Court and the Justices of the Court. On Feb. 10, the plaintiff filed a Notice of Appeal. The appeal was filed on April 1.

"The LSBA will continue to focus primarily on our regulatory functions, as well as the myriad services and programs we provide to both our members and the public," commented 2019-20 LSBA President Robert A. Kutcher. "We have closely monitored litigation in other states, and Judge Africk's well-reasoned decision is consistent with other district and appellate court results," he added.

Mandatory membership in a state bar and payment of compulsory fees were held constitutional in *Keller v. State Bar of California*, 496 U.S. 1 (1990) and *Lathrop v. Donohue*, 367 U.S. 820 (1961) and the LSBA operates in accordance with these decisions. The LSBA's legislative advocacy is subject to a number of provisions set forth in the Association's Bylaws. These activities are limited to matters involving issues affecting the profession, the regulation of attorneys and the practice of law, the administration of justice, the availability and delivery of legal services to society, the improvement of the courts and the legal profession, and such other matters consistent with the mission and purposes of the Association.

To review the brief and for more information on the case, go to: www.lsba.org/Challenge/Louisiana.aspx.

Nominations Accepted Through June 30 for Citizen Lawyer Award

Nominations will be accepted through June 30 for the Louisiana State Bar Association's (LSBA) Citizen Lawyer Award, a service award that recognizes individual attorneys and judges who have performed public services out of a sense of duty, responsibility and professionalism.

In 2001, the LSBA instituted the Crystal Gavel Awards. This award program was updated in 2014 and renamed the Citizen Lawyer Awards.

To be nominated, the lawyer must be admitted to practice in Louisiana, and the judge must have been elected or appointed to a state or federal court in Louisiana. Nominees must have made a difference in their local communities, in local organizations, or in the life of one person, and have served the public in a number of areas, including:

- ▶ Aiding the administration of justice.
- ▶ Assisting groups or individuals on a volunteer basis in a non-legal capacity.
- ▶ Educating the public or individuals or students about legal matters.
- ▶ Providing pro bono legal services in a matter of a significant nature, or in a significant number of cases, or in a way that significantly changed the life of a person or group.
- ▶ Working in conjunction with the court system to make it more welcoming, inviting and understandable for jurors, witnesses or victims of crime.

Awards are presented in local communities throughout the state. There is no limit to the number of awards which will be presented, as the LSBA wishes to recognize all deserving individuals.

For more information about the award or to submit a nomination, go to: <https://www.surveymonkey.com/r/CitizenLawyerAward>. Or email the LSBA's Member Outreach and Diversity Department at outreach@lsba.org.

Attorneys Are Recertified as Board-Certified Specialists in 2020

In accordance with the requirements of the Louisiana Board of Legal Specialization (LBLS) and the Plan of Legal Specialization, the following individuals have satisfactorily met the established criteria for recertification as LBLS board-certified specialists in the following areas for a five-year period which began on Jan. 1, 2020, and will end on Dec. 31, 2024.

Estate Planning & Administration

Orr Adams, Jr. Metairie
 M. Elizabeth Bowman..... Gretna
 David M. Charlton..... Baton Rouge
 Laura Elizabeth Fine..... New Orleans
 Ronda Mary Gabb Covington
 Carl S. Goode..... Baton Rouge
 Steven Anthony Grenier..... Shreveport
 Lawrence Dietrich Huter..... Lafayette
 Gregory Jesse Logan Lafayette
 Conrad Meyer IV..... Metairie
 Ronald Wayne Morrison, Jr. Metairie
 Joseph Michael Placer, Jr. Lafayette
 Joseph A. Prokop, Jr. Baton Rouge
 Beau P. Sagona..... Metairie
 Eric M. Schorr..... New Orleans
 Carla Hines Sibille..... Baton Rouge
 Scott Joseph Sonnier New Orleans

Tax Law

Hirschel T. Abbott, Jr. New Orleans
 A. Albert Ajubita..... New Orleans
 Robert S. Angelico..... New Orleans
 Walter Antin, Jr. Hammond
 William M. Backstrom, Jr. New Orleans
 Dale R. Baringer Baton Rouge
 Alton E. Bayard III Baton Rouge
 Hilton S. Bell..... New Orleans
 Thomas G. Blazier..... Lake Charles
 Sidney M. Blitzer, Jr. Baton Rouge
 Robert T. Bowsher..... Baton Rouge
 Timothy Paul Brechtel..... New Orleans
 Susan J. Burkenstock..... New Orleans
 Richard M. Campbell Monroe
 Donald A. Capretz Lafayette
 David R. Cassidy Baton Rouge
 John P. Cerise..... New Orleans
 David M. Charlton..... Baton Rouge
 John W. Colbert New Orleans
 J. Grant Coleman..... New Orleans
 George R. Collier, Jr. Monroe
 Katherine Conklin New Orleans
 Gary L. Conlay Natchitoches
 Paul D. Cordes, Jr. New Orleans
 David N. Corkern Dallas, TX
 Jeanne T. Cresson Metairie
 Michael L. Eckstein..... New Orleans
 Gary J. Elkins..... New Orleans

Mark S. Embree..... New Orleans
 James C. Exnicios..... New Orleans
 Mandy Mendoza Gagliardi..... New Orleans
 Edward N. George III..... New Orleans
 Carl S. Goode..... Baton Rouge
 Steven Anthony Grenier..... Shreveport
 Michael E. Guarisco..... New Orleans
 David S. Gunn Baton Rouge
 Kernan August Hand, Jr. Metairie
 Steven E. Hayes Metairie
 Robert L. Henderson, Jr..... Slidell
 Ted W. Hoyt Lafayette
 Edwin Kidd Hunter Lake Charles
 Steven I. Klein New Orleans
 William H. Langenstein III New Orleans
 John Paul LeBlanc..... Mandeville
 Brian T. Leftwich..... New Orleans
 Lawrence M. Lehmann..... New Orleans
 Lawrence L. Lewis III..... Lafayette
 Dwayne O. Littauer New Orleans
 Peter J. Losavio, Jr. Baton Rouge
 John L. Luffey, Jr. Monroe
 David J. Lukinovich Metairie
 Richard E. Matheny..... Baton Rouge
 Michael A. Mayhall..... Covington
 Van R. Mayhall, Jr. Baton Rouge
 Ray C. Mayo, Jr. Shreveport
 John F. McDermott..... Baton Rouge
 W. Deryl Medlin Shreveport
 Donald M. Meltzer Baton Rouge
 Joel A. Mendler..... New Orleans
 Bruce A. Miller Metairie
 J. Tracy Mitchell Baton Rouge
 William A. Neilson..... New Orleans
 Daniel A. Palmer..... Waco, TX
 Laura Walker Plunkett..... New Orleans
 Eugene F. Pollingue, Jr.
 Palm Beach Gardens, FL
 Edward M. Porche II Mandeville
 Betty Ann Raglin Lake Charles
 Rudolph R. Ramelli..... New Orleans
 Jerome John Reso, Jr. New Orleans
 Patrick K. Reso Hammond
 Earl C. Reynolds..... Baton Rouge
 F. Kelleher Riess New Orleans
 John A. Rouchell..... New Orleans
 Robert E. Rowe..... Lafayette
 H. Brenner Sadler Alexandria
 Douglas L. Salzer New Orleans
 Robert C. Schmidt Baton Rouge
 David R. Sherman Metairie
 David L. Sigler..... Lake Charles
 Scott Joseph Sonnier New Orleans
 Paul D. Spillers Monroe
 David Bruce Spizer New Orleans
 Mark S. Stein New Orleans
 William P. Stubbs, Jr. Lafayette
 Robert E. Tarca New Orleans

Barry E. Waguespack Baton Rouge
 Jess J. Waguespack Napoleonville
 J. Benjamin Warren, Jr..... Shreveport
 William Brooks Watson Monroe
 Charles S. Weems III..... Alexandria
 John J. Weiler New Orleans
 Jack G. Wheeler..... Lake Charles
 Lester J. Zaubrecher Lafayette
 Karl J. Zimmermann New Orleans

Family Law

Honorable Dawn Amacker Covington
 Ernest S. Anderson Slidell
 D. Rex Anglin Shreveport
 James H. Askew..... Shreveport
 Alfred R. Beresko Shreveport
 Honorable David A. Blanchet..... Lafayette
 Lisa Leslie Boudreaux..... Baton Rouge
 David L. Carriere..... Opelousas
 Jennifer C. Carter..... New Orleans
 Robert P. Cuccia..... Houma
 Honorable Mary Clemence
 Devereux Covington
 Karen D. Downs Baton Rouge
 Jack L. Dveirin..... New Orleans
 Patricia M. Franz Metairie
 Frank A. Granger Lake Charles
 Nancy S. Gregorie Baton Rouge
 Grace Phyllis Gremillion..... Covington
 Steven W. Hale..... Lake Charles
 Helen Popich Harris Lafayette
 Mitchell J. Hoffman..... New Orleans
 Lila Triticco Hogan Hammond
 Melanie Newkome Jones Baton Rouge
 Honorable Patricia M. Joyce..... Gretna
 Debra M. Kesler Metairie
 Philip C. Kobetz..... Lafayette
 Robert D. Levenstein..... LaPlace
 Robert G. Levy Alexandria
 Robert C. Lowe..... New Orleans
 Christine O'Brien Lozes Covington
 Lorraine Jane Andresen
 McCormick Baton Rouge
 Edith H. Morris..... New Orleans
 Patrice Wightman Oppenheim..... Mandeville
 David R. Paddison Covington
 David M. Prados New Orleans
 Philip Riegel, Jr. Metairie
 Walter M. Sanchez..... Lake Charles
 Diane A. Sorola..... Lafayette
 D. Reardon Stanford..... Lafayette
 Susan L. Theall Lafayette
 Linda A. Veazey..... Abbeville
 Barbara J. Ziv New Orleans

Business Bankruptcy Law

Patrick Shawn Garrity New Orleans
 Michael David Rubenstein..... Houston, TX

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Estate Planning & Administration

Byron Ann Cook.....New Orleans
 Miriam Wogan HenryNew Orleans
 Julie Renée JohnsonHammond
 Jimmy D. Long, Jr.Natchitoches
 Christine Wendt Marks.....Metairie
 Kyle Christopher McInnis..... Shreveport
 Leon Hirsch Rittenberg III.....New Orleans
 Cherish Dawn Van Mullem ...New Orleans
 Todd Michael VillarrubiaNew Orleans

H. Aubrey White III.....Lake Charles

Tax Law

Cade Richard Cole.....Sulphur
 Byron Ann Cook.....New Orleans
 Kyle Christopher McInnis..... Shreveport
 Leon Hirsch Rittenberg III.....New Orleans
 Richard Joseph Roth III.....New Orleans
 John Kevin Stelly..... Lafayette
 Ryan Charles Toups.....New Orleans
 John R. Williams..... Shreveport

Family Law

Terry George Aubin Alexandria
 Gregory Holland Batte Shreveport
 Suzanne Ecuyer Bayle.....New Orleans
 H. Craig Cabral.....Metairie
 Michael D. Conroy Covington
 Bradford Hyde Felder..... Lafayette
 Kenneth P. Haines..... Shreveport

Margaret H. Kern..... Covington
 Charles O. LaCroix..... Alexandria
 Susan Helene Neathamer Gretna
 Vincent Anthony Saffiotti.....Baton Rouge
 Laurel Annette SalleyMetairie
 Lila Molaison Samuel Gretna

Business Bankruptcy Law

Ralph S. Bowie, Jr. Shreveport
 Rudy J. Cerone.....New Orleans
 Bradley Loy Drell..... Alexandria
 Robert W. Raley..... Shreveport
 Paul Douglas Stewart, Jr.....Baton Rouge
 Stephen P. StrohscheinBaton Rouge
 David Felicien Waguespack...New Orleans

Consumer Bankruptcy Law

Ralph S. Bowie, Jr. Shreveport
 Raymond L. Landreneau, Jr..... Houma
 David J. WilliamsLake Charles

LBLS Lifts Self-Study CLE Credit Limit for 2020

In compliance with the April 28 Louisiana Supreme Court order and in accordance with Louisiana Board of Legal Specialization (LBLS) Rules 7.4 and 7.9, the LBLS has amended its rules for specialty education for self-study credits and the limitation on self-study

credits for 2020 only, increasing the limit from 4 hours to 12.5 hours. All specialists may earn up to 12.5 hours of approved specialization self-study credits on or before Dec. 31, 2020. Learn more: www.lsba.org/specialization/.

Important Reminder: Lawyer Advertising Filing Requirement

Per Rule 7.7 of the Louisiana Rules of Professional Conduct, all lawyer advertisements and all unsolicited written communications sent in compliance with Rule 7.4 or 7.6(c) — unless specifically exempt under Rule 7.8 — are required to be filed with the LSBA Rules of Professional Conduct Committee, through LSBA Ethics Counsel, prior to or concurrent with first use/dissemination. Written evaluation for compliance with the Rules will be provided within 30 days of receipt of a complete filing. Failure to file/late filing will expose the

advertising lawyer(s) to risk of challenge, complaint and/or disciplinary consequences.

The necessary Filing Application Form, information about the filing and evaluation process, the required filing fee(s) and the pertinent Rules are available online at: <http://www.lsba.org/members/LawyerAdvertising.aspx>.

Inquiries, questions and requests for assistance may be directed to LSBA Ethics Counsel Richard P. Lemmler, Jr., RLemmler@LSBA.org, (800)421-5722, ext. 144, or direct dial (504)619-0144.

2020 Regular Legislative Session: BOG Adopts Positions on Bills

The Louisiana State Bar Association's (LSBA) Board of Governors on April 27 adopted positions on several bills pending before the Louisiana Legislature, based on recommendations from the LSBA's Legislation Committee.

Review the bills and positions online 24/7 at: www.lsba.org/documents/Legislation/2020RLSABOBGPositions.pdf. Or, go to the LSBA's Legislative Advocacy web page: www.lsba.org/Legislation/. Click on "Current and Past Bill Positions," then "2020 Regular Session."

By Ashley M. Flick

IMPORTANCE OF WORK/LIFE BALANCE

Those in the legal profession, like in many other professions, are known to struggle with substance abuse, mental health and general job dissatisfaction. Lawyers know they need to improve their work/life balance and well-being and reduce stress, but some lawyers don't know where to start. Or, if work/life balance options are available at law firms, some lawyers may be hesitant to utilize them.

While it is admirable to be that "go-getter" and work as hard as you can for your clients and your firm, you run the risk of burnout. Burnout isn't always easy to detect because it doesn't have any unique symptoms and it can look like many different types of ailments. However, the three big warning signs are generally fatigue or chronic exhaustion, cynicism or feeling disengaged, and feeling ineffective. These often lead to other mental and emotional issues such as anxiety and depression.

To be the best and do your best work, you need to take care of yourself first. Lawyers can reduce stress and improve well-being and work/life balance by incorporating a few easy steps.

Delegate your work. Utilize your staff. Don't try to carry the whole weight on your shoulders alone and stop justifying performing the work yourself with the following excuses, "I can do it better," "I don't trust anyone to handle this," or "it is just easier and faster if I do it myself." Let others learn from you and develop your support staff or mentees.

Set boundaries. Don't accept calls, texts or emails after hours, on the weekends or while on vacation. You are only robbing yourself of your down time.

Say no. This is probably the hardest thing to do because we don't want to let anyone down and we want to prove ourselves, but you have to set limits because you are only doing yourself and your clients an injustice if you take on more than



you can handle.

Take time off. You need this time to decompress, reset your attention span and re-energize.

Listen to your body. Sometimes your body will tell you when you need to take a break, so be mindful of those cues and take some time off. A few signs could include exhaustion, insomnia, agitation or grumpiness. Listen for those cues and take time to reset your battery.

Incorporate a relaxing activity. One way to deal with stress is exercise. Try running, walking, yoga or other gentle exercises. If exercise isn't your thing, try a new hobby such as meditation, gardening or painting.

Get sleep. Make sure you get adequate and quality sleep as it helps to improve memory, sharpen attention, reduce stress and regulate hormones. As a rule of thumb, you should get about seven to nine hours of rest each night.

Eat better and don't skip meals. Healthy eating fuels your brain and body, helps you maintain a healthy weight, and contributes to healthy blood glucose and blood pressure levels.

Organize your life. Schedule personal time or down time so you make sure you are taking care of yourself, too. Make sure you are scheduling time to maintain your social networks and hobbies.

Seek support. Reach out to a health coach or counselor to assist with maintaining a good work/life balance and managing stress. The Louisiana Judges and Lawyers Assistance Program (JLAP) is a great resource for pointers on dealing with stress or maintaining overall wellness. They are there to help you!

Ashley M. Flick is professional liability loss prevention counsel for the Louisiana State Bar Association and is employed by Gilsbar, L.L.C. in Covington. She received her BA degree in political science in 2005 from Southeastern Louisiana University and her JD degree in 2010 from Loyola University College of Law. As loss prevention counsel, she lectures on ethics as part of Mandatory Continuing Legal Education requirements for attorneys licensed to practice law in Louisiana. Email her at aflick@gilsbar.com.



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12x40 Hwy 549 South Face Texarkana, AR



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By J.E. (Buddy) Stockwell

THE PHARMACIST

New in 2020 is the Netflix documentary, *The Pharmacist*, a four-part series set in New Orleans' Lower 9th Ward and St. Bernard Parish. The subject matter is gripping, centered on a family's journey of pain and courage after their son's death.

Dan Schneider, Sr. is the main character. In 1999, his son, Danny, Jr., was killed in a drug-related shooting in the Lower 9th Ward. Schneider is also a pharmacist who worked at Bradley's Pharmacy in the small town of Poydras, La., downriver from Chalmette.

The documentary begins with Schneider's search to identify his son's killer. He undertook that mission on a level that few have the courage, fortitude and endurance to complete. Solving his son's case seemed dangerous and hopeless, but what came next was astounding.

Schneider's combined experiences as a grieving parent and a pharmacist placed him in a unique position to unearth the truth about the dangerously addictive properties of the opioid pain drug OxyContin. His investigations led him to a "pain pill-mill" doctor operating in New Orleans East who he believed to be overprescribing thousands of pills, even staying open all hours of the night to sell massive numbers of OxyContin prescriptions.

Not to be deterred, and fueled by his family's passion not to let Danny, Jr. die in vain, Schneider took on what appeared to be a disinterested FBI, DEA and State Medical Board. He shook those entities long enough and hard enough to make things happen.

One of the most compelling aspects of the documentary is how frustratingly long "the system" can take to even acknowledge a problem, much less act. At times, the Schneider family was dumbfounded by the casual pace of authorities. Meanwhile, the opioid addiction crisis was exploding virtually unchecked in New Orleans and the nation.

The documentary also includes interspersed segments about Purdue Pharma, the company that manufactured and marketed OxyContin, generating billions in profits for its owners. One of its former sales representatives is interviewed and he provides inside information on how the drug was marketed as "safe and non-addictive," all while "pain pill-mill" doctors became millionaires and top Purdue sales reps were raking in as much as \$800,000 annually.

As we all now know, opioid pain medications are extremely addictive and dangerous when overprescribed. There are now waves of litigation due to the damage caused by OxyContin.

After watching *The Pharmacist*, one could get the impression that "Big Pharma" was finally exposed and that's the end of the story. In fact, however, the opioid crisis has a brand-new chapter that will now run its course.

This new issue centers upon Big Pharma's response to the opioid crisis: the best way to manage opioid drug addiction harm is with more and better *addictive drugs*.

In the article, "How Big Pharma Wrings More Profits from Opioid Addicts," Brian Eckert with ClassAction.com¹ explains: "As the opioid epidemic deepens, new drugs are vying for a piece of the multi-billion-dollar addiction management industry. And as one might expect, this pharmaceutical gold rush has ushered in some unethical behavior. The most notorious of these drugs is Suboxone, a combination of buprenorphine (an opioid painkiller) and naloxone (a drug that blocks the effects of opioids, meant to deter abuse)."

The article also cites alleged unethical behavior by its manufacturer, Reckitt Benckiser, to protect its huge Suboxone profits. In addition, Eckert points out: "Since Suboxone's proponents wanted the drug to be prescribed in doctor's offices (unlike methadone, which patients can only receive at clinics), a federal law that prohibited doctors from prescribing

narcotics to narcotic addicts had to be changed." Also, "While Suboxone has had its treatment successes, the drug's track record is marred by a subculture of diversion, abuse, and unscrupulous doctors prescribing it for profit." Some doctors have been sanctioned for profiteering and Suboxone has been implicated in hundreds of overdose deaths.

It leaves some asking: will an attempt to "manage" addiction with addictive drugs ultimately render failure and *The Pharmacist, Part II*?

Meanwhile, people in long-term 12-Step Recovery programs and those in total abstinence from all mind-altering substances (including opiates and opioid pain medications) are shocked to see addictive drugs now being promoted to try and *manage* active addiction, instead of promoting abstinence-based treatment for all aspects of addiction disease including its physical, mental and spiritual components.

These are all very complicated and controversial issues. But no matter how the opioid crisis story finally ends, one thing is certain *right now*: JLAP has a proven 95% success rate in facilitating full recovery and abstinence from drug and alcohol addiction. If you or someone you know needs help, make a confidential call to JLAP at (985)778-0571, email jlap@louisianajlap.com, or visit the website at www.louisianajlap.com.

FOOTNOTE

1. www.classaction.com/news/big-pharma-profits-opioid-epidemic/2.

J.E. (Buddy) Stockwell is the executive director of the Louisiana Judges and Lawyers Assistance Program, Inc. (JLAP) and can be reached at (866)354-9334 or email jlap@louisianajlap.com.



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Vessel Status: A Moving Target or All Jacked-Up

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2020 Discovery: Unearthing Electronic Evidence Against Maritime Defendants

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Neblett, Beard & Arsenault; Alexandria

Joseph Thorpe

International Litigation Services; Irvine, CA

Dustin C. Carter

Neblett, Beard & Arsenault; Alexandria

Maritime Claim Resolution Issues

Jerome H. Moroux

Broussard & David, LLC; Lafayette

Thomas Juneau

Perry Dampf Dispute Solutions; Lafayette

Kevin Merchant

Neuner Pate; Lafayette

Moderator:

Blake R. David, Sr.

Broussard & David, LLC; Lafayette;
2019-20 LAJ Maritime Law Section Chair

FOCUS ON Professionalism

By Christy M. Howley Connois

EMBRACING THE PARADIGM SHIFT

As I sit here writing this article in early April, I am quarantined at home, with most of my family positive for COVID-19, two in the hospital.

I have had a few moments to think about the many crucial junctures the practice of law has had. This is certainly a crucial juncture for humanity, but we have a real opportunity now as attorneys to be the best professionals we can be and to be a guide for our clients and our communities. It is up to us to exemplify the best of our practice, to be organized and capable and to reassure our clients. Our judges are reassuring the public that court will continue and people will not be in limbo, and many courts have set up systems for video-conferencing and remote working.

By the time you are reading this, I hope you're back in your office, meeting with clients, going to court in person, going out to lunch on a Friday and enjoying life. Or, maybe we are still in our new normal of social distancing. I don't know how all of this is going to turn out for us. I saw a quote online that said we're all in a rush to return to normal but make sure that normal is worth rushing back to. What if we have to do this again? How will we handle it? What have we learned? What can we do differently?

The very first thing is please be courteous to each other. You can win while still being nice. You can make your client happy while still being nice. We will remember the people who are nice to us now, as we will remember the ones who were not.

You may not fully understand technology, but you can still work on becoming tech savvy. Hire an IT person. Get a computer with a camera and download the Zoom app for virtual meetings. Why do we run around town and the country



having in-person meetings? Sometimes it is necessary, but that's a small percentage of the time. Basic Zoom is free and allows 30-minute calls; for a small monthly fee, you can have more options and longer calls. Facetime for Apple users is also a great tool, and it's now possible to Facetime multiple people at a time. Also, it is no longer acceptable not to have an email account!

Make a contingency plan for working from home. Set up a tiny home office. A laptop is portable. Have backups of all of your client files on external hard drives and become mobile.

Learn to settle and let's manage our client's expectations about court delays, especially now, and about winning some and losing some. There are certainly cases that are not capable of settlement and must go to trial. But there are a large number of cases where we could stop arguing, tell our clients to take a little bit less and resolve them.

There has been a paradigm shift in our world, one that none of us can ignore and, honestly, one that may last through our lifetime. The director of the World Economic Forum said there are four ingredients in true leadership — brain, soul, heart and good nerves. We

need to be leaders in our communities now because, ultimately, not many people will remember who we were as attorneys but they will remember who we were as human beings and that's a large part of being professional. Be involved in the court system and help and encourage our courts to become completely tech savvy and able to operate during a crisis. Be a light to other attorneys, our clients and our communities.

It's time for us to win this no-win situation by rewriting the old rules and moving forward into a different future. I hope to see you again soon, even if it's from a distance.

Christy M. Howley Connois, a member of the Gretna firm of Bowman & Howley, has been practicing law for more than 20 years. She has a general civil and criminal practice, focusing on family law, personal injury, successions, civil litigation matters, and felony and misdemeanor criminal representation. She is a member of the Louisiana State Bar Association's House of Delegates and a former co-chair of the LSBA's Committee on the Profession. She was listed in Louisiana Super Lawyers and was named as one of the Top 10 Family Law Attorneys in Louisiana in 2015 by the National Academy of Family Law Attorneys. She received her undergraduate degree from Loyola University and her law degree from Loyola University College of Law. (christyhowley@bowmanandhowley.com; 629 Lafayette St., Gretna, LA 70053)



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Due to the COVID-19 pandemic the LSBA Diversity Committee has made the difficult decision to cancel the 13th Annual Conclave on Diversity in the Legal Profession scheduled on March 27, 2020 at the Sheraton New Orleans Hotel. The 2021 Conclave has been rescheduled for March 5, 2021.

The 2021 Conclave will feature the

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same exciting format and sessions with highly credentialed speakers that will provoke discussions regarding the scope and meaning of inclusion, the state of the profession, and the case for a diverse and inclusive legal profession.

Registrants and sponsors will be notified. Registrants will be provided with the option of transferring registration. Sponsors will be provided an opportu-

nity to support the conference in 2021.

If you have any questions, please contact the team in the LSBA Member Outreach and Diversity Department at diversity@lsba.org.

Thank you to the following sponsors and co-hosts for their commitment to sponsoring the Conclave on Diversity in the Legal Profession:

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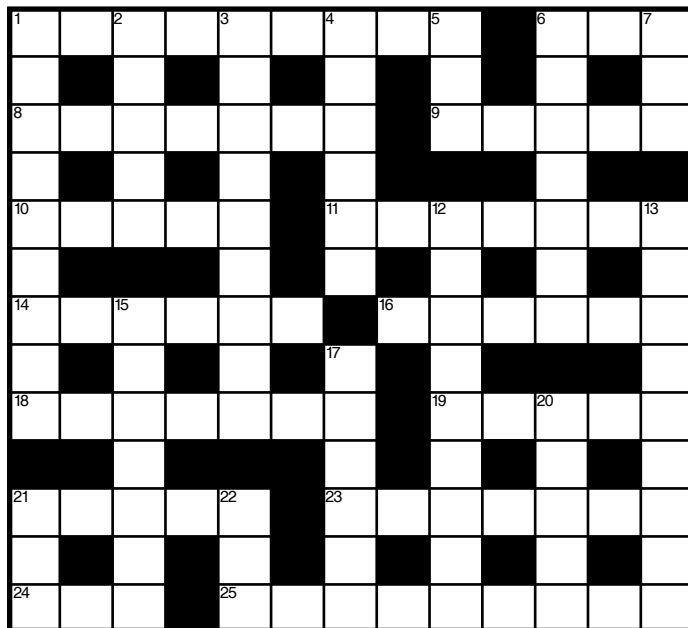
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Crossword PUZZLE

By Hal Odom, Jr.

COMMITMENT



ACROSS

- 1 Mental or physical weakness with serious consequences (9)
- 6 Compensate (3)
- 8 With flowing locks (7)
- 9 Worn by men at Highland games (5)
- 10 Addendum to an insurance policy (5)
- 11 More than one "codex" (7)
- 14 Bergman, who won an Oscar for "Gaslight" (6)
- 16 Prototypical (6)
- 18 It might pop up in your kitchen (7)
- 19 Major mixup (5)
- 21 Sacked out (5)
- 23 Latter-day fascist (7)
- 24 Attempt (3)
- 25 Statement against interest (9)

DOWN

- 1 Subject a person to "civil death, without the benefit of an inscription thereof on a tombstone" (9)
- 2 Released (5)
- 3 Partial or total immobilization (9)
- 4 Return a true bill against (6)
- 5 Talk excessively (3)
- 6 The brown one is our state bird (7)
- 7 Agreeable answer (3)
- 12 Choices about care of person or property, which 1 Down cannot make (9)
- 13 Being locked in a room by oneself (9)
- 15 How disabled a person must be, for judicial commitment (7)
- 17 Première partie d'une appellation personnelle (6)
- 20 Ancient calculators (5)
- 21 Preside over, as a case; pose for, as a picture (3)
- 22 Screening grp. (1, 1, 1)

Answers on page 71.

SOLACE: Support of Lawyers/Legal Personnel — All Concern Encouraged

The Louisiana State Bar Association/Louisiana Bar Foundation's Community Action Committee supports the SOLACE program. Through the program, the state's legal community is able to reach out in small, but meaningful and compassionate ways to judges, lawyers, court personnel, paralegals, legal secretaries and their families who experience a death or catastrophic illness, sickness or injury, or other catastrophic event. For assistance, contact a coordinator.

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For more information, go to: www.lsba.org/goto/solace.

REPORT BY DISCIPLINARY COUNSEL

Public matters are reported to protect the public, inform the profession and deter misconduct. Reporting date April 9, 2020.

Decisions

Eric A. Bopp, Mandeville, (2020-B-00070) **By consent, suspended for a period of one year and one day, with all but 90 days deferred, and shall be placed on probation to coincide with the term of his recovery agreement with JLAP,** by order of the Louisiana Supreme Court on Feb. 26, 2020. JUDGMENT FINAL and EFFECTIVE on Feb. 26, 2020. *Gist:* Respondent was twice arrested for driving while intoxicated.

Chris L. Bowman, Jonesboro, (2019-

B-2026) **By consent, suspended from the practice of law for one year, fully deferred, subject to conditions,** by order of the Louisiana Supreme Court on Feb. 18, 2020. JUDGMENT FINAL and EFFECTIVE on Feb. 18, 2020. *Gist:* Committing a criminal act reflecting adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer; and violating the Rules of Professional Conduct.

David Augustus Capasso, New Orleans, (2019-B-01891) **Through reciprocal discipline based upon discipline imposed by the Grievance Committee**

of the North Carolina State Bar has been issued a public reprimand by order of the Louisiana Supreme Court on Feb. 18, 2020. JUDGMENT FINAL and EFFECTIVE on March 3, 2020. *Gist:* Respondent knowingly made a false statement of material fact to a tribunal.

Matthew B. Collins, Jr., New Orleans, (2019-B-1746) **Suspended from the practice of law for one year and one day** by order of the Louisiana Supreme Court on Feb. 26, 2020. JUDGMENT FINAL and EFFECTIVE on March 12, 2020. *Gist:* Respondent neglected a legal matter, failed to communicate with a client, and failed to protect the client's legal interests upon the termination of the representation.

Demetrie Elijah Ford, Gretna, (2019-B-1700) **Suspended for one year and one day, with all but 30 days deferred, followed by a two-year period of probation,** by order of the Louisiana Supreme Court on Feb. 10, 2020. JUDGMENT FINAL and EFFECTIVE on Feb. 10, 2020. *Gist:* Engaged in the unauthorized practice of law while ineligible to do so.

Alicia Harrell-Hampton, Lake Charles, (2020-OB-0251) **Transferred to disability inactive status** by order of the Louisiana Supreme Court on Feb. 26, 2020. JUDGMENT FINAL and EFFECTIVE on Feb. 26, 2020. *Gist:* Harrell-Hampton may not practice law until further orders from the Court.

Ronald David Harvey, Shreveport, (2019-B-01829) **Suspended from the practice of law for one year and one day** by order of the Louisiana Supreme Court on Feb. 18, 2020. JUDGMENT FINAL and EFFECTIVE on March 4, 2020. *Gist:* Respondent failed to communicate with a client, failed to disclose his DWI arrest to the Committee on Bar Admissions, and failed to cooperate with the ODC in its investigations.

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DISCIPLINARY REPORT: UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

The following is a verbatim report of the matters acted upon by the United States District Court for the Eastern District of Louisiana, pursuant to its Disciplinary Rules. This information is published at the request of that court, which is solely responsible for the accuracy of its content. This report is as of April 3, 2020.

Respondent	Disposition	Date Filed	Docket No.
John Christopher Alexander	[Reciprocal] Interim suspension.	3/31/20	20-472
Michael T. Bell	Disbarred.	3/31/20	20-474
James A. Dukes	[Reciprocal] Interim suspension.	3/31/20	20-473
Demetrie Elijah Ford	[Reciprocal] Suspension, partially deferred.	3/31/20	20-583
Jerry L. Settle	[Reciprocal] Suspension.	3/31/20	20-582
Timothy Upton	[Reciprocal] Interim suspension.	3/31/20	20-581

Discipline continued from page 42

William F. Janney, Baton Rouge, (2020-B-0242) **By consent, suspended from the practice of law for one year and one day, fully deferred, subject to conditions**, by order of the Louisiana Supreme Court on March 16, 2020. JUDGMENT FINAL and EFFECTIVE on March 16, 2020. *Gist*: Committing a criminal act reflecting adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer; and violating the Rules of Professional Conduct.

Willie R. Joseph, Jr., Baton Rouge, (2020-0350) **Interimly suspended from**

the practice of law by order of the Louisiana Supreme Court on March 9, 2020. ORDER FINAL and EFFECTIVE on March 9, 2020. *Gist*: Joseph may not practice law in Louisiana until further orders of the Court.

Tedrick K. Knightshead, Baton Rouge, (2020-B-0114) **By consent, suspended from the practice of law for one year and one day, fully deferred, followed by a two-year period of unsupervised probation**, by order of the Louisiana Supreme Court on March 9, 2020. ORDER FINAL and EFFECTIVE on March 9, 2020. *Gist*: Knightshead had inappropriate

interactions with an intern who worked at his office, in violation of Rule 8.4(d) of the Rules of Professional Conduct.

Michael T. Moore, Jr., Covington, (2020-0079) **By consent, suspended from the practice of law for one year and one day, fully deferred, subject to probation**, by order of the Louisiana Supreme Court. ORDER FINAL and EFFECTIVE on Feb. 26, 2020. *Gist*: Criminal conduct (DWI).

Michael Pierre Ned, Lake Charles, (2020-OB-0316) **Transferred to disability inactive status** by order of the

Continued next page

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Legal & Judicial Ethics



William M. Ross
wmr@stanleyreuter.com

William "Billy" M. Ross has over 15 years of experience defending lawyers and judges in disciplinary matters, advising lawyers on their ethical duties, and providing representation in legal fee disputes and breakups of law firms. He is committed to advancing the legal profession through his work for clients, involvement with the LSBA, and participation in presentations on ethics and professional responsibility.

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Discipline continued from page 43

Louisiana Supreme Court on March 9, 2020. ORDER FINAL and EFFECTIVE on March 9, 2020. *Gist:* Ned may not practice law until further orders from the Court.

Raymond F. Niswanger, West Monroe, (2020-0186) **By consent, suspended from the practice of law for one year and one day, fully deferred, subject to probation**, by order of the Louisiana Supreme Court. ORDER FINAL and EFFECTIVE on March 9, 2020. *Gist:* Criminal conduct (DWI).

Jerry L. Settle, New Orleans, (2019-B-1874) **Probation revoked, previous deferred suspension of one year and one day has been made executory**, by order of the Louisiana Supreme Court on Feb. 10, 2020. JUDGMENT FINAL and EFFECTIVE on Feb. 10, 2020.

John E. Settle, Jr., Shreveport, (2019-OB-1838) **Permanently resigned from the practice of law in lieu of discipline** by order of the Louisiana Supreme Court on Jan. 14, 2020. ORDER FINAL and EFFECTIVE on Jan. 14, 2020. *Gist:* Settle's misconduct involved engaging in

the unauthorized practice of law. He is permanently prohibited from practicing law and seeking readmission to the practice of law in this state or in any other jurisdiction in which he is admitted; and shall be permanently prohibited from seeking admission to the practice of law in any jurisdiction.

Christopher Lee Sices, Shreveport, (2019-B-1875) **Permanently disbarred** by order of the Louisiana Supreme Court on Feb. 18, 2020. JUDGMENT FINAL and EFFECTIVE on March 3, 2020. *Gist:* Abandonment of clients' legal matters, failure to communicate with clients, conversion of client and third-party funds, and failure to cooperate with ODC in its investigation.

Timothy French Upton, Covington, (2020-B-0167) **Suspended from the practice of law on an interim basis** by order of the Louisiana Supreme Court on Feb. 10, 2020. JUDGMENT FINAL and EFFECTIVE on Feb. 10, 2020.

Admonitions (private sanctions, often with notice to complainants, etc.) issued since the last report of misconduct involving:

Rule 8.4(d) — Conduct prejudicial to the administration of justice.

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DEFENSE OF ETHICS COMPLAINTS AND CHARGES

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Leslie J. Schiff

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Disciplinary Defense Counsel
117 W. Landry Street
Opelousas, Louisiana 70570
Phone (337) 942-9771
Fax (337) 942-2821
leslie@sswethicslaw.com

Steven Scheckman

Former Special Counsel
Judiciary Commission ('94-'08)
650 Poydras Street, Suite 2760
New Orleans, Louisiana 70130
Phone (504) 309-7888
Fax (504) 518-4831
steve@sswethicslaw.com

Julie Brown White

Former Prosecutor,
Disciplinary Counsel ('98-'06)
11715 Bricksome Ave, Suite B-5
Baton Rouge, Louisiana 70816
Phone (225) 293-4774
Fax (225) 292-6579
julie@sswethicslaw.com

Damon S. Manning

Former Investigator, Prosecutor
Disciplinary Counsel ('98-'14)
201 NW Railroad Ave, Suite 302
Hammond, Louisiana 70401
Phone (985) 602-9201
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◀ **Mike McKay**, a member at the Stone Pigman Walther Wittmann L.L.C. law firm in Baton Rouge, has represented plaintiffs and defendants in a wide variety of matters ranging from intellectual property to community property; wills and trusts to antitrust; RICO to ERISA; class actions to derivative actions; product liability to professional liability; breach of contract cases involving \$200 million, and more. He has been mediating casualty and commercial disputes for over 25 years and is a member of the American Arbitration Association's Roster of Arbitrators. He received a graduate certificate from the Straus Institute of Dispute Resolution at Pepperdine Law School and is currently completing Pepperdine's LLM program. He served as president of the Louisiana State Bar Association 2004–2005.



Manager's Continued Right to Access LLC Records

Jarquin v. Pontchartrain Partners, L.L.C., No. 19-0737 (La. App. 4 Cir. 1/22/20), 2020 WL 398511.

Jarquin was a board member and a co-manager of a Louisiana limited liability company (LLC). In October 2017, Jarquin was removed as co-manager of the LLC by the other LLC board members. Jarquin subsequently filed a petition for injunctive relief, declaratory judgment and damages against the other board members, individually and in their capacities as board members. Specifically, Jarquin complained that

the defendants illegally removed him as a co-manager of the LLC and asserted the board: (1) intentionally acted contrary to the LLC's operating agreement and applicable law; and (2) recklessly disregarded his rights and interests through conduct that caused and continues to cause him harm.

In connection with his suit, Jarquin requested that, as an LLC board member and in accordance with La. R.S. 12:1319, the LLC allow him to copy and inspect specific documents, including certain financial statements and tax returns of the LLC. The LLC rejected Jarquin's request. He responded by filing a petition for writ of mandamus. The LLC subsequently adopted a resolution providing that Jarquin was, as of that date, expelled as a board member of the LLC. The LLC then opposed Jarquin's writ by arguing, among other things, that he was no longer entitled to access the records, as provided in La. R.S. 12:1319, because he had been expelled. The district court ruled in Jarquin's favor, and the LLC appealed.

On appeal, the LLC again argued that Jarquin was not entitled to a writ of mandamus because he was no longer a board member. The 4th Circuit rejected this argument and affirmed the district court's grant of the writ of mandamus in favor of Jarquin, citing the following:

- (1) At the time he petitioned the district court to enforce his right to inspect and copy the LLC records, he was a member of the LLC board and the documents he requested were limited to the time period he was a board member; and
- (2) The LLC cannot expel a member of an LLC as a means to deny such member of his right to inspect the books and records of an LLC.

It is not entirely clear from the 4th Circuit's opinion whether it relied on Jarquin's status as a member of the LLC or simply his status as a board member of the LLC in reaching its decision.



Ronald E. Corkern, Jr.



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“Single Business Enterprise” Theory Must be Pled with Specificity

Premier Rotors, L.L.C. v. Black Star, L.L.C., No. 6:19-0869 (W.D. La. 12/10/19), 2019 WL 6724354.

Premier Rotors, L.L.C., filed suit on an open account against Black Star, L.L.C., and Black Star Helicopters, L.L.C. (collectively, Black Star), alleging it had sold and delivered various goods, materials and services but not been paid for them. Premier further alleged that the Black Star defendants constituted a “single business enterprise” (SBE) and were solidarily liable for the amounts allegedly owing to Premier. In doing so, Premier noted that various legal factors are used to determine SBE status, but it did not allege any facts in support of the various factors cited.

The “single business enterprise” doctrine is a theory for imposing liability where two or more business entities act as one. Generally speaking, when two or more business entities integrate their resources in operations to achieve a common business purpose, each business entity may be held liable for wrongful acts done in pursuit of that purpose. In *Green v. Champion Ins. Co.*, 577 So.2d 249 (La. App. 1 Cir. 1991), the Louisiana 1st Circuit Court of Appeal set forth 18 non-exhaustive factors that may be used to determine whether a group of entities constitutes an SBE. If a group of entities is found to be an SBE, the court may disregard the concept of corporate separateness to extend liability to each of the affiliated corporations to prevent fraud or to achieve equity.

In this case, on the SBE issue, the district court ruled that Premier’s allegation that the Black Star entities constituted an SBE was insufficiently pled. The district court noted that, “[w]hile setting forth the legal factors to establish a single business enterprise directs the Court as to what factors will be used to make this determination, the underlying facts that support each element have not been pled.” However, rather than

dismiss Premier’s complaint, Premier was permitted an opportunity to amend its complaint to allege sufficient facts in support thereof.

—**Jacob M. Kantrow**
Member, LSBA Corporate &
Business Law Section
Butler Snow LLP
City Plaza, Ste. 300
445 North Blvd.
Baton Rouge, LA 70802



No Jurisdiction to Consider Judicial Challenge to DEQ Remediation Order

In a lengthy dispute between the Department of Environmental Quality (DEQ) and the former and current owners of a rubber manufacturing facility, the 1st Circuit Court of Appeal determined that it had no subject matter jurisdiction to review a DEQ remediation order. *Firestone Polymers, L.L.C. v. La. Dep’t of Env’tl. Quality*, 19-0283 (La. App. 1 Cir. 11/15/19), 2019 WL 6050454. Since 2004, DEQ had demanded that Firestone Polymers, L.L.C., among others, pay for the remediation of Bayou d’Inde and a ditch that linked the Firestone facility to the bayou. Firestone had refused to pay. Finally, in 2017, DEQ issued an Administrative Order for Remedial Action, which stated that it compelled Firestone to participate in the bayou’s remediation.

In response, Firestone filed various petitions for judicial review of the Administrative Order, which the trial court dismissed. Firestone appealed, arguing that the order, issued under the Louisiana Environmental Quality Act (LEQA) Chapter 12, is appealable as a “final enforcement action.” The appellate court disagreed, relying on a close reading of the LEQA.

Pursuant to the LEQA, the DEQ can

issue an order demanding payment for remediating hazardous discharges to every responsible party. If the recipient fails to comply, the DEQ can institute suit to enforce the order.

The LEQA also allows the DEQ to take “enforcement actions,” which include compliance orders, penalty assessments and so forth. An enforcement action can be appealed by the receiving party once it is considered a “final enforcement action.” Here, Firestone urged that the Administrative Order regarding Bayou d’Inde was a final enforcement action and, therefore, appealable by Firestone. The appellate court disagreed, noting that the statutory language pertaining to remediation orders has its own enforcement mechanisms and does not state that such orders are immediately appealable — or, for that matter, enforceable. Instead, additional steps must be taken, unlike final enforcement actions, which by statute can be appealed.

Thus, the Firestone petitions for judicial review were properly dismissed for lack of subject matter jurisdiction. Interestingly, the appellate court opinion stated that the complained-of Administrative Order was also unenforceable by the DEQ, unless that agency institutes a lawsuit to compel compliance with the order.

—**Lauren E. Godshall**
Member, LSBA Environmental
Law Section
Tulane Environmental
Law Clinic
6329 Freret St.
New Orleans, LA 70118

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Appeal

Brashier v. Brashier, 19-0934 (La. App. 1 Cir. 2/21/20), ___ So.3d ___, 2020 WL 868118.

Following a trial, the court signed a judgment regarding custody, child support and use of the former matrimonial domicile and an automobile. Mr. Brashier then filed a motion averring that the judgment failed to include the trial court's order that he be allowed to claim the minor children on his federal and state income tax returns. Subsequently, the court signed an amended judgment recognizing his entitlement to claim the children.

Following a hearing officer conference in which the hearing officer recommended that the parties file amended 2014, 2015 and 2016 tax returns allowing him to claim the children, Ms. Brashier filed an exception to the recommendation, as well as a motion to vacate and a rule to show cause, alleging that the original judgment was wrongfully modified. The trial court denied her exception and ordered both parties to file amended returns. However, the court did not address her motion to vacate.

Consequently, on her appeal of the trial court's judgment ordering them to file amended returns, the court of appeal found that that judgment was not a final appealable judgment since the motion to vacate, which was "directly related to the April 3, 2019, judgment at issue," remained open. Ms. Brashier argued that the judgment should be considered a final appealable judgment since its silence on her motion to vacate should be treated as a presumption that the relief she sought was denied. The court of appeal responded by stating that there was no evidence in the record indicating that her motion was ever placed before the court, and, thus, it could not presume that the trial court had denied it. Her appeal, consequently, was dismissed.

Wolfe v. Breaud, 19-0454 (La. App. 1 Cir. 3/2/20), 2020 WL 998759.

The trial court signed conflicting judgments following a custody trial and vacated one of the two judgments. The remaining judgment proceeded before the appellate court on Ms. Breaud's appeal. However, the trial court was unable to advise which of the two judgments had been signed first. Because the second signed judgment would be an absolute nullity that could not be cured, the appellate court was unwilling to assume that the remaining judgment was the first signed judgment. Thus, the court converted the appeal to an application for supervisory writs, which allowed it to avoid the issue of whether it had appellate jurisdiction.

Ms. Breaud filed her appeal within 30 days, making it timely within the period for writs. The court then granted the writ, but vacated the judgment on the ground that it could not determine whether it was a valid judgment. It then reviewed the record and rendered judgment. Although the trial court had granted Mr. Wolfe's request to modify the physical custody, the court of appeal found that he failed to allege and prove a change of circumstances. Thus, it denied his request for modification. Regarding her request to modify the existing judgment to seek sole custody, the appellate court found that, although she stated a change of circumstances, she failed to prove her allegations and, therefore, denied her relief.

Custody/Protective Orders

Main v. Main, 19-0503 (La. App. 5 Cir. 2/19/20), ___ So.3d ___, 2020 WL 810851.

A consent judgment prohibited contact between Mr. Main and his children pending a custody evaluation. He filed a petition seeking supervised visitation, which the trial court denied due to his past history of substance abuse and poor parental decisions that affected the welfare of one of the children. The court of appeal reversed, finding that the burden of proof was on Ms. Main, as she was attempt-

ing to prevent his having contact with his children, and that he was entitled to a presumption in favor of visitation as a parent.

The court further found that she failed to show that harm would occur to the children if he were allowed therapeutically supervised visitation while he participated in further treatment. While many of the custody factors weighed against his having custody, the court found that they were not germane to his having supervised visitation with appropriate protections in place. The court of appeal not only allowed supervised visitation, but ordered that there be reunification therapy between him and the minor child, that the visitation be therapeutically supervised, that both parents attend and complete a parenting education course and that a parenting coordinator be appointed.

The court of appeal also found that the custody evaluator went beyond the scope of his role as an evaluator and attempted to do parental counseling; moreover, the court found that he had become unable to act as an impartial and objective evaluator. He also failed to timely update his report and failed to meet with the father and the minor child together. He also inappropriately criticized the father's behavior in a non-partisan fashion.

Suits Between Spouses

Clay v. Sutton, 53,333 (La. App. 2 Cir. 3/4/20), 2020 WL 1036278.

The trial court awarded Ms. Sutton \$3,500 on her suit for mental and emotional abuse against her ex-husband, Mr. Sutton. She claimed that he embarrassed her by the way he treated his first wife with favoritism over her, that he lied to her about his medical condition, that he caused her to incur numerous expenses during the marriage, and that he committed other irritating, aggravating and humiliating actions. The court of appeal reversed, finding that she failed to present any evidence regarding the value of her claim, as she called no counselor or psychologist regarding the effects of the emotional abuse. She also failed to show that he intended to inflict emotional abuse or knew that distress would re-

sult from his conduct. As the appeal was filed in *forma pauperis*, the court did not assess costs against her.

Interdiction

Sanders v. Dupree, 53,296 (La. App. 2 Cir. 3/4/20), ___ So.3d ___, 2020 WL 1036492.

Mr. Colvin granted Sanders a power of attorney. Subsequently Sanders filed a petition on Colvin's behalf against Dupree, his spouse, for protection from abuse, and later, for divorce. He was then interdicted, and Sanders was named his curatrix. The trial court granted Dupree's exception of no cause and no right of action and lack of procedural capacity. As the 2nd Circuit stated: "The looming question in this matter is does a person, even if interdicted, lose the right [to] seek a divorce." *Id.* at *2. The appellate court reversed the exceptions of no cause and no right of action, finding that Colvin had a cause of action to seek a divorce and had a right of action, although the action had to be accomplished by his curator.

Regarding Dupree's exception of lack of procedural capacity, the appellate court found that the trial court, in granting the exception, did not provide Colvin the right to amend to cure the fault in the pleading. It, therefore, vacated the judgment and remanded the matter to the trial court to reissue the judgment with a time period for Colvin to attempt to correct the procedural deficiency. The court further opined that because the articles addressing curators and interdicts did not seem to address whether a curator could file a petition for divorce on behalf of the interdict, "a determination is necessary as to whether a curator's authority to manage the affairs of an interdict, as defined in La. C.C.P. art. 4566, includes seeking a divorce." *Id.* at *5.

—David M. Prados

Member, LSBA Family Law Section
Lowe, Stein, Hoffman, Allweiss
& Hauver, L.L.P.
Ste. 3600, 701 Poydras St.
New Orleans, LA 70139-7735



U.S. Court of Appeals for the Federal Circuit

Am. Inst. for Int'l Steel v. United States, No. 2019-1727 (Fed. Cir. Feb. 28, 2020), 2020 WL 967925.

The Court of Appeals for the Federal Circuit recently upheld a decision of the Court of International Trade (CIT) regarding the constitutionality of Section 232 of the Trade Act. As previously reported in these Recent Developments, a group of steel companies filed suit challenging the constitutionality of Section 232, which delegates to the President authority to impose tariffs when imports impair or threaten to impair the national security. President Trump imposed 25% tariffs on

imported steel from certain countries under Section 232. Plaintiffs challenged the statute as an unconstitutional delegation of legislative authority to the President, in part, because of the broad scope of what constitutes national security.

A three-judge panel of the CIT rejected the constitutional claim, relying on U.S. Supreme Court precedent in *Fed. Energy Admin. v. Algonquin SNG, Inc.*, 426 U.S. 548 (1976). Plaintiffs appealed the decision directly to the U.S. Supreme Court, which denied writs. Plaintiffs also appealed directly to the Court of Appeals for the Federal Circuit. In a unanimous decision, the Federal Circuit upheld the CIT, finding that *Algonquin* remains valid binding precedent and precludes the constitutional non-delegation claim. Plaintiffs intend to appeal to the Supreme Court.

—Edward T. Hayes

Chair, LSBA International Law Section
Leake & Andersson, L.L.P.
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Labor and Employment Law

5th Circuit: Years Served Do Not Necessarily Render an Individual More Qualified

In *Thompson v. Zinke*, 795 Fed. Appx. 294 (5 Cir. 2020), the 5th Circuit affirmed the Eastern District of Louisiana’s grant of summary judgment regarding appellant’s racial discrimination claims under Title VII. Appellant alleged that racial discrimination caused his employer to choose a white applicant with less seniority and experience over him for the position of petroleum-engineering technician in the Commingling and Measurement Approval Unit within the Department of the Interior. Appellant, an African-American, possessed 38 years of experience in various positions within the Bureau of Safety and Environmental Enforcement, and he alleged that this experience rendered him a superior candidate to the individual chosen for the position.

The court considered appellant’s argument that because he had more experience in the pipeline industry than the individual chosen, the hiring decision must have been made on a discriminatory basis. However, the court held that because the experience of the individual chosen included familiarity with the data that would be used in the position and prior use of the system used to manage that data, and appellant possessed neither of those qualifications, appellant did not demonstrate that he was better qualified for the position than the individual chosen. The court cited *Moss v. BMC Software, Inc.*, 610 F.3d 917 (5 Cir. 2010), when rejecting appellant’s attempt to equate years of general experience with superior qualifications. The court held that the reasons given by the Department were not a pretext for discrimination and affirmed the district court judgment.

—**Katelyn W. Harrell**
Member, LSBA Labor and Employment Law Section
Jackson Lewis, P.C.
Ste. 1900, 650 Poydras St.
New Orleans, LA 70130



Mineral Law

Good Faith Drilling

Cannisnia Plantation, L.L.C. v. Cecil Blount Farms, L.L.C., No. 53,252 (La. App. 2 Cir. 3/4/20), 2020 WL 1036500.

In June 1996, Thomas Blount sold land to Cannisnia Plantation, L.L.C. (Cannisnia), reserving a mineral servitude for one-half of all the oil and gas produced from the land. Blount later transferred the servitude to Blount Farms, L.L.C., which transferred it to Blount Company, which eventually transferred the servitude back to Blount Farms. This article will refer to Blount, his father, Blount Farms and Blount Company as, collectively, “the Blounts.”

The Blounts apparently had no previous oil and gas experience, but they wanted to drill their own well. They hired an experienced geologist who developed a plan to drill a well through multiple potentially productive formations. The Blounts also consulted with other geologists, hired a drilling contractor and obtained a permit to

Jessica D. LeBlanc, CPA, CFF

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Jessica D. LeBlanc, CPA, LLC 504.812.7105 jdleblanc.cpa@gmail.com
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drill. They spudded the Cannisnia-Blount No. 1 well in March 2006 and reached total depth in April 2006. (In certain places in the opinion, the court erroneously refers to drilling or other operations occurring in “2016,” but the context of the reference indicates that the events occurred in 2006.) They logged the well and collected a core sample. The well was a dry hole, and the Blounts plugged it.

Several years later, in early November 2014, Cannisnia sent notice to the Blounts, demanding (pursuant to Mineral Code art. 206) that the Blounts furnish a recordable instrument stating that their servitude had terminated. The Blounts did not do so. In December 2014, Cannisnia filed suit, seeking a declaratory judgment that the servitude had terminated, plus attorney fees and damages for the Blounts’ failure to acknowledge that the servitude had terminated. The Blounts answered and filed a reconventional demand in which they sought a declaratory judgment that the servitude had not terminated.

Under Louisiana law, a mineral servitude is extinguished by nonuse. La. R.S. 31:27. Prescription of nonuse is interrupted by “good faith” drilling. La. R.S. 31:29. For drilling to be in “good faith” for purposes of Mineral Code art. 29, the drilling “must be . . . commenced with reasonable expectation of discovering and producing minerals in paying quantities at a particular point or depth,” and the drilling must be “continued at the site chosen to that point or depth.” *Id.* When a landowner contends that a mineral servitude has terminated, the owner of the servitude has the burden of proving that there was an interruption of prescription. *Cannisnia*, No. 53,252 at *7 (citing *Smith v. Andrews*, No. 51, 186 (La. App. 2 Cir. 2/15/17), 215 So.3d 868).

At trial, four of the geologists with whom the Blounts had consulted gave testimony in which they stated they believed there had been a reasonable expectation that the Blounts would find hydrocarbons in paying quantities at the depth to which they had drilled. The evidence shows that the Blounts incurred about \$160,000 in drilling expenses. The trial court entered judgment, holding

that the servitude had not terminated. Cannisnia appealed.

The Louisiana 2nd Circuit noted that prior decisions of Louisiana courts have considered numerous factors in determining whether drilling was done in “good faith.” Some of these factors include the geology of the drilling site and surrounding area based on prior wells and seismic data; the expertise and experience of the geologists, petroleum engineers and oil men making the recommendations and decisions; the depth of review of the available geology; the timing of the lease and its terms; the expenses incurred in the operation; the permit applications; the various types of testing performed; the analysis of formations encountered during drilling; the keeping of well logs; the time put into drilling; the depth drilled; and the size of pipes used. This nonexclusive list, along with the credibility assessment of testimony given at trial, is to be weighed by the trial court in making the good faith determination. *Id.* at *10 (citing *Indigo Minerals, L.L.C. v. Pardee Minerals, L.L.C.*, No. 45,160 (La. App. 2 Cir. 5/28/10), 37 So.3d 1122).

The 2nd Circuit affirmed the trial court’s judgment. The appellate court noted that the trial court’s written reasons included a reference to Cannisnia not proving its case, but the appellate court concluded that this did not require reversal. It was not clear that the trial court had really placed the

burden of proof on Cannisnia. Further, parties appeal judgments, not the reasons for judgment, and the record contained sufficient evidence to justify affirming the lower court’s judgment. In affirming the lower court’s judgment, the appellate court rejected suggestions that the Blounts’ sole reason for drilling the well had been to interrupt prescription and that they had not had a reasonable expectation of finding hydrocarbons at the location and depth to which they drilled.


In a dissenting opinion, Judge Thompson expressed an opinion that the record did not contain sufficient evidence to show that the Blounts satisfied Louisiana’s objective standard for good faith, which requires a reasonable expectation of finding hydrocarbons in paying quantities, not merely a subjective belief that a well will produce hydrocarbons.

—**Keith B. Hall**

Member, LSBA Mineral Law Section
 Director, Mineral Law Institute
 LSU Law Center
 1 E. Campus Dr.
 Baton Rouge, LA 70803-1000
 and

Colleen C. Jarrott


Member, LSBA Mineral Law Section
 Baker, Donelson, Bearman,
 Caldwell & Berkowitz, P.C.
 Ste. 3600, 201 St. Charles Ave.
 New Orleans, LA 70170-3600



Capt. Gregory Daley
 International Maritime Consultancy
 Marine Safety & Operations Expert

M.S. Mechanical Engineering, MIT
 USCG Ocean Master Unlimited
 Certified Safety Professional
 Experienced Expert Witness

imc@captaingreg.net ♦ (337) 456-5661





Motion for Summary Judgment

Reed v. Restorative Home Health Care, L.L.C., 19-1974 (La. 2/26/20), 289 So.3d 1028.

The trial judge continued a motion for summary judgment “solely to hear oral argument . . . while closing the record to further filings,” pursuant to La C.C.P. art. 966. Fifteen days prior to the hearing on the motion for summary judgment, the plaintiffs filed a motion to substitute an original affidavit, which was unsigned, to replace it with a signed copy. The trial court refused to accept the signed affidavit and granted summary judgment in favor of the defendants. The appellate court originally reversed the trial court’s decision, but

then affirmed on rehearing.

The Supreme Court, in a per curiam opinion, reversed, pointing out that article 966 was revised in 2015, and the official comments made the legislative intent clear that subparagraphs (B)(1), B(2) and (B)(3) established time periods for filings in summary judgment proceedings that superseded Rule 9.9 of the District Court Rules. While recognizing the “ability of the trial court and all of the parties to enter in to a case management or scheduling order or other order to establish deadlines different from those provided by this Article,” the Legislature clarified that “[n]evertheless, these orders may not shorten the period of time allowed for a party to file or oppose a motion for summary judgment under this Article”

The Court noted that “when a court grants a motion to continue a hearing on a motion for summary judgment, the filing deadlines are reset.” Thus, the trial court erred when it forbade resetting of the deadlines. The plaintiffs’ motion to substitute the original affidavit with a signed copy was granted, and the lower court rulings were vacated.

General Negligence v. Malpractice

Blazio v. Ochsner Clinic Found., 19-0753, 2020 WL 1056795 (La. App. 4 Cir. 3/4/20), ___ So.3d ___.

A hospital patient locked herself inside her bathroom. The door hinges had to be removed in order to reach her. She was found on the floor with no pulse. Shortly thereafter, she died. The plaintiff alleged a number of negligent acts in her wrongful death and survival lawsuit. The defendants filed an exception of prematurity, contending that all of the claims were required to first be considered by a medical-review panel. The trial court granted the exception as to all claims.

The plaintiff argued on appeal that three of the claims against the hospital did not fall within the ambit of the Medical Malpractice Act (MMA). The first claim involved the removal of a camera monitor that had been placed earlier in the decedent’s room to more closely monitor her condition. The plaintiff argued that the

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removal of the camera was not “treatment related,” as she did not contend that the camera was removed by the medical staff. The appellate court noted that, irrespective of the correctness of the plaintiff’s allegations, nothing in the Act “limits its application to direct treatment by a physician.” La. R.S. 40:1231.1(A)13 speaks of claims resulting from services rendered by a health care provider to a patient. Thus, the court decided that “[t]he use of the broad term ‘health care provider,’ rather than simply ‘physician’ or ‘medical doctor,’ necessarily includes actions which are treatment related and undertaken by [a] Hospital in its capacity as a health care provider — even if those actions are not performed directly by a medical professional” (quoting *Dupuy v. NMC Operating Co.*, 15-1754 (La. 3/15/16), 187 So.3d 436, 443). The court decided that removing a camera monitor, which sought to observe a patient, fell within the definition of “health care,” irrespective of whether it was removed by medical or non-medical hospital employees.

The plaintiff’s second claim involved inadequate orders for monitoring and/or failing to adequately monitor the patient, which the plaintiff claimed was not malpractice. Again, the court disagreed, principally because the failure to monitor was directly related to the patient’s care, and proof of negligence would require expert medical testimony concerning the standard of care. Thus, this claim “clearly” was covered by the MMA.

The plaintiff’s third claim was that an unknown employee’s negligent positioning of the door lock allowed the patient to prevent entry into the bathroom in emergency situations. The court described this claim as related to “the deficient design of the hospital and lack of emergency procedure,” which it deemed was neither treatment-related nor caused by the absence of medical expertise. The court further reasoned that proof of negligence “would not require expert medical testimony or an assessment of the patient’s condition.” Despite the requirement that hospitals must have “operating standards” concerning construction and housing conditions, and that such a claim “does fall within the scope of activities a hospital is licensed to perform,” the court decided that “any ambiguity as to whether a claim falls under the MMA should be resolved in favor of

the Plaintiff.” Finding that the plaintiff’s claims sounded in premise liability and general negligence, the court reversed this part of the trial court judgment.

—Robert J. David

Gainsburgh, Benjamin, David,
Meunier & Warshauer, L.L.C.
Ste. 2800, 1100 Poydras St.
New Orleans, LA 70163-2800



Trucks and Trailers for Transportation Do Not Qualify for MM&E Exclusion

*CORA-TEXAS Mfg. Co., Inc. v. Sec’y,
Dep’t of Revenue*, BTA No. 11065D
(12/5/19).

CORA-TEXAS Mfg. Co., Inc. sought refunds for sales-and-use taxes paid on its purchases and leases of equipment CORA claimed were excluded from the definition of “sale at retail” pursuant to the Manufacturing Machinery and Equipment (MM&E) exclusion.

CORA manufactures sugar from sugarcane at its sugar mill in Iberville Parish. CORA acquires raw sugarcane from farmers. The farmers are not CORA’s employees. Combines are used to harvest the sugarcane. The combines feed the stalks into machinery that chops the stalks into small billets. CORA does not own, lease or operate the combines or machinery.

The essential component of sugarcane for manufacturing raw sugar is sucrose. As cuts are made in the sugarcane, there is exposure to bacteria. Bacteria will convert sucrose to dextran, which means less sucrose, lowering the production of raw sugar.

When sugarcane reaches the sugar mill, CORA extracts the sucrose and removes the bacteria. CORA’s success is dependent on transporting the billets to the sugar mill as quickly as possible. Trucks and trailers

are used for such transport. Farmers collect cane billets and deliver them to CORA’s leased trucks and trailers. The trucks and trailers bring the billets to the mill.

The main issue presented for review was whether trucks, trailers and other transportation equipment used by CORA in its business are MM&E under the MM&E exclusion. The majority of the refund claims at issue related to the trucks and trailers.

CORA claimed that the MM&E exclusion applied to lease payments, repairs and parts for cane trucks and trailers. The Louisiana Board of Tax Appeals (BTA) held the MM&E exclusion does not include property used to transport raw materials prior to the beginning of the manufacturing process. Under the MM&E exclusion, the manufacturing process begins at the point at which raw materials reach the first machine or piece of equipment involved in changing the form of the material. The BTA held the only transformation during transport was dextran formation, which occurs naturally and inhibits the manufacturing process. Dextran formation was not a step in the process of producing sugar. In fact, CORA did everything possible to stop it. The BTA ruled CORA’s manufacturing process does not begin when the billets are loaded on the trucks and trailers. The costs associated with the trucks and trailers, including repairs, parts and lease payment, are not used in the manufacturing process and were found to not qualify for the MM&E exclusion.

—Antonio Charles Ferachi

Member, LSBA Taxation Section
Director, Litigation Division
Louisiana Department of Revenue
617 North Third St.
Baton Rouge, LA 70821

Application of Late Payment Penalties

In *Smith Int’l v. Robinson*, 18-1640 (La. App. 1 Cir. Jan. 9, 2020), ___ So.3d ___, 2020 WL 104366, the Louisiana 1st Circuit Court of Appeal held that the Louisiana Department of Revenue can’t impose a late payment penalty on a taxpayer paying the tax shown on the face of its return as due. The court’s holding limits a tax collector’s ability to “stack” late payment and understatement

penalties, which often resulted in penalties equaling or exceeding 35% of the additional tax determined on audit.

After a corporation income-and-franchise-tax audit, Smith International paid the additional tax and interest, but appealed the late payment and negligence (*i.e.*, understatement) penalties to the Louisiana Board of Tax Appeals (BTA). Specifically, Smith International disputed the late payment penalty because it had timely remitted the amount of tax shown on the face of its returns. The taxpayer also disputed the negligence penalty for tax periods before July 1, 2015, because, prior to that time, the negligence penalty was authorized only where there was “willful negligence or intentional disregard of rules and regulations.” The Department alleged that both penalties were properly imposed, and that La. Acts 2015, No. 128, which amended the negligence penalty statute to remove the willfulness requirement, effective July 1, 2015, was retroactive. The Department also asserted that the BTA lacked the jurisdiction to waive the penalties.

In *Smith Int'l v. Sec'y, Dep't of Revenue*,

BTA No. 10498D, the BTA overruled the Department's exception of lack of subject matter jurisdiction, and with respect to the substantive issues, the BTA held that the late payment penalty applies only when a taxpayer fails to remit the amount due shown on its filed return and that Act 128, as a substantive law, could not be applied retroactively. The Department appealed only the BTA's rulings on its exception of lack of subject matter jurisdiction and the application of the late payment penalty to the Louisiana 1st Circuit Court of Appeal.

On appeal, the court agreed that the BTA had jurisdiction over the dispute because the dispute concerned a redetermination of an assessment and not a waiver of penalties. The court then reviewed the late payment penalty statute and concluded that Smith International was not subject to the late payment penalty because it paid the amount identified as due on the face of its returns. In so holding, the court expressly disagreed with the Louisiana 4th Circuit Court of Appeal's holding in *City of New Orleans' Dep't of Fin. v. Touro Infirmary*, 04-0835 (La. App. 4 Cir.

4/27/05), 905 So.2d 314, which interpreted the penalty statute's language to mean the total amount of tax owed by the taxpayer for the period that is supposed to be due, because separate penalties apply when a taxpayer makes an incorrect or fraudulent return.

The court also distinguished its holding from its decision in *Enterprise Leasing Co. of New Orleans v. Curtis*, 07-0354 (La. App. 1 Cir. 11/2/07), 977 So. 2d 975, *writ denied*, 07-2320 (La. 2/1/08), 976 So.2d 719, in which it was found that a taxpayer was liable for late payment penalties even though the taxpayer paid the amount of tax shown as due, by explaining that the issue in *Enterprise Leasing* was whether there was a good faith exception to the late payment penalty, not whether the penalty was improperly applied.

—William J. Kolarik II

Member, LSBA Taxation Section

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The print version of the directory for arbitrators and mediators will be mailed with the October/November 2020 Louisiana Bar Journal. For the one low price of \$125, your listing is first published in the print directory, then the directory is uploaded to the LSBA website in interactive PDF format (email addresses and website URLs are activated and instantly accessible). The Web version of the directory remains active for one full year!

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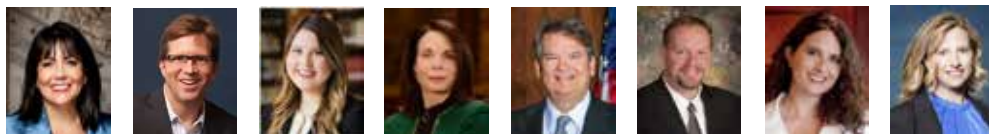
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CHAIR'S MESSAGE

YLD Council Will Pursue, Expand, Rework Programming in Light of COVID-19

By Carrie LeBlanc Jones

I've been thinking about my first message as chair of the Young Lawyers Division (YLD) ever since I was elected as secretary by the YLD Council in August 2017. The message I envisioned included discussing the YLD's programming for the upcoming year, recognizing my mentors, and thanking my family for supporting me through my journey to chairing this incredible group of young lawyers. I will save those ideas for a future issue because they seem unfitting under the circumstances.

I write this from my dining room which was transitioned to a home office in the wake of COVID-19, social distancing and the Governor's stay-at-home order. As the chief legal officer/general counsel for the Louisiana State

Board of Nursing, I've been tirelessly working with my agency's leadership to collaborate with the Governor's executive team, the Louisiana Department of Health, other Louisiana regulatory boards and state nursing boards throughout the country to increase Louisiana's nursing workforce and to remove barriers to healthcare during this unprecedented public health emergency. As we all know, healthcare workers are not the only profession impacted by COVID-19. Likewise, the Louisiana State Bar Association (LSBA) lead-



Carrie LeBlanc Jones

ership is working closely with the Louisiana Supreme Court to identify and address issues arising in the legal field.

I'm also the mother of two young children whose routines have been completely uprooted. I'm sharing my "new office" space with my 5-year-old son. I try to help him complete his distance learning requirements for the day between telephone calls and emails, all while I'm desperately trying to keep my almost 3-year-old entertained for more than five minutes at a time. This is my new life during the COVID-19 public health emergency. Unfortunately, this is not specific to me. Many of our state's attorneys also have families and are faced with a similar struggle of balancing work and family needs. In the rare moments that I find time to stop and reflect, I find myself immensely sad for humanity. Hopefully, by the time this issue of the *Journal* is published, there will be light at the end of the tunnel and some hint of what our lives will be like after the pandemic.

My year as YLD chair is forever marked by COVID-19. I cannot begin to imagine all the ways that COVID-19 will impact the legal profession, particularly young attorneys. As chair, I promise that this year's YLD Council will continue to pursue and expand its successful programming to serve the profession and the public. The YLD Council will take time to consider the impacts of COVID-19 on Louisiana's young attorneys as well as our programming. We will work with the LSBA staff and leadership to modify existing programming and find ways to address specific needs that are identified for young attorneys following COVID-19. Please stay healthy and safe. I look forward to serving the members of the LSBA over the next year.



YOUNG LAWYERS DIVISION NEWS

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PGRS is a new program led by the Louisiana Department of Justice, Gaming Division in partnership with the Louisiana Department of Health, Office of Behavioral Health to bring awareness about problem gambling and the FREE gambling addiction services available to all Louisiana residents. Not only are attorneys in a unique position to determine that their clients may have a gambling problem, but attorneys are at a greater risk themselves.

A client’s gambling addiction may be the underlying cause of what led them to seek your help:

Attorneys are in a unique position to identify problem gambling behavior in their clients because they have access to client information, financial records, and other documentation that is generally not available to others. Clients, protected by attorney -client privilege, may feel safe disclosing a gambling problem to their attorney.

Lawyers and their staff are at a high risk for Problem Gambling. Here’s why:

- Lawyers are among the professionals most likely to suffer from stress and depression, which can play a role in the development of problem gambling behavior.
- Lawyers are risk takers. The legal profession is often a high risk, high reward environment, which may lead to risk taking behavior, such as gambling.
- Lawyers often have access to large sums of money, such as client trust accounts, retainers, settlement proceeds, etc.
- Lawyers are at a heightened risk for alcohol and drug misuse and dependency, which can increase the possibility for developing co-occurring alcohol/drug and gambling addictions.

What happens when someone calls 1-877-770-STOP?

- The Helpline, like all gambling addiction services offered by Louisiana, is confidential and **FREE**.
- The Helpline is answered by trained, certified and caring Helpline Specialists. The Specialists do not provide counseling, but they will refer you to a qualified counselor and all the **FREE** resources in your area.

If you have concerns about your own gambling or if you suspect that a client or colleague may have a problem, call or text 1-877-770-STOP for FREE help.

YOUNG LAWYERS SPOTLIGHT

Amanda L. Brown Baton Rouge

The Louisiana State Bar Association's Young Lawyers Division Council is spotlighting Baton Rouge attorney Amanda L. Brown for her continued work on access to justice efforts in Louisiana.

Brown is the founder and executive director of Lagniappe Law Lab, a legal aid technology nonprofit serving Louisiana's justice community. She is the co-chair of the Louisiana Access to Justice Commission's Technology Subcommittee, a member of the

Louisiana State Bar Association's Access to Justice Committee and Disaster Response Subcommittee, and is an inaugural class member of the Legal Service Corporation's Emerging Leaders Council.

She is active in the American Bar Association (ABA), serving as the vice director of the Young Lawyers Division's (YLD) Disaster Legal Services Team, a member of the ABA Center for



Amanda L. Brown

Innovation's Governing Council and the YLD liaison to the Standing Committee on the Delivery of Legal Services.

Most recently, Brown was a legal technology consultant for the Louisiana Bar Foundation on its statewide civil legal aid triage portal, the Louisiana Civil Legal Navigator Project. Prior to that, she served as the inaugural Microsoft NextGen Fellow for the ABA's Center for Innovation and was a disaster recovery attorney at Southeast Louisiana Legal Services.

She holds a BS degree in economics from Louisiana State University and earned her JD degree, *cum laude*, from Loyola University College of Law.

2021 EXPERT WITNESS, CONSULTANT AND LEGAL SERVICES DIRECTORY

The Louisiana State Bar Association is publishing its Expert Witness, Consultant and Legal Services Directory. The supplement to the *Louisiana Bar Journal* will be printed separately and shrink-wrapped for mailing with the December 2020/January 2021 *Louisiana Bar Journal*. The directory is published annually, guaranteeing a year's worth of exposure in print and on the LSBA Web site.

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APPOINTMENTS... IN MEMORIAM

Appointments

► Maxine Crump was reappointed, by order of the Louisiana Supreme Court, to the Louisiana Judicial Campaign Oversight Committee for a term of office beginning June 15 and ending on June 14, 2024.

► Edwin G. Preis, Jr. was reappointed, by order of the Louisiana Supreme Court, to the Louisiana Judicial Campaign Oversight Committee for a term of office which began on March 10 and will end on Feb. 1, 2024.

Deaths

► 22nd Judicial District Court, Division D, Judge Peter J. Garcia, 66, died March 10. He earned his JD degree in 1979 from Louisiana State University Paul M. Hebert Law Center. From 1991-96, he served as city attorney and magistrate for the City of Covington. He was an assistant district attorney for St.

Tammany and Washington parishes under District Attorney Marion B. Farmer and worked as a law clerk for the 22nd JDC and the Louisiana Legislative Council. He was elected to Division D of the 22nd JDC in 1996 and re-elected without opposition in 2002, 2008 and 2014. From 2003-06, he served as chief judge of the 22nd JDC. In 1998, Judge Garcia established one of the first Drug Courts in Louisiana and presided over a division of the Drug Court for 15 years. He also presided over a division of the Juvenile Drug Court for three years. He is a former president of the 22nd JDC Bar Association and the Covington Bar Association. He is a founding member and first president of the 22nd JDC Chapter of the American Inn of Court. In 2011, he started a Behavioral Health Court to provide case management and judicial supervision to individuals with mental health and addictive disorders within the criminal justice system.

► Retired 1st Parish Court, Division

B, Judge George W. Giacobbe, 75, died Feb. 29. He earned his bachelor's degree in 1967 from Louisiana State University and his JD degree in 1973 from Loyola University College of Law. He worked in private practice, serving as city attorney and later as magistrate judge for the City of Kenner. He was appointed by the Louisiana Supreme Court to preside over a special Domestic Relations Court in Jefferson Parish and to create and develop a Drug Court for the parish. He represented Louisiana at the Annual Meeting of the National Conference of Specialized Court Judges, and he served on the Louisiana Supreme Court's committee to evaluate new judgeships and court costs across the state. He served as the secretary of the Louisiana City Judges Association and as president and treasurer of the 4th and 5th Circuit Judges Association. He took the oath of office as 1st Parish Court judge in 1988. He was chief judge when he retired in 2014.

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LAWYERS ON THE MOVE

Bienvenu, Bonneau, Foco, Viator & Holinga, A.P.L.L.C., in Baton Rouge announces that **Patrick H. Hunt** has been named a partner in the firm and **Thomas C. Naquin** has joined the firm as an associate.

Chaffe McCall, L.L.P., announces that New Orleans office partner **Julie D. Livaudais** was elected as the firm managing partner. **Amy L. McIntire** has been elected as a partner in the New Orleans office. Also, **Benjamin R. Slater III** recently joined the firm as a partner in the New Orleans office.

Chehardy, Sherman, Williams, Murray, Recile, Stakelum & Hayes, L.L.P., announces that attorney **Walter R. Woodruff, Jr.** has joined the Metairie office. **Rory V. Bellina** and **Edwin T.**

Murray have joined the Metairie office as associates.

Christovich & Kearney, L.L.P., in New Orleans announces that **Christy L. McMannen** has been named an equity partner in the firm.

Coats Rose, P.C., announces that F. Christopher Wootten has been promoted to director in the New Orleans office. Also, Sarah E. Yednock has joined the New Orleans office as an associate.

Courington, Kiefer, Sommers, Marullo & Matherne, L.L.C., in New Orleans announces that Nicholas J. Smeltz and Ashley M. DeMouy have joined the firm as associates.

Daigle Fisse & Kessenich, P.L.C., announces that **Christina B. Peck** has joined the firm's Baton Rouge office as a partner and **Patrick B. Fisse** has joined the Madisonville office as an associate.

Deutsch Kerrigan, L.L.P., announces that **Kelly E. Theard**, head of the construction department in the New Orleans office, has been elected as managing partner.

Irwin Fritchie Urquhart & Moore, L.L.C., announces that Annie E. Reed and Gabriel J. Winsberg have joined the firm's New Orleans office as associates. Also, W. Chase Gore has joined the firm as an associate in the Baton Rouge office.

Lugenbuhl, Wheaton, Peck, Rankin & Hubbard announces that **Lorin R. Scott**, **Coleman L. Torrans** and **Ryan M. Tucker** have joined the New Orleans headquarters as associates.

Mansfield, Melancon, Cranmer & Dick, L.L.C., announces that **Seth T. Mansfield** has joined the firm and will head the firm's Lafayette office.

maps, Inc. (Mediation Arbitration Professional Systems, Inc.) announces



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Richard J. Arsenaault



Jeffrey M. Bassett



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Blake J. David



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Julius W. Grubbs, Jr.



Richard T. Haik, Sr.



Richard T. Haik, Jr.

that Judge (Ret.) Marc T. Amy has joined the maps panel of neutrals, mediating and arbitrating cases throughout Louisiana. Amy is special counsel in the Lafayette office of Jones Walker LLP.

Maynard Cooper & Gale, P.C., announces that Allison White Smalley has joined the firm's Mobile, Ala., office as of counsel.

Perry Dampf Dispute Solutions announces that **Marvin H. Olinde**, **G. Kent Moroux, Jr.** and **Judge (Ret.) Freddie Pitcher, Jr.** have joined its mediation panel. Olinde is a partner with Taylor, Wellons, Politz & Duhe, A.P.L.C., in Baton Rouge. Moroux is a partner with Kinchen, Walker, Bienvenu, Bargas, Reed & Helm, L.L.C., in Baton Rouge. Pitcher is a senior partner in the Baton Rouge office of Phelps Dunbar, L.L.P.

Taylor, Porter, Brooks & Phillips, L.L.P., announces that **John T. Andrishok** has joined the Baton Rouge office as special counsel.

NEWSMAKERS

Richard J. Arsenault, a partner in the Alexandria firm of Neblett, Beard & Arsenault, has been recognized as Acquisition International's Leading Trial

Attorney of the Year for Louisiana as part of its Leading Advisor Awards.

Timothy F. Daniels, a partner in the New Orleans office of Irwin Fritchie Urquhart & Moore, L.L.C., has become a Fellow of the American College of Trial Lawyers.

Blake J. David, founding partner with Broussard & David in Lafayette, was reappointed to serve on the Louisiana Board of Regents by Gov. John Bel Edwards. Blake currently is secretary of the Board of Regents, serves on the Executive Committee and chairs the Finance Committee.

John Jerry Glas, a partner in the New Orleans office of Deutsch Kerrigan, L.L.P., has become a Fellow of the American College of Trial Lawyers.

William H. (Bill) Goforth, a member of Goforth & Lilley, A.P.L.C., in Lafayette, was selected by the Top 100 Registry, Inc. for the list of Top 100 Lawyers.

Julius W. (Will) Grubbs, Jr., a partner in Haik, Minvielle & Grubbs, L.L.P., in New Iberia, was reappointed to the Louisiana Property and Casualty Insurance Commission.

Edward L. Tarpley, Jr., owner of Edward L. Tarpley, Jr., A.P.L.C., in Alexandria, was honored by the Urban League of Louisiana in 2019 with an award for his work with the Unanimous Jury Coalition and his leadership in restoring the unanimous criminal jury verdict in Louisiana.

PUBLICATIONS

Best Lawyers in America 2020

Adams and Reese, L.L.P. (Baton Rouge, New Orleans): E. Gregg Barrios, Mark R. Beebe, Philip O. Bergeron, Charles A. Cerise, Jr., Robin B. Cheatham, Jaimmé A. Collins, Johnny L. Domiano, Jr., Kathleen F. Drew, John M. Duck, Brooke Duncan III, Richard B. Eason II, Mark S. Embree, Philip A. Franco, A. Kirk Gasperecz, William B. Gaudet, Charles F. Gay, Jr., Matthew C. Guy, Lisa Merz Hedrick, E.L. Henry, Christopher J. Kane, Louis C. LaCour, Jr., Edwin C. Laizer, Leslie A. Lanusse, Francis V. Liantonio, Jr., Kellen J. Mathews, Lisa E. Maurer, Don S. McKinney, Robert B. Nolan, Glen M. Pilié, Jane C. Raiford, Lee C. Reid, Edward J. Rice, Jr., Jeffrey E. Richardson, Robert L. Rieger, Jr., James T. Rogers III, Gregory F. Rouchell, Deborah B. Rouen, Elizabeth A. Roussel, E. Paige Sensenbrenner, William D. Shea, Tyson B. Shofstahl, Ronald J. Sholes,



Patrick H. Hunt



Frank E. Lamothe III



Julie D. Livaudais



Seth T. Mansfield



Amy L. McIntire



Christy L. McMannen



G. Kent Moroux, Jr.



Patrick C. Morrow, Sr.



P. Craig Morrow, Jr.



Edwin T. Murray



Thomas C. Naquin



Marvin H. Olinde

Mark J. Spansel, Martin A. Stern, Mark C. Surprenant, Roland M. Vandenweghe, Jr. and David M. Wolf.

Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C. (Baton Rouge, Mandeville, New Orleans): Alissa J. Allison, Jennifer L. Anderson, Edward H. Arnold III, Alton E. Bayard III, Gregory E. Bodin, Craig L. Caesar, Phyllis G. Cancienne, Roy C. Cheatwood, Robert C. Clotworthy, Christopher O. Davis, Nancy Scott Degan, Warner J. Delaune, Jr., Robert S. Emmett, Matthew R. Emmons, Sean L. Finan, Donna D. Fraiche, Mark W. Frilot, Monica A. Frois, Steven F. Griffith, Jr., Christopher M. Hannan, Jan M. Hayden, William H. Howard III, Errol J. King, Jr., Kenneth M. Klemm, Amelia Williams Koch, M. David Kurtz, Kent A. Lambert, Jon F. Leyens, Jr., Alexander M. McIntyre, Jr., Patricia B. McMurray, Mark W. Mercante, Christopher G. Morris, Kathlyn C. Perez, Anne E. Raymond, Margaret M. Silverstein, Christine M. White, Anne Derbes Wittmann, Matthew A. Woolf and Adam B. Zuckerman.

Beck Redden, L.L.P. (Houston, TX): Kathleen A. Gallagher and Thomas E. Ganucheau.

Breazeale, Sachse & Wilson, L.L.P. (Baton Rouge, New Orleans): John T. Andrishok, Robert L. Atkinson, John W. Barton, Jr., Thomas M. Benjamin, Robert T. Bowsher, Jude C. Bursavich, Peter J.

Butler, Jr., David R. Cassidy, David M. Charlton, V. Thomas Clark, Jr., Jeanne C. Comeaux, Carroll Devillier, Jr., Cullen J. Dupuy, Murphy J. Foster III, Gregory D. Frost, Judith W. Giorlando, Alan H. Goodman, Emily Black Grey, Leo C. Hamilton, Paul M. Hebert, Jr., Scott N. Hensgens, Michael R. Hubbell, David R. Kelly, Lance J. Kinchen, Eve B. Masinter, Van R. Mayhall, Jr., Van R. Mayhall III, C. Stokes McConnell, Jr., Trenton J. Oubre, Richard G. Passler, James R. Raines, Claude F. Reynaud, Jr., Melissa M. Shirley, Jerry L. Stovall, Jr., Thomas R. Temple, Jr., Lydia H. Toso, B. Troy Villa, Stephen R. Whalen and Douglas K. Williams.

Chaffe McCall, L.L.P. (New Orleans, Houston, TX): Walter F. Becker, Jr., G. Wogan Bernard, H. Michael Bush, Katharine R. Colleta, T. Louis Colletta, Jr., E. Howell Crosby, Anthony P. Dunbar, Leah Nunn Engelhardt, Thomas D. Forbes, Mandy Mendoza Gagliardi, Edward N. George III, Douglas R. Holmes, William H. Langenstein III, Julie D. Livaudais, Fernand L. Laudumiey IV, Charles D. Marshall III, David J. Messina, Corinne A. Morrison, Sarah Voorhies Myers, John F. Olinde, Frank A. Piccolo, Robert S. Rooth, Peter J. Rotolo III, G. Philip Shuler III, Brent A. Talbot, Sabrina C. Vickers, Harold K. Watson and Jon W. Wise.

Coats Rose, P.C. (New Orleans): A.

Kelton Longwell, Megan C. Riess and Elizabeth Haecker Ryan.

Lamothe Law Firm, L.L.C. (New Orleans): **Frank E. Lamothe III.**

McGlinchey Stafford, P.L.L.C. (Baton Rouge, New Orleans, Dallas, TX): Richard A. Aguilar, Rudy J. Aguilar, Jr., Samuel A. Bacot, J. Patrick Beauchamp, Stephen P. Beiser, Magdalen Blessey Bickford, Mark N. Bodin, Rudy J. Cerone, Katherine Conklin, Richard A. Curry, Larry Feldman, Jr., Michael D. Ferachi, Jon Ann H. Giblin, R. Marshall Grodner, Ronnie L. Johnson, Mary Terrell Joseph, Christine Lipsey, Kathleen A. Manning, Deirdre C. McGlinchey, Colvin G. Norwood, Jr., Erin Fury Parkinson, R. Andrew Patty II, Jean-Paul Perrault, Stephen W. Rider, Anthony J. Rollo, Jr., Michael H. Rubin, Benjamin O. Schupp, Eric Shuman, Stephen P. Strohschein and Dan E. West.

Chambers USA 2020

Breazeale, Sachse & Wilson, L.L.P. (Baton Rouge, New Orleans): Thomas M. Benjamin, David R. Cassidy, Clay J. Countryman, Murphy J. Foster III, Gregory D. Frost, Alan H. Goodman, Emily Black Grey, David R. Kelly, Steven B. Loeb, Eve B. Masinter, Van R. Mayhall, Jr., Catherine B. Moore, E. Fredrick Preis, Jr. and Claude F. Reynaud, Jr.



Christina B. Peck



Judge (Ret.)
Freddie Pitcher, Jr.



James P. Ryan



Kathleen E. Ryan



Lorin R. Scott



Benjamin R.
Slater III



Charles L. Stern, Jr.



Edward L.
Tarpley, Jr.



Kelly E. Theard



Coleman L. Torrans



Ryan M. Tucker



Walter R.
Woodruff, Jr.

Louisiana Super Lawyers 2019

Courington, Kiefer, Sommers, Marullo & Matherne, L.L.C. (New Orleans): Kaye N. Courington, Scott B. Kiefer and Dawn D. Marullo.

Louisiana Super Lawyers 2020

Carver, Darden, Koretzky, Tessier, Finn, Blossman & Areaux, L.L.C. (New Orleans): Raymond G. Areaux, M. Hampton Carver, M. Taylor Darden, William T. Finn, Frank A. Tessier, Robert P. Thibeaux and David F. Waguespack; and J. Matthew Miller III, Stephen P. Scullin and Peter J. Segrist, all Rising Stars.

Courington, Kiefer, Sommers, Marullo & Matherne, L.L.C. (New Orleans): Kaye N. Courington, Scott B. Kiefer, Dawn D. Marullo and Troy N. Bell; Brittney B. Ankersen and Mathilde V. Semmes, 2020 Rising Stars.

Domengeaux Wright Roy & Edwards, L.L.C. (Lafayette): James P. Roy, Bob F. Wright, James H. Domengeaux, Thomas R. Edwards, John Parkerson Roy and Elwood C. Stevens, Jr.

Lamothe Law Firm, L.L.C. (New Orleans): **Frank E. Lamothe III.**

Mansfield, Melancon, Cranmer & Dick, L.L.C. (Baton Rouge, New Orleans): Scott M. Mansfield, Collin R. Melancon, Brad Cranmer and Kelley R.

Dick, Jr., all Rising Stars.

Morrow, Morrow, Ryan, Bassett & Haik (Opelousas, Lafayette, New Iberia): **Patrick C. Morrow, Sr., James P. Ryan, Jeffrey M. Bassett, P. Craig Morrow, Jr., Richard T. Haik, Jr.** and **Richard T. Haik, Sr.;** and **Taylor J. Bassett** and **Kathleen E. Ryan,** both Rising Stars.

Benchmark Litigation 2019

Chaffe McCall, L.L.P. (New Orleans): Walter F. Becker, Jr., H. Michael Bush, Julie D. Livaudais, Charles D. Marshall III, Sarah V. Myers, Peter J. Rotolo III and Brent A. Talbot.

Benchmark Litigation 2020

Barrasso Usdin Kupperman Freeman & Sarver, L.L.C. (New Orleans): Judy Y. Barrasso, Celeste P. Coco-Ewing, George C. Freeman III, Craig R. Isenberg, Stephen H. Kupperman, Richard E. Sarver and Steven W. Usdin; and Michael A. Balascio, Jamie L. Berger, David N. Luder and Andrea M. Price, all Future Stars. Also, Kyle W. Siegel, 2019 40 and Under List.

New Orleans CityBusiness

Chaffe McCall, L.L.P. (New Orleans): **Julie D. Livaudais,** 2020 Leadership in Law Class.

Mouledoux, Bland, Legrand & Brackett, L.L.C. (New Orleans): **Alan G. Brackett,** 2020 Leadership in Law Class.

Stegg Law Firm, L.L.C. (New Orleans): **Charles L. Stern, Jr.,** 2020 Leadership in Law Class.

New Orleans Magazine 2019

Liskow & Lewis, A.P.L.C. (New Orleans): Neil C. Abramson, Marguerite L. Adams, Robert S. Angelico, John C. Anjier, Kelly B. Becker, Wm. Blake Bennett, James L. Breaux, James A. Brown, Louis E. Buatt, Ryan T. Christiansen, James C. Exnicios, S. Gene Fendler, Kathryn Z. Gonski, Shannon S. Holtzman, R. Keith Jarrett, Greg L. Johnson, Philip K. Jones, Jr., Paul C. Kitziger, Cheryl M. Kornick, Gene W. Lafitte, Mark D. Latham, David W. Leefe, Thomas J. McGoey II, Robert B. McNeal, Carey L. Menasco, Joe B. Norman, Dena L. Olivier, Trey Raymond, Katherine S.

Roth, Kelly T. Scalise, Scott C. Seiler, Matthew D. Simone, Randye C. Snyder, Sean M. Toomey, Raymond T. Waid, Jack M. Weiss, Stephen W. Wiegand, Michael S. Williams, Charles B. Wilmore, John M. Wilson, Brett D. Wise and John D. Wogan, all Top Lawyers.

IN MEMORIAM

Michael James Moran, long-time director and vice president of maps (Mediation Arbitration Professional Systems, Inc.) in Metairie, died April 19. He was 74. Born in New Orleans, he



Michael James Moran

moved to Metairie in 1969 to assist coaching seventh grade football at Sam Barth Boys School while he attended law school. A 1964 graduate of Fortier High School, he earned his bachelor's degree in 1969 from Northeast Louisiana State University and his JD degree from Loyola University Law School. He was admitted to the Louisiana Bar in 1972. In 1969, he was sworn in the U.S. Army as a commissioned officer and honorably discharged as captain. He was also a member of the National Reserve. As one of Louisiana's first mediators and pioneers in mediation, he created relationships with Harvard and Pepperdine's dispute resolution programs and, as a result, introduced groundbreaking techniques for Louisiana neutrals. He mediated thousands of cases, trained mediators and was an adjunct professor at Tulane Law School. He was a charter Fellow of the International Academy of Mediators and the American College of Civil Trial Mediators. He was selected as a Louisiana Super Lawyer in 2012 and 2017 in alternative dispute resolution. He received the 2018 Louisiana State Bar Association's Stephen T. Victory Memorial Award for an article published in the *Louisiana Bar Journal*. He is survived by his wife of 51 years, Linda Lackey Moran, two daughters, three grandchildren, a sister, two brothers and several other relatives.

People Deadlines & Notes

Deadlines for submitting People announcements (and photos):

Publication Deadline

Aug./Sept. 2020	June 4, 2020
Oct./Nov. 2020	Aug. 4, 2020
Dec. 2020/Jan. 2021	Oct. 4, 2020

Announcements are published free of charge for members of the Louisiana State Bar Association. Members may publish photos with their announcements at a cost of **\$50 per photo**. Send announcements, photos and photo payments (checks payable to Louisiana State Bar Association) to:

Publications Coordinator Darlene M. LaBranche
Louisiana Bar Journal
601 St. Charles Ave.
New Orleans, LA 70130-3404
or email dlabranche@lsba.org.

UPDATE

LSU Law Recognizes 2020 Distinguished Alumni, Distinguished Achievement Honorees

Eight Louisiana State University Paul M. Hebert Law Center alumni were honored during the 2020 Distinguished Alumni Celebration on March 6 in Baton Rouge. LSU Law Professor William E. Crawford, Judge Ernestine Steward Gray, Judge Guy P. Holdridge and attorneys H. Alston Johnson III and James P. Roy were honored as Distinguished Alumni of the Year. Distinguished Achievement honorees were attorneys Glenn J. Armentor, John M. Madison, Jr. and Mary Olive Pierson.

Professor Crawford (LSU Law, 1955) became assistant dean of the LSU Law Center in 1966, associate professor in 1969 and professor in 1971. In 1985, he was awarded the James J. Bailey Professorship in Law. He retired from LSU Law Center in 2019. He served as director of the Louisiana State Law Institute from 1978-2018.

Judge Gray (LSU Law, 1976) was elected to the Orleans Parish Juvenile Court in 1984 and served for 35 years. She is a former president of the National Council of Juvenile and Family Court Judges and currently serves as the president of the Pelican Center for Children and Families. She was a 2019 inductee into the Louisiana Justice Hall of Fame.

Judge Holdridge (LSU Law, 1978) serves on the 1st Circuit Court of Appeal. He is on the adjunct faculty of LSU Law Center and on the LSU Trial Advocacy Program Committee. A long-time member of the Louisiana State Law Institute Council, he currently serves as director. He was inducted into the LSU Law Center Hall of Fame.



Eight Louisiana State University Paul M. Hebert Law Center alumni were honored during the 2020 Distinguished Alumni Celebration. From left, LSU Interim President Tom Galligan; Glenn J. Armentor, Distinguished Achievement; James P. Roy, Distinguished Alumni; Mary Olive Pierson, Distinguished Achievement; Professor William E. Crawford, Distinguished Alumni; Judge Ernestine S. Gray, Distinguished Alumni; H. Alston Johnson III, Distinguished Alumni; John M. Madison, Jr., Distinguished Achievement; Judge Guy P. Holdridge, Distinguished Alumni; and LSU Law Interim Dean Lee Ann Lockridge.

Johnson (LSU Law, 1970) is a partner in the Baton Rouge office of Phelps Dunbar, L.L.P., first joining the firm in 1984. His teaching career spans almost five decades, 14 years as a full-time member of the LSU Law faculty and the balance as an adjunct professor.

Madison (LSU Law, 1969) is a founding member of the law firm Wiener, Weiss & Madison in Shreveport, practicing law there since 1975. He is a Fellow and member of the American Bar Foundation and former president of the LSU Law School Alumni Association.

Pierson (LSU Law, 1970) works at the Cooper & Pierson law firm in Baton Rouge. She served as a member of the East Baton Rouge Metropolitan Council. An endowed scholarship at

LSU Law Center was established in her honor in 2014.

Roy (LSU Law, 1976) is the managing member of Domengeaux Wright Roy & Edwards, L.L.C., in Lafayette. He is a Fellow of the American College of Trial Lawyers and the International Academy of Trial Lawyers. He is a member of the LSU Law Alumni Board of Trustees.

Armentor (LSU Law, 1977) is general partner of Glenn Armentor Law Corp. in Lafayette, which he founded in 1977. He is a current member of the LSU Board of Supervisors and the LSU Law Alumni Board of Trustees. He has funded the Glenn Armentor LSU Law Annual Scholarship.



Judge Daniel E. Stretcher



Judge Pammela S. Lattier



Judge Raylyn R. Beevers



Judge Brian H. Barber

Louisiana City Judges Association Elects Officers

The Louisiana City Judges Association elected officers for the 2019-20 term during the Fall Judges Conference in February. President is Judge Daniel E. Stretcher, Jennings City Court; Vice President Judge Pammela S. Lattier, Shreveport City Court; Secretary Judge Raylyn R. Beevers, 2nd Parish Court of Jefferson; and Treasurer Judge Brian H. Barber, Shreveport City Court.



Tulane University alumni Deidre Dumas Labat, right, and Reynold T. Decou, left, were honored with the dedication of the Decou-Labat Residences on Nov. 16, 2019. Labat and Decou were the first African-American undergraduates to earn degrees from Newcomb College and Tulane University. The event featured a brunch, second line and ribbon-cutting ceremony. With them is Kim M. Boyle, 2009-10 Louisiana State Bar Association president. Photo by Paula Burch-Celentano.

Judge D'Souza Elected NAWJ President

Orleans Parish Civil District Court Judge Bernadette G. D'Souza was installed as president of the National Association of Women Judges (NAWJ) during a ceremony on Oct. 19, 2019. District of Columbia Court of Appeals Chief Judge Anna Blackburne-Rigsby, who administered her oath of office, read a congratulatory letter from longtime NAWJ member Louisiana Supreme Court Chief Justice Bernette Joshua Johnson.



Judge Bernadette G. D'Souza

Judge D'Souza's theme for her term as president is "Innovation Efforts to

Improve Access to Justice through Global Judicial Leadership." She has served as the NAWJ co-chair of the Domestic Violence Committee, NAWJ secretary, chair of the Personnel Committee, co-chair of the Executive Director Search Committee and district director.

In March 2019, Judge D'Souza presented the program on "Integrated Domestic Violence Courts" at the United Nations Convention on the Status of Women in New York. In June 2019, at the invitation of Pope Francis, she attended the first Pan American Judges' Summit on Social Justice and the Franciscan Doctrine in Vatican City, where she discussed "Equal Access to Justice: The Importance of Civil Legal Aid and Delivery of Justice to Eradicate Poverty."

LOCAL / SPECIALTY BARS



The Baton Rouge Bar Association (BRBA) hosted its annual Opening of Court, Memorial and New Member Ceremony on Jan. 29 at the 19th Judicial District Courthouse. BRBA President S. Dennis Blunt and BRBA President-Elect Christopher K. Jones recognized 50-, 55-, 60- and 65-year members of the Bar. Louisiana State Bar Association 2019-20 President Robert A. Kutcher introduced new members. The ceremony also recognized deceased bar members. From left, Amy C. Lambert, 2018-19 BRBA president; Michael A. Patterson, Long Law Firm, LLP; Edward J. Walters, Jr., Walters, Papillion, Thomas, Cullens, LLC; LSBA President Kutcher; Christopher K. Jones, 2019-20 BRBA president-elect; S. Dennis Blunt, 2019-20 BRBA president; David A. Thomas, 2019-20 BRBA treasurer; and Michael B. Victorian, 2019-20 president, Louis A. Martinet Legal Society, Inc. Baton Rouge Chapter.



Chief Judge Wilson E. Fields, 19th Judicial District Court, welcomed new Bar admittees during the Jan. 29 Baton Rouge Bar Association's annual Opening of Court, Memorial and New Member Ceremony.



The Lafayette Bar Association welcomed new Bar members at its annual Red Mass and Court Opening Ceremony on Jan. 10.



U.S. District Court Judge Ivan L.R. Lemelle, Eastern District of Louisiana, co-hosted the annual Lemelle Mixer on Oct. 3, 2019, with the A.P. Tureaud Chapter of the Black Law Student Association, the Tulane University Law School Black Law Student Association and the Greater New Orleans Louis A. Martinet Legal Society, Inc. The mixer is an opportunity for diverse law students to engage with judges and attorneys. Attending, from left, Micah C. Zeno, Gordon, Arata, Montgomery, Barnett, McCollam, Duplantis and Eagan, LLC; Kristen A. Lee, law clerk to Judge Regina Bartholomew Woods, 4th Circuit Court of Appeal; Judge Roland L. Belsome, Jr., Louisiana Supreme Court; and Mia J. Lewis, Galloway, Johnson, Tompkins, Burr & Smith, APLC.



The Lafayette Bar Association (LBA) hosted its annual Red Mass and Court Opening Ceremony on Jan. 10 at the Cathedral of St. John the Evangelist and the 15th Judicial District Courthouse, respectively. Louisiana State Bar Association 2019-20 President Robert A. Kutcher joined the 15th JDC in remembering deceased members of the Bar and welcoming new admittees. From left, Shannon S. Dartez, 2019-20 LBA secretary-treasurer; Kutcher; and Maggie T. Simar, 2018-19 LBA president.



The Lafayette Bar Association (LBA) held its installation of officers on Nov. 7, 2019. T. Glenn Edwards IV, left, was sworn in as 2019-20 LBA president. With him is Maggie T. Simar, 2018-19 LBA president. Not in photo, Karen J. King, 2019-20 LBA president-elect; and Shannon S. Dartez, 2019-20 secretary-treasurer.

LBF Announces New Fellows

The Louisiana Bar Foundation welcomes the following new Fellows:

Dean A. Cole Lafayette
 David Daniels II New Orleans
 Theodore Glenn Edwards IV Lafayette
 Shanté S. Harvey Baton Rouge
 Lonny A. Myles Zachary
 Lindsay Meador Young Lafayette

Philips to Lead LBF 2020-21 Board

Harry J. (Skip) Philips, Jr. of Baton Rouge will serve as the 2020-21 president of the Louisiana Bar Foundation. Other officers are Vice President Christopher K. Ralston, New Orleans; Treasurer Alan G. Brackett, New Orleans; and Secretary Deidre Deculus Robert, Baton Rouge.

Philips is the managing partner of Taylor, Porter, Brooks & Phillips, L.L.P., in Baton Rouge. He practices primarily in the areas of commercial and personal injury litigation and insurance law. He received his BS and JD degrees from Louisiana State University.

Ralston is a litigation partner and litigation group coordinator in the New Orleans office of Phelps Dunbar, L.L.P. His practice is focused on business disputes, including litigation of real estate, intellectual property, tax and licensing disputes. He received his undergraduate degree from the College of William and Mary and his law degree from Tulane University Law School.

Brackett is a member of Mouledoux,



Harry J. (Skip) Philips, Jr.



Christopher K. Ralston



Alan G. Brackett



Deidre Deculus Robert

Bland, Legrand & Brackett in New Orleans, where his practice is focused on representing maritime clients in transactions and defense of personal injury claims. He also manages the firm's workers' compensation defense group, which includes federal longshore and Defense Base Act claims as well as claims under the War Hazards Compensation Act. He received his BA and JD degrees from Tulane University.

Robert is executive counsel for the

Louisiana Department of Transportation and Development, where she serves as the chief legal officer for the department. Prior to accepting this appointment, she served as general counsel for the Southern University System and deputy director of the Litigation Division of the Louisiana Attorney General's Office. She received her BA degree from Louisiana State University and her law degree from Southern University Law Center, where she serves as an adjunct professor.

President's Message

LBF Establishes Emergency Fund to Support Civil Legal Aid Program

By 2020-21 President Harry J. (Skip) Philips, Jr.

In these unprecedented times, the number of our citizens facing life-changing challenges increases every day. Through no fault of their own, more families find themselves qualifying for civil legal aid and more civil legal issues are surfacing. Civil legal aid is a vital component of the societal response to, and recovery from, the current public health crisis.

The economic impact of the pandemic will have devastating consequences on Louisiana's civil legal aid network. Civil legal aid is free legal advice, representation or other legal assistance provided to low-income and vulnerable people who cannot otherwise afford legal help. The Louisiana Bar Foundation (LBF) is the state's largest funder of civil legal aid.

The efforts by the Federal Reserve to ease other economic uncertainty reduce the amount of money the LBF receives through the Interest on Lawyers' Trust Accounts (IOLTA) Program, a significant funding source for the civil legal aid net-

work. Approximately 60% (or \$7 million) of the LBF's 2019-20 operating revenue was from the IOLTA Program. We anticipate a 50% decrease in IOLTA revenue in the 2020-21 fiscal year that begins on July 1, 2020.

In addition to the interest rate drop dramatically reducing IOLTA income, the need for civil legal aid will likely balloon as it did after hurricanes Katrina and Rita in 2005 and the 2008 economic downturn.

Domestic violence in Louisiana remains an ongoing crisis, without compounding it with additional stress situations in a home. With unemployment on the rise, we will likely see mortgage foreclosure issues, consumer issues from debt collection, and fraudulent government aid scams.



Harry J. (Skip) Philips, Jr.

With the major funding source these programs rely on to provide critical services at risk, the LBF will work to identify additional funding to replace IOLTA revenue.

The LBF has a robust network of well-established partnerships with more than 70 legal aid providers across the state's 64 parishes who are working hard to meet emergency civil legal needs. The LBF stands with our community partners who are working even harder as more families need the help of Louisiana's civil legal aid safety net to recover from the impact of this pandemic. We applaud the civil legal aid programs that continue to serve their missions even when the path forward is unclear.

Please help the LBF support emergency civil legal aid needs. Now more than ever, the LBF needs the continued support of the legal community. For more information, go to: www.raisingthebar.org/EmergencyFund.

LBF Seeking Donations to Emergency Legal Aid Fund

The Louisiana Bar Foundation (LBF) is seeking donations to the Emergency Legal Aid Fund to support civil legal aid needs. The unprecedented impact of COVID-19 has resulted in many Louisiana residents needing support as they face life-changing challenges caused by business closures and illness. The fund will help civil legal aid providers resolve issues such as:

- ▶ missed rent payments leading to eviction notices;
- ▶ disputes over medical and consumer debt;
- ▶ people being wrongly denied public benefits that can keep their families afloat;
- ▶ increased incidents of domestic

violence due to quarantines; and

- ▶ stay-at-home orders resulting in custody issues for minor children and an increase in abuse and neglect cases.

The LBF's Interest on Lawyers' Trust Accounts (IOLTA) Program is a significant funding source for the Louisiana civil legal aid network. The efforts by the Federal Reserve to ease other economic uncertainty works in opposition to the IOLTA Program, which directly assists the impoverished and the working poor. As the number of Louisiana citizens eligible for civil legal aid increases, this funding will diminish.

To learn more and donate, go to: www.raisingthebar.org/about-us/newsroom.

LBF Annual Fellows Gala Rescheduled to Spring 2021

The Louisiana Bar Foundation has rescheduled its annual Fellows Gala to spring 2021. The Gala, originally planned for April 3, had been moved to May 15. But, continued concerns for public health in light of the coronavirus, as well as stay-at-home orders in New Orleans and a prohibition against large public and private gatherings through the remainder of 2020, led to the decision to reschedule the event.

The 2019 Distinguished honorees will be recognized at the 2021 event, including Distinguished Jurist Robert H. Morrison III, 21st Judicial District Court; Distinguished Attorney Marcus V. Brown, Entergy Corp.; Distinguished Attorney Mary Terrell Joseph, McGlinchey Stafford, P.L.L.C.; Distinguished Professor John M. Church, Louisiana State University Paul M. Hebert Law Center; and Calogero Justice Award recipient, Chief Justice Bernette Joshua Johnson, Louisiana Supreme Court.

CLASSIFIED

ADS ONLINE AT WWW.LSBA.ORG

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Standard classified advertising in our regular typeface and format may now be placed in the *Louisiana Bar Journal* and on the LSBA Web site, LSBA.org/classifieds. All requests for classified notices must be submitted in writing and are subject to approval. Copy must be typewritten and payment must accompany request. Our low rates for placement in both are as follows:

RATES

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\$85 per insertion of 50 words or less
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Screens: \$25

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Boxed ads must be submitted camera ready by the advertiser. The ads should be boxed and 2¼" by 2" high. The boxed ads are \$70 per insertion and must be paid at the time of placement. No discounts apply.

DEADLINE

For the August issue of the Journal, all classified notices must be received with payment by June 18, 2020. Check and ad copy should be sent to:

LOUISIANA BAR JOURNAL
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601 St. Charles Avenue
New Orleans, LA 70130

RESPONSES

To respond to a box number, please address your envelope to:

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c/o Louisiana State Bar Association
601 St. Charles Avenue
New Orleans, LA 70130

POSITIONS OFFERED

Seeking Assistant District Attorney.

Civil Division in the 22nd Judicial District, Mandeville, La. This position requires significant experience in defense of civil litigation, including defense of personal injury cases, vehicular accidents, workers' compensation and contract disputes. Minimum three years' specific experience in defense of civil lawsuits. For further details, click link: www.lsba.org/goto/ADA22nd or go to the website:

http://damontgomery.org/careers/open_jobs/

Active law firm in Hahnville, La., announces an opening for a long-term, motivated administrative assistant/bookkeeper. Competitive compensation offered based on experience, with room to grow, in addition to offering a 401K profit-sharing plan after three years. Email résumé, salary expectation, availability and cover letter to jennifer@lemmonlawfirm.com.

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Need tech help? The Louisiana State Bar Association's online Tech Center has myriad resources, many of which are relevant in this time of working remotely and relying more than ever on technology-focused business tools. Take advantage of these resources at: www.lsba.org/PracticeManagement/TechCenter.aspx.

NOTICE

Notice is hereby given that Michael L. Cave intends on petitioning for reinstatement/readmission to the practice of law. Any person(s) concurring with or opposing this petition must file notice of same within 30 days with the Louisiana Attorney Disciplinary Board, Ste. 310, 2800 Veterans Memorial Blvd., Metairie, LA 70002.

Notice is hereby given that Jerome W. Dixon intends on petitioning for reinstatement/readmission to the practice of law. Any person(s) concurring with or opposing this petition must file notice of same within 30 days with the Louisiana Attorney Disciplinary Board, Ste. 310, 2800 Veterans Memorial Blvd., Metairie, LA 70002.



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Steven C. Gill intends to file a petition seeking reinstatement of his license to practice law in Louisiana. Any person(s) concurring with or opposing this petition must file such within 30 days with the Louisiana Attorney Disciplinary Board, Ste. 310, 2800 Veterans Memorial Blvd., Metairie, LA 70002.

LSBA PUBLICATIONS

Calling arbitrators/mediators! The 2020 "Who's Who in ADR" Directory is open for submissions. The cost per text listing/photo is \$125. Response deadline is July 24. This advertising supplement with profiles, photographs and contact information for arbitrators and mediators is published annually and mailed with the Oct./Nov. issue of the *Louisiana Bar Journal*. Download 2020 information or review the 2019 directory at: www.lsba.org/PublicDirectoryArbitratorsMediators.aspx.

Bookings are now open for advertising in the 2021 Expert Witness, Consultant & Legal Services Directory. This annual advertising supplement assists attorneys in obtaining services they require in their day-to-day practices. Download 2021 information or review the 2020 directory at: www.lsba.org/NewsAndPublications/ExpertWitness.aspx.

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ANSWERS for puzzle on page 41.

1	I	N	F	I	R	M	I	T	Y		P	A	Y
	N		R	E	N		A	E		E			
2	T	R	E	S	E	D		K	I	L	T	S	
	E	E	T	I									
14	R	I	D	E	R		C	O	D	I	C	E	S
	D		A	T			E	A		E			
14	I	N	G	R	I	D		I	C	O	N	I	C
	C	R	N		P		I						
16	T	O	A	S	T	E	R		S	N	A	F	U
		V					E		I	B		S	
21	S	L	E	P	T			N	E	O	N	A	Z
	I	L		S			O		N		C		O
24	T	R	Y				A	D	M	I	S	S	I

INDEX TO ADVERTISERS

Admiralty Symposium.....	27
Complex Litigation Symposium.....	55
Argent Financial.....	39
D. Wesley Attaway.....	70
Bourgeois Bennett.....	52
Broussard & David.....	OBC
Christovich & Kearney, L.L.P.....	44
Delise & Hall, Attorneys at Law.....	42
Expert Communications.....	71
Robert G. Foley.....	70
Chad M. Garland, CPA, LLC.....	1
Gilsbar, Inc.....	23, IBC
Steve Herman.....	5
International Maritime Consultancy.....	51
LawPay.....	2
Jessica LeBlanc, CPA.....	50
Legier & Company, apac.....	IFC
Louisiana Association for Justice.....	37
MAPS, Inc.....	59
J. Price McNamara Law Offices.....	49
National Academy of Distinguished Neutrals.....	9
The Patterson Resolution Group.....	45
Perry Dampf Dispute Solutions.....	61
Problem Gambling Resource Services.....	57
Schiff, Scheckman & White, L.L.P.....	44
Shipp Outdoor, L.L.C.....	35
Stanley, Reuter, Ross, Thornton & Alford, L.L.C.....	43
Upstate Mediation Group.....	46
The Write Consultants.....	71

Ipsse Dixit: How to Write Good

By Edward J. Walters, Jr.

I thought that headline would get your attention. There are numerous references about proper legal writing. So, what else is there to say? Well . . .

I am reminded of a brief I read in 1979 in a case I had before the Louisiana Supreme Court. The issue was whether La. Civil Code Art. 2317 applied. My opponent started his brief (he was a lion of the bar) suggesting that the “audacious nascence” of Art. 2317 made its use suspect for some reason. Audacious Nascence?!? I had to run for the dictionary.

What does this tell the judge? It tells the judge you know how to use big words. Does it send the right message? Or, does it aggravate the judge who has to locate a dictionary or access Google? We all want to be perceived as educated and smart, but does this accomplish the goal of persuading the court to adopt your theory of the case?

I asked some judge friends and non-judge friends for examples of language we should not use in proper legal writing. Here goes.

Clearly. “Clearly” usually means unclear. It means you are unsure and are stretching it. If it was REALLY clear, you wouldn’t have to say it was clear, but simply show the court how the law and the facts are on your side.

Plaintiff and Defendant-in-Reconvention. What’s wrong with using the party’s name? It’s much easier to understand the case of Mr. Boudreaux when you refer to him by name and not “Plaintiff and Defendant-in-Reconvention.” This is too impersonal and confusing in a multi-party case, particularly with intervenors.

Hereinafter Referred To. Put that in the trash bin along with witnesseth, whereat, heretofore notwithstanding, aforesaid, *inter alia*, *vel non* and *a fortiori*. Your job is to explain your position and persuade the court to adopt it, not to persuade the court you know Latin.

Use Subheadings. Subheadings break up your brief into small pieces, curb the monotony and provide emphasis. This brief may (and should) be read several times. Subheadings show the judge where to locate your support for an issue.

Fightin’ Words. If you say your opponent’s position is ridiculous, disingenuous, specious, laughable, absurd or frivolous, you are looking for those same words to be thrown back at you. Professionalism, anyone? I know, he started it, but judges HATE us verbally sniping back and forth.

Long Introductions. Avoid long introductions. “Now comes Defendant and Plaintiff-in-Reconvention, by and through undersigned counsel, who hereby submits to the Court its Memorandum in Support of Plaintiff-in-Reconvention’s Motion

for Leave of Court to Amend Plaintiff-in-Reconvention’s First Amending Petition-in- Reconvention.” If you are paid by the word, this makes it obvious but aggravating.

Citation Form. Judges (and other lawyers) judge you based on your paperwork. If it is crisp, logical and well-supported, it says good things about you as a lawyer. What does it tell the judge when you cite a recent Louisiana case like this: Smith v. Jones, 659 So2d 500 (La. App 4th Cir. 2019)? It says you need to read Louisiana Supreme Court Rules, Part G, General Administrative Rules, Section 8, Citation of Louisiana Appellate Court Decisions. Keep a copy on your desk.

Punctuation. I hate exclamation points and contractions in legal writing. If I need to use a semicolon, I rewrite the sentence. When in doubt, change it.

Long Pull Quotes. What do judges think when they see a long quote from a case, double-indented, single-spaced and 6 inches long? “I have to wade through all of this to find one kernel of relevant language?” Make your pull quotes short and to the point, or, preferably, include the pertinent language in the text of your argument. If you MUST use a long pull quote, preface it by telling the court why this quote is important and necessary so it can be digested from a position of intelligence.

String Cites. It may be impressive (to you) that you can end a paragraph by citing a dozen cases you say support your position. Pick the one or two that are MOST relevant to the facts of your case (and always READ them before oral argument).

Footnotes. In today’s era of reading briefs on computers, laptops, tablets and phones, do you really think judges are going to leave the main screen, go to the end of the document, read the footnote and find their way back to the main screen? Put footnotes at the bottom of the page and make life easy for the judge.

Bolding, italicizing, underlining, or all three, CAPITALIZATION, larger fonts, tiny fonts to squeeze into page limits or changing fonts. Embellish your argument with logic, policy, the facts and the law, not cheap font tricks.

You MUST Do . . . Judges don’t like it when lawyers tell them what they MUST do. Instead, suggest to the court the right thing to do based on the law and the evidence.

What They DO Read and DON’T Read. Several judges and law clerks said that two of the most valuable parts of a brief are the Introduction and the Conclusion. Others say they don’t see those parts as any more valuable than the rest. One source stated that the Standard of Review and Summary of the Argument are very important. The Standard of Review sets the court on the correct path for review: *de novo*, abuse of discretion, manifest error and the like. The Summary of the Argument is a great way to educate the judge and research attorneys of your theory of the case and what support you have for your position. It allows the court to read the brief intelligently with your theory in mind.



Edward J. Walters, Jr., a partner in the Baton Rouge firm of Walters, Papillion, Thomas, Cullens, L.L.C., is a former Louisiana State Bar Association secretary and editor-in-chief of the Louisiana Bar Journal. He is a current member of the Journal’s Editorial Board and chair of the LSBA Senior Lawyers Division. (walters@lawbrnet; 12345 Perkins Rd., Bldg. 1, Baton Rouge, LA 70810)

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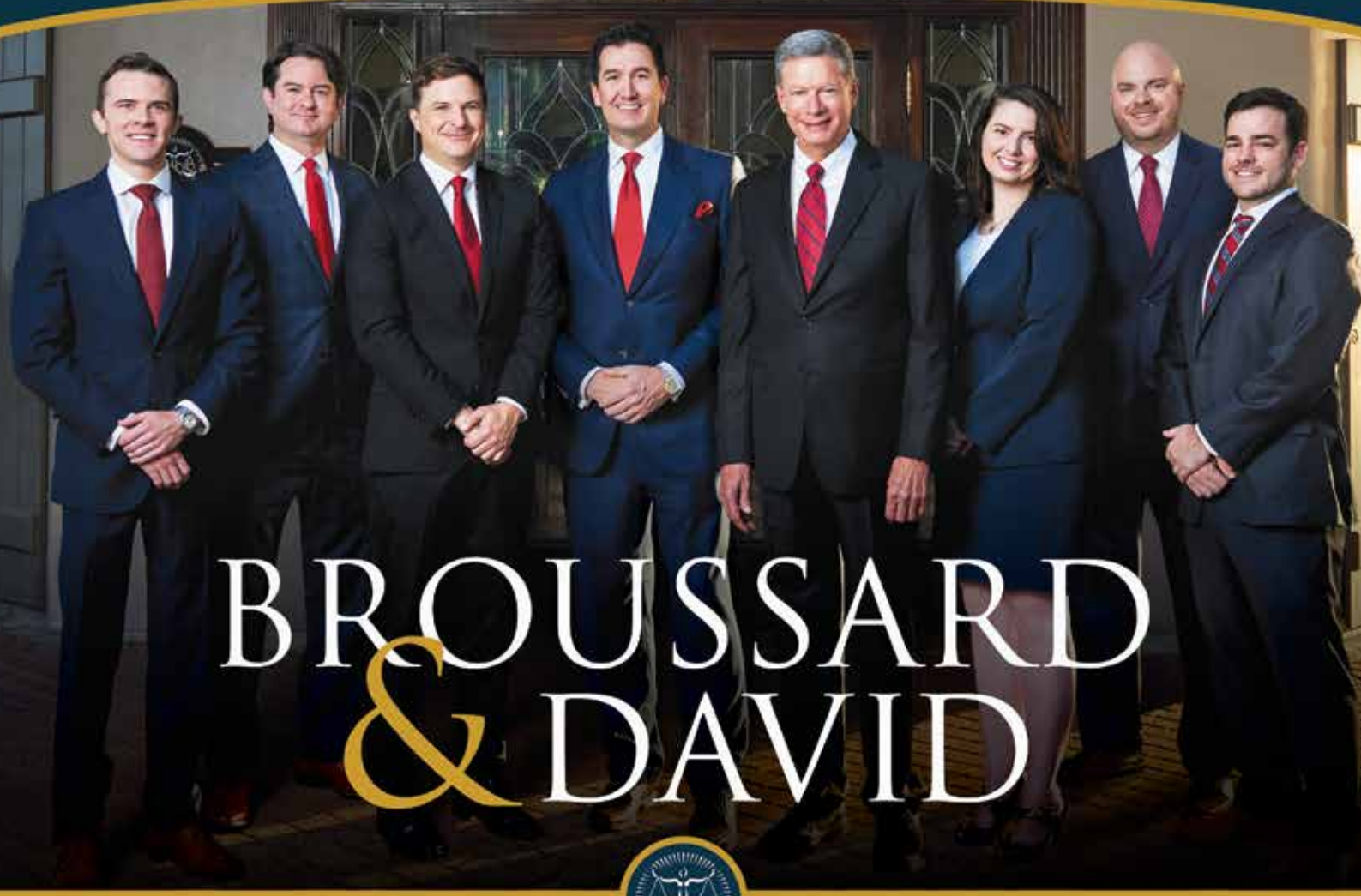
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