## Administrative Law

### Competing Interests Create Frustrating Dichotomy

While pursuing a judicial claim against the City of Alexandria, Richard Heath prevailed in a second lawsuit compelling the City to provide certain public records and for an award of costs and attorneys' fees of $2,500. The City allocated money to pay the costs but not the attorneys' fees, causing Heath to attempt to conduct a judgment debtor examination of the City. That effort resulted in the issuance of a protective order issued by the trial court limiting the scope of the judgment debtor examination based on the trial judge's interpretation of the Louisiana Constitution, which, in pertinent part, prohibits the collection of judgments against the State or its political subdivisions except from funds allocated by the entity for that specific purpose, even where the judgment is for violating the Louisiana Public Records Act. Heath appealed.

In *Heath v. City of Alexandria*, 10-0280 (La. App. 3 Cir. 10/6/10), 52 So.3d 86, *writ denied*, 10-2493 (La. 1/7/11), 52 So.2d 886, the court upheld the trial court's holding that the repeatedly attacked constitutional requirement is valid and was properly applied in this case, even though it may create a "frustrating dichotomy" relative to the enforcement of the penalties provided by the Louisiana Public Records Act.

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## Alternative Dispute Resolution

### Mediation, Compromises Save 2011-12 NFL Season

Court-ordered mediation saved the 2011-12 National Football League (NFL) season as the League's longest work stoppage, and its first since 1987, threatened to cancel the season.

*Brady v. National Football League*, 644 F.3d 661 (8 Cir. 2011), explains the basis of the dispute. The NFL operates through the successful coexistence of two separate entities — the NFL itself and the NFL Players Association (NFLPA). The NFL, or "the League," refers to the entity that represents the interests of the League's 32 team owners, while the NFLPA represents the players' interests. Since 1968, the League's general stability has been achieved through the NFL and NFLPA periodically agreeing to renewable collective bargaining agreements (CBAs). The recent dispute between the NFL and NFLPA arose when the NFL allowed the CBA to expire in March with no agreement waiting to replace it, despite two years of negotiations to create a new agreement.

By allowing the CBA to expire, League officials hoped that a promptly implemented player lockout, which would prevent players from collecting payments under contracts, would pressure the players financially, giving the owners a strategic economic advantage in negotiations to create a new CBA. Several players brought suit to enjoin the League from implementing the lockout, claiming the planned lockout violated the 1890 Sherman Antitrust Act as an illegal group boycott and price-fixing arrangement. The players alleged additional Sherman Act violations based on the League's plans to implement a price ceiling on recently drafted rookie prospects, place a salary cap on current players and add new restrictions on free agents.

Bringing their case before Judge Susan Richard Nelson at the United States District Court for the District of Minnesota, the players successfully enjoined the NFL from continuing its player lockout. *Brady v. NFL*, 2011 U.S. Dist. LEXIS 44523 (D. Minn., April 25, 2011). However, appealing Judge Nelson's ruling, the League was successful in reinstating the lockout, as the 8th Circuit Court of Appeals granted both temporary and permanent stays of the district court's ruling before finally upholding the lockout and remanding the case. *Brady v. NFL*, 638 F.3d 1004 (8 Cir. 2011) (granting temporary stay); *Brady v. NFL*, 640 F.3d 785 (8 Cir. 2011) (granting permanent stay).

Concurrent with the ongoing injunction proceedings, Judge Nelson, undeterred by the failure of prior negotiations, issued court-mandated mediation to create a new CBA. Following Judge Nelson's order, U.S. Magistrate Judge Arthur Boylan began mediation by meeting with the parties first in separate caucuses beginning April 12. Though exact details of the mediation are unknown due to confidentiality, comparing the parties' pre-mediation desires with the resulting solution and new CBA illuminates concessions made during mediation.

Team owners, clamoring for a more sustainable financial model, wanted to expand the NFL's regular season from 16 to 18 games, obtain greater revenue sharing, institute a salary cap, limit rookie players' contracts and restrict free agency. The players, like the owners, wanted greater revenue sharing of NFL profits, as well as higher minimum salary levels, expanded team rosters and reduced offseason workouts, including training camp.

With the season nearing, players still unable to receive payment on their contracts and a favorable 8th Circuit court ruling upholding the player lockout, it seemed that the owners were gaining leverage in negotiations for a new CBA. Momentum shifted, however, when the NFLPA informed the owners that it had secretly purchased insurance that would pay players if the 2011 season were cancelled. Then, on July 21, mediation successfully concluded as the owners announced their vote to approve a new CBA, pressuring the NFLPA to accept the agreement.

This unexpected resolution was likely the result of the owners anticipating several problems if a new agreement had not been reached before the scheduled start of the 2011 season. Facing disgruntled fans clamoring for a resolution to the dispute, escalating financial pressure of losing millions of dollars in television deals and realizing that the players had a financial foundation to continue CBA negotiations, League owners approved the new CBA based on negotiations with the player representatives. The players unanimously accepted the CBA just days later, on July 25, effectively ending the four-month dispute. Through court-mandated mediation, both sides compromised and achieved an attractive resolution to their dispute.

While the owners realized their goals of greater revenue sharing, a rookie wage system and a salary cap, they were unable to accomplish some of their biggest changes, such as lengthening the regular season and restricting free agent players. Though the players will receive a decreased share of the League's revenue, they were able to deny the owners free agency regulation, obtain assurances in team cash spending and provide greater benefits for players. Many safety-related issues were incorporated into the new CBA, such as limited practice times, greater injury protection, less frequent full-contact practices and obtaining lifetime medical insurance.

Most importantly, both parties used mediation to draft and approve a new CBA, guaranteeing NFL fans football through the 2020 season. And for that, we can all be grateful.

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## Animal Law

### Federal Jury Awards $333,000 for Raid that Resulted in Police Killing Family Dog

***Russell v. City of Chicago***, No. 10 0525 (N.D. Ill. Aug. 18, 2011).

A Chicago family brought suit in federal court against the City of Chicago and four police officers, alleging that officers acted in violation of 42 U.S.C. § 1983 and other state laws when officers killed a family dog during a failed drug raid. The nine-count complaint alleged that 18-year-old Thomas Russell III and his 16-year-old brother, Darren Russell, were in the family's apartment when Thomas heard a commotion coming from a downstairs apartment. A short time later, four officers arrived at the front door of the Russells' apartment, at which time Thomas opened the door. Thomas requested that he be allowed to put the family's 9-year-old Labrador retriever, "Lady," in another room before the officers commenced the search. The officers refused this request and instead put a gun to Thomas' head, pushed him to the floor and placed him in handcuffs. At the same time, Lady walked into the front room with her tail wagging in an unaggressive manner. Despite the dog's calm demeanor, one of the officers turned his gun to Lady and shot her in the head, killing her instantly. After hearing the gunshot and his brother crying, Darren entered the front room, wherein officers responded by pointing a gun to his head and handcuffing him as well. Officers searched the apartment; however, no drugs were found. Thomas was taken into police custody and booked with obstruction of service of process but was later found innocent of the charge.

At the civil trial, plaintiffs' attorneys argued that the officers were acting under color of law during the raid and shooting and that their actions in placing the guns to the boys' heads as well as shooting a nonaggressive family dog were extreme and outrageous and caused severe emotional distress. The jury agreed and awarded Thomas Russell III $175,000 for the officers' use of excessive force (placing a gun to his head), unreasonable seizure of his property (killing Lady), both in violation of § 1983, as well as state violations of false arrest, malicious prosecution and intentional infliction of emotional distress. Likewise, the jury awarded Darren Russell $85,000 for excessive use of force and unreasonable seizure of Lady. The boys' parents, who were not present during the raid and shooting, were both awarded $35,000 each for the unreasonable seizure of their dog. In addition, the jury found the officer who shot Lady personally liable and awarded $2,000 in punitive damages against the officer as well as $1,000 in punitive damages from the officer's supervisor for unlawfully arresting Thomas.

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## Bankruptcy Law

### U.S. Supreme Court Decision

***Stern v. Marshall***, 131 S.Ct. 2594 (2011).

In *Stern v. Marshall*, a possible landmark decision, the United States Supreme Court considered whether a bankruptcy court judge had authority under 28 U.S.C. § 157 and Article III of the Constitution to enter a final judgment in the bankruptcy case of Vickie Lynn Marshall (Vickie) concerning a counterclaim filed by Vickie against Pierce Marshall (Pierce), the son of her deceased husband, J. Howard Marshall II (J. Howard).

Before J. Howard died, Vickie asserted a claim against Pierce in Texas state court alleging J. Howard meant to provide for Vickie through a trust, and that Pierce tortiously interfered with that gift. Vickie filed for bankruptcy after J. Howard died, and Pierce filed a proof of claim in that case asserting that he was entitled to recover damages from Vickie's estate because Vickie had defamed him. Vickie filed a counterclaim against Pierce for tortious interference with the gift she anticipated from J. Howard.

The bankruptcy court granted a judgment in favor of Vickie on Pierce's defamation claim, and treated Vickie's counterclaim as a core proceeding under Section 157(b)(2), eventually awarding her hundreds of millions of dollars in damages. The district court held that Vickie's counterclaim was not a core proceeding, as it was only somewhat related to Pierce's claim, and therefore treated the bankruptcy court judgment as proposed and not final. The district court then decided the matter itself, finding in favor of Vickie. The court of appeals reversed, holding that the bankruptcy court lacked authority to enter a judgment on Vickie's counterclaim as it was not "so closely related to [Pierce's] proof of claim that the resolution of the counterclaim is necessary to resolve the allowance or disallowance of the claim itself." As such a holding meant that the Texas probate court judgment was the first final judgment on such matters, the court of appeals determined that the district court should have afforded the state court judgment preclusive effect.

In a 5-4 decision, the Supreme Court held that while the bankruptcy court had the statutory authority to enter a judgment concerning Vickie's counterclaim under Section 157(b)(2)(C), it did not have constitutional authority to do so. Affirming the judgment of the court of appeals, the Supreme Court stated that:

> Article III of the Constitution provides that the judicial power of the United States may be vested only in courts whose judges enjoy the protections set forth in that Article. We conclude today that Congress, in one isolated respect, exceeded that limitation in the Bankruptcy Act of

1984. The Bankruptcy Court below lacked the constitutional authority to enter a final judgment on a state law counterclaim that is not resolved in the process of ruling on a creditor's proof of claim.

The Supreme Court concluded that "in purporting to resolve and enter final judgment on a state common law claim," the bankruptcy court had clearly exercised the "judicial Power of the United States." The Supreme Court further determined that the counterclaim did not fall within any public rights exception, and that bankruptcy courts are not "adjuncts" of district courts under the 1984 Bankruptcy Act. The Supreme Court also rejected the argument that Pierce's filing of a proof of claim in the bankruptcy court conferred authority upon the bankruptcy court to adjudicate the counterclaim, and was not persuaded by the contention that restrictions on the ability of bankruptcy courts to hear and resolve compulsory counterclaims on a final basis would impose delays and costs upon the bankruptcy process. With respect to the defamation claim of Pierce, the Supreme Court determined that Pierce had consented to the bankruptcy court's resolution of that claim.

## Barred from Asserting Fraud Claims

***In re Davis Offshore, L.P.***, 644 F.3d 259 (5 Cir. 2011).

Commenced as a prepackaged Chapter 11 case for a family-owned business, *Evercore* was filed and resolved by confirmation order within one week, and provided for the sale of the debtors' assets to an investor consortium that included Gregg Davis (Davis), a son of the deceased former patriarch of the company.

The appellant, Nancy Sue Davis Trust (NSDT), did not vote on the plan, but also did not register an opposition to the plan. No appeal was filed concerning the confirmation order, and it was not until six months later that NSDT filed a motion to revoke the confirmation order, alleging that Davis as well as others had engaged in fraud that enabled them to buy the interests far below market value. NSDT also later filed a motion seeking leave to pursue damage claims against Evercore, its affiliate buyers and individuals, including Davis.

The principal issue posed to the 5th Circuit was whether the plan and confirmation order barred NSDT from asserting fraud claims against the defendant-appellees. The 5th Circuit discussed the ambiguity between the confirmation order and the plan, specifically concerning the scope of Davis's release or exculpation, and determined that the bankruptcy court erroneously interpreted the law when it declared that the confirmation order must always prevail over the terms of a conflicting plan. Therefore, deference was not afforded to the bankruptcy court's resolution of the ambiguity, and the 5th Circuit held that Davis was exonerated from personal liability, even for fraud, by virtue of the confirmation order. The 5th Circuit concluded that "in the context of reorganizing a family-owned company all of whose shareholders had access to sophisticated financial and legal assistance, and where the releases and exculpatory provisions in the Plan and confirmation order were essential to a reorganization that no party appealed," NSDT's claims were barred.

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Consumer Protection Law

## Louisiana Unfair Trade Practices Act

***Bogues v. La. Energy Consultants***, (La. App. 2 Cir. 8/10/11), ____ So.3d ____.

An oil and gas operator, Louisiana Energy Consultants (LEC), reconvened against the owners of surface interests and undivided mineral interests in and to numerous tracts of land in the Haynesville Shale play. LEC asserted claims under the Louisiana Unfair Trade Practices Act (LUTPA), contending that the owners were competitors and that the owners committed unfair practices against it by seeking termination of the leases. LEC also claimed that the owners' meetings and discussions caused tortious injury to LEC's business. The trial court sustained plaintiffs' exceptions of no cause of action and vagueness as to the entire set of counterclaims but did not rule on the exception of no right of action. LEC appealed, and the court of appeal affirmed.

Citing *Cheramie Services, Inc. v. Shell Deepwater Production, Inc*., 09-1633 (La. 4/23/10), 35 So.3d 1053, the court noted that LEC might have standing but had failed to allege facts to support a claim that the owners committed unfair or deceptive acts in trade or commerce causing LEC any damage. "LUTPA is not limited to consumers and business competitors...." The court went on to state that to make out a claim under LUTPA, "a plaintiff must prove some element of fraud, misrepresentation, deception, or other unethical conduct on the part of the defendant" and must further prove "that the alleged conduct 'offends established public policy and . . . is immoral, unethical, oppressive, unscrupulous or substantially injurious.'" The range of prohibited practices under LUTPA is extremely narrow.

The court found a "great deal of daylight" between acts proscribed by LUTPA and LEC's contentions. The court failed to find anything alleged about the owners to involve "dishonest, immoral or egregious" conduct, and LEC's belief that the owners communicated unfavorable opinions of LEC to others does not constitute egregious conduct under LUTPA.

LEC also advanced a claim for tortious interference with business under La. Civ.C. art. 2315. LEC claimed that the actions of the owners improperly influenced LEC's ability to further develop the leases with other oil and gas companies. LEC further claimed that the owners knowingly made false statements to other lessors to influence them to break their leases and to other companies to cast doubt on LEC as a prudent operator. The owners alleged that LEC had melded an improperly pleaded tortious interference with contract claim and a defamation claim, despite LEC claiming it pled neither. The court found that "it is not enough to allege that a defendant's actions affected plaintiff's business interests; the plaintiff must allege that the defendant actually prevented the plaintiff from dealing with a third party." The claim requires malice, and LEC failed to properly allege facts to support such a claim.

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### Affirmative Defenses to Arbitral Award

***FIA Card Servs., N.A. v. Weaver***, 10-1372 (La. 3/15/11), 62 So.3d 709.

The Louisiana Supreme Court granted writs to resolve a split between circuits on whether affirmative defenses to an arbitral award are waived if a party does not file a motion to vacate within the three-month statute of limitations. On examining whether Louisiana or federal law should be applied, Louisiana courts recognize that Louisiana law and federal law governing arbitration are almost identical in substance.

The Supreme Court found that Louisiana law specifically lists four grounds for judicial review when challenging the confirmation of an arbitral award in the form of a motion to vacate, modify or correct an arbitral award, including corruption, fraud, arbitrator corruption or misconduct, and an arbitrator exceeding his statutory power. La. R.S. 9:4210-4211; *see also*, 9 U.S.C. § 10. The law requires any motion to vacate, modify or correct an award be served within three months of notice. However, the non-existence of an arbitration agreement is not one of the grounds listed for judicial review.

In this case, the plaintiff argued that the defendant waived his rights to the affirmative defenses statutorily granted by failing to file a motion to vacate within three months of the award. Essentially, the plaintiff argued that the courts are legally required to confirm arbitral awards as a purely ministerial act after the statutorily prescribed deadline. The Supreme Court disagreed. An arbitral award must be confirmed by a court to be made enforceable by law. The plain language of Section 9 of the Federal Arbitration Act presupposes an arbitration agreement as a necessary condition to confirm an arbitral award; therefore, the crucial first step in deciding whether to confirm an arbitral award is to determine whether there is a valid arbitration agreement between the parties. This requirement is independent of the statutory defenses.

The Supreme Court found that lower courts have a duty to confirm the existence of a valid arbitration agreement. This decision is not left to the discretion of the arbitrator. Thus, challenging the existence of a valid arbitration agreement is appropriate at any time after the award and is not barred by the three-month statute of limitations.

The burden is on the plaintiff to provide prima facie evidence establishing that the parties entered a valid arbitration agreement. The plaintiff in the present case provided evidence of only two unsigned documents containing additional terms, each including an arbitration clause sent to the defendant. This alone did not provide the court with enough evidence to determine whether the defendant consented to the arbitration agreement. While black letter law states that consent to additional terms in a credit card agreement is evidenced by continued use, the burden is on the plaintiff to provide evidence that the customer continued to use the credit card post-notice. By not providing this evidence, the plaintiff did not meet the burden of proving the existence of an enforceable arbitration agreement.

Thus, the confirmation of the arbitral award was reversed.

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Family Law

## Child Support

***State v. Sensley***, 10-1319 (La. App. 1 Cir. 3/25/11), 63 So.3d 229.

The family court unilaterally modified a hearing officer's recommendation that the father provide medical insurance by deleting that provision, stating it was noticing on its own a failure to state a cause of action because medical insurance was not prayed for in the initial petition. Local and state rules provide that if timely written objection is not filed, a hearing officer's recommendation becomes a final judgment of the court. Neither party had objected to the recommendation. The court of appeal found that the family court had erroneously modified the judgment because the request for child support included a request for medical insurance coverage and the hearing officer's recommendation had the effect of a judgment if no timely objection was filed.

## Custody

***Molony v. Harris***, 10-1316 (La. App. 4 Cir. 2/23/11), 60 So.3d 70.

Although Ms. Harris had alcohol abuse as well as anxiety and depression issues, the court of appeal affirmed the trial court's award of joint custody because the evidence was not clear and convincing that sole custody to Mr. Molony was required. The court did not err in changing the physical custody schedule from two days on, two days off, and alternating weekends to alternating weeks. The trial court's designation of the parties as "co-domiciliary parents" was vacated as there is "no authority for the court to designate the parties as co-domiciliary parents" under La. R.S. 9:335(B). However, the court of appeal remanded for an evidentiary hearing for the trial court to designate a single domiciliary parent or to issue an implementation order delineating the authority and responsibility of each parent as to decision making. It also recommended that the trial court consider appointing a parenting coordinator due to the parties' high conflict. The trial court also did not err in not requiring additional accountability measures regarding Ms. Harris's drinking as had been requested by Mr. Molony.

## Custody/Non-Parents

***In re Melancon***, 10-1463 (La. App. 1 Cir. 12/22/10), 62 So.3d 759.

A non-parent has no right of action under La. Civ.C. art. 132 to seek custody with a biological parent, even if the biological parent consents to the joint custody. Under La. Civ.C. art. 133, a non-parent is entitled to custody only on showing that an award of custody to the parent would result in substantial harm to the child. As that was not alleged, the plaintiff stated no cause of action.

## Grandparent Visitation Rights

***Broussard-Scher v. Legendre***, 10-1164 (La. App. 3 Cir. 3/23/11), 60 So.3d 1290.

The grandmother's petition for visitation stated a cause of action under La. Civ.C. art. 136, and La. R.S. 9:344 did not apply. The court of appeal affirmed the trial court's finding that extraordinary circumstances existed to allow the grandmother visitation because she acted as a primary caretaker of the child since its birth. The award of visitation did not violate the parents' rights under *Troxel v. Granville*, 120 S.Ct. 2054 (2000), or the United States Constitution because there was no evidence that the court did not give some special weight to the parents' decision or that the court did not adequately consider the special circumstances present before "stepping in" with its decision to allow visitation. The trial court's appointment of a parenting coordinator was reversed as not statutorily allowed because this was not a custody case. The dissent argued that there were no extraordinary circumstances and that the grandmother did no more than would be expected of any grandparent.

## Property

***Henry v. Anderson***, 10-0941 (La. App. 3 Cir. 3/9/11), 60 So.3d 1285.

The appropriate venue for Ms. Henry's petition for specific performance, reformation and/or amendment of agreement, etc., regarding the parties' previous community property partition settlement was in the parish where the judgment terminating the community regime was rendered and where the property was located, rather than in the parish of the parties' present domicile as an action on a contract.

***Goines v. Goines***, 09-0994 (La. App. 5 Cir. 3/9/11), 62 So.3d 193, *writ denied*, 11-0721 (La. 5/20/11), 63 So.3d 984.

Claims for mismanagement under La. Civ.C. art. 2354 must be pled with specificity under La. C.C.P. art. 856. No reimbursement is due for post-termination repairs unless they are necessary, increase the value of the property and are not for the party's own use and benefit. Although he was entitled to reimbursement for funds spent on roof repairs, he was not entitled to reimbursement for one-half of the interest on the loan obtained to make the repairs. He was not entitled to reimbursement for expenses for ordinary cleaning and maintenance of the house post-termination as they were occasioned by his use of the property. He was not entitled to reimbursement for payment of a loan and repairs on a community computer because he failed to show how much he paid on the loan, and because he had use.

The trial court did not err in using a 2005 valuation of the home because Mr. Goines used a "real estate evaluation" prepared by a real estate agent, not an appraiser, who used only a mechanical computer program to value the home, which valuation was rejected. He was entitled to reimbursement for expenses paid post-termination on the termite contract and extermination services. He was entitled to reimbursement for payments with community property on her separate property trailer and insurance on it. Because the trial court did not allocate the family home, the issue was remanded for the court to complete the partition. Ms. Goines was not entitled to reimbursement for community property loan proceeds used to pay Mr. Goines's previous mortgage debt existing when his separate property home was made community because the refinancing of the debt was equivalent to the community purchasing the home for the mortgage balance owed. He was due reimbursement for one-half of the mortgage, taxes and insurance payments post-termination, even though he had exclusive use and paid her no rent because such payments were part of his prudent management obligation, and because she had availed herself of her status as a co-owner to obtain a mortgage on the home post-termination. He was not entitled to reimbursement for the down payment and mortgage payments made with his separate property while the house was his separate property prior to its becoming community property, which transfer waived all claims as they were not reserved.

***Weinstein v. Weinstein***, 10-1083 (La. App. 3 Cir. 4/13/11), 62 So.3d 878.

A trial court is not precluded from reconsidering an oral motion for involuntary dismissal after denying the motion in open court upon a motion for new trial, prior to the presentation of the defendant's case. Although Mr. Weinstein, an attorney, represented Ms. Weinstein in her previous divorce, he was not also her attorney regarding the prenuptial contract between them. Further, she was advised to obtain separate legal representation regarding the contract but chose not to. The premarital separate property contract was thus valid. Any attorney/client privilege she had with attorneys who represented her was waived by her calling them as witnesses concerning potentially privileged matters. The subsequent agreement to establish a community regime prepared after the parties' marriage did not have to be approved and signed by the court, but the court's doing so on the parties' joint petition had the effect of making the contract a consent judgment and established a community regime, even though the document they signed was not in proper form because it was witnessed by only one witness. The trial court's granting an involuntary dismissal as to the effectiveness of the prior court's accepting the agreement was reversed. Good cause existed not to make the child support award retroactive to the date of Mr. Weinstein's 2005 initial petition, which prayed that child support be set, as no motion to set the matter for hearing was filed until she filed in 2009.

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## Insurance, Tort, Workers' Compensation & Admiralty Law

### The Economic-Loss Rule

***Wiltz, d/b/a Opelousas Crawfish House v. Bayer Cropscience,*** 645 F.3d 690 (5 Cir. 6/8/11).

Louisiana crawfish, farmed in rice ponds, were decimated in the 1999-2000 season, allegedly as a result of the introduction of rice seed coated with ICON, a pesticide manufactured and sold by defendant Bayer. Plaintiffs in this putative class action, buyers and processors of farm-raised crawfish, sought recovery for economic loss under the Louisiana Products Liability Act (LPLA), La. R.S. 9:2800.54. The district court granted summary judgment to the manufacturer, Bayer, because the plaintiffs' economic loss was unaccompanied by damage to their own person or property. "[T]he plaintiffs failed to show a proprietary interest in the farmers' crawfish."

The 5th Circuit affirmed, citing the "economic-loss rule," which, in most jurisdictions, bars recovery in tort when a party suffers economic loss unaccompanied by harm to his own person or property, *i.e.*, "no physical damage to a proprietary interest, a pragmatic limitation on both proximate causation and the scope of a defendant's duty of care." The economic-loss rule can be traced to Justice Holmes' opinion in *Robins Dry Dock & Repair Co. v. Flint,* 48 S.Ct. 134 (1927). Employees of a dry dock negligently damaged a vessel subject to a charter agreement, and the charterer sued the dry dock for economic damages caused by lost use of the vessel. The Supreme Court rejected the claim, noting that the damage to the vessel "was no wrong to the [charterer] but only to those to whom [the vessel] belonged."

In *PPG Industries, Inc. v. Bean Dredging,* 447 So.2d 1058 (La. 1984), the Louisiana Supreme Court addressed the rule. Bean negligently damaged a pipeline owned by a natural gas company. The gas company was unable to fulfill a contract with a manufacturer, causing the manufacturer to obtain gas from another source at an increased cost. The manufacturer sued Bean in tort for its economic loss. The court rejected the claim, holding that the manufacturer's economic loss did "not fall within the scope of the protection intended by the law's imposition of a duty on dredging contractors not to damage pipelines negligently." The court explained that for "policy reasons," the law does not:

> require that a party who negligently causes injury to property must be held legally responsible to all persons for all damages flowing in a "but for" sequence from the negligent conduct. [The] imposition of responsibility on the tortfeasor for such damages could create liability in an indeterminate amount for an indeterminate time to an indeterminate class. Because the list of possible victims and the extent of economic damages might be expanded indefinitely, the court necessarily makes a policy decision on the limitation of recovery of damages.

Judge Benavides' well-written opinion includes an excellent discussion of how the economic-loss rule interfaces with La. Civ.C. art. 2315, the LPLA and duty-risk analyses in Louisiana jurisprudence.

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## International Law

### USTR: Petition for Relief Under Section 301 of the Trade Act of 1974

A unique matter was raised with the Office of the U.S. Trade Representative (USTR) under Section 301 of the Trade Act of 1974 (19 U.S.C. § 2411) in September. Section 301 authorizes the President to take all appropriate and necessary actions to remove any foreign practices that unjustifiably hinder U.S. commerce or violate an international trade agreement. Section 301 cases may be self-initiated by the USTR or as the result of a petition by a private party.

Houston-based Azurix Corporation filed a Section 301 petition at the USTR in September asking the President to oppose Argentina's debt restructuring in the Paris Club and deny disbursements of credit and loans at the World Bank and Inter-American Development Bank until Argentina complies with a $220 million arbitration award Azurix secured at the International Center for Settlement of Investment Disputes (ICSID).

The original dispute surrounds Azurix's 2001 investment in an Argentine water-processing facility that was cancelled by the municipality of Buenos Aires. After completion of the utility, Azurix's concession was terminated through purported "unwarranted political interference." Azurix, thereafter, invoked the dispute-resolution provisions of the U.S.-Argentina Bilateral Investment Treaty, which guarantees due process of law and just compensation for expropriations and other adverse investment-related activities. An ICSID arbitral panel awarded Azurix $220 million in compensation in 2008. Argentina has refused to comply with the arbitration award, making Argentina the first country in the 30-year history of the ICSID Convention to fail to comply with an award. The precedential impact of Argentina's refusal will undoubtedly serve as a major theme in Azurix's Section 301 petition.

### USTR: Dominican Republic-Central American Free Trade Agreement

As previously reported in this Journal, the United States initiated the first U.S. free-trade-agreement labor case against Guatemala under the DR-CAFTA free trade agreement. The dispute involves Guatemala's purported failure to satisfy DR-CAFTA labor obligations related to the rights of association, organization and collective bargaining, as well as appropriate working conditions. Formal consultations with Guatemala occurred in 2010, and a Free Trade Commission meeting on June 7, 2011, failed to produce an acceptable labor plan. USTR Ron Kirk announced on July 14, 2011, that he will request the appointment of an arbitral panel to resolve the dispute as all preliminary procedural steps have failed.

### U.S. Supreme Court

***Garcia v. Texas***, 131 S.Ct. 2866 (2011).

An epic conclusion to litigation spanning nearly two decades occurred on July 7, 2011, when Humberto Leal Garcia, a Mexican national residing in the United States since the age of 2, was executed by lethal injection. Garcia was convicted and sentenced to death in 1994 for the rape and murder of 16-year old Adria Sauceda. The death sentence produced years of contentious litigation at the United Nations International Court of Justice (ICJ) regarding the Texas arresting authority's failure to advise Garcia of his right under the Vienna Convention on Consular Relations (Vienna Convention) to consular assistance. The ICJ ruled in the *Case Concerning Avena & Other Mexican Nationals,* (Mex. v. U.S.), 2004 I.C.J. 12 (Judgment of Mar. 31), that the United States violated the Vienna Convention by failing to offer consular assistance, and the conviction was improper as a matter of international treaty law. The U.S. Supreme Court addressed the ICJ decision in *Medellin v. Texas*, 128 S.Ct. 1346 (2008), ruling that the ICJ decision and a Memorandum by President Obama attempting to implement the ICJ decision were unenforceable because U.S. domestic law prevails over contrary international law and no congressional act of transformation occurred.

Garcia filed an application for stay and petition for writ of habeas corpus in a last attempt to avoid the death penalty. His primary argument was that the execution should be stayed pursuant to the Due Process Clause to grant Congress sufficient time to consider whether it would enact legislation transforming the ICJ decision into enforceable domestic law. Senator Leahy introduced implementing legislation in the Senate, but the House had no similar implementing legislation pending. The Supreme Court rejected the due process claim on the ground that future, currently un-enacted legislation cannot provide the basis for a stay.

Justices Breyer, Ginsburg, Sotomayor and Kagan dissented, arguing, *inter alia*, that the execution would place the United States in "irreparable breach" of its international law treaty obligations under the Vienna Convention and that congressional action on implementing the ICJ decision is a "reasonable possibility" that requires a stay to allow the legislative branch to carry out its constitutional function.

## World Trade Organization

***United States Anti-Dumping Measures on Certain Shrimp from Vietnam***, WT/DS404/R (11 July 2011).

Vietnam achieved a measure of success in its first dispute at the World Trade Organization (WTO). In 2010, Vietnam requested a dispute-settlement panel at the WTO to address several U.S. laws, regulations and practices with respect to frozen warmwater shrimp exported from Vietnam. Vietnam's primary challenge is to the U.S. administrative practice of "zeroing" in anti-dumping cases. This long established practice of the U.S. Department of Commerce excludes nondumped imports (those sold in the United States at the same price as in the home market) from the dumping margin calculation in order to allow the Department to capture the full scope of dumping; the Department "zeroes" or excludes transactions that are sold at fair value.

On July 11, 2011, the WTO panel issued and circulated its report, finding that the United States is in non-compliance with various obligations under the WTO agreements. The panel found, *inter alia*, that use of the zeroing methodology in administrative reviews is inconsistent with Article 9.3 of the WTO Anti-Dumping Agreement and Article VI:2 of GATT 1994. The United States has the right to appeal the panel's decision to the standing WTO Appellate Body. This result is consistent with a series of cases by WTO panels and the Appellate Body finding application of zeroing in various aspects of U.S. administrative practice inconsistent with WTO rules. The United States is seeking clarification of this issue in the ongoing Doha Round of WTO negotiations.

## Organization of American States

***Participation of Honduras in the Organization of American States***, AG/RES. 1 (XLI-E/11).

We previously reported that Honduras was suspended from the Organization of American States (OAS) as a result of the undemocratic transfer of power on June 28, 2009. In its 41st Special Session on June 1, 2011, the OAS resolved to lift the suspension of the State of Honduras, allowing it to immediately resume participation in the OAS. The decision was made primarily due to the Agreement for National Reconciliation and Consolidation of the Democratic System of the Republic of Honduras, signed on May 22, 2011, by current President Porfirio Lobo and former President Jose Manuel Zelaya Rosales.

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## Mineral Law

### Duty of Further Exploration; Suspension Doctrine

***Ferrara v. Questar Explor. & Prod. Co.***, 46,357 (La. App. 2 Cir. 6/29/11), ____ So.3d ____, and (La. App. 2 Cir. 8/4/11), ____ So.3d ____ (Caraway, J., concurring).

The Ferraras granted a mineral lease for a 48-acre tract in DeSoto Parish in 1988. The lessee drilled two wells on lands unitized with the leased land — one in 1988 and another in 1989. Both wells were productive and still were producing at the time of trial. The lessee drilled a dry hole on the leased land in 1990. Questar, which had been assigned the lessee's rights, drilled a well on land unitized with the leased land in 2000. The well was productive and remained in production at the time of trial.

After a bench trial, the district court granted cancellation of the lease as to all depths deeper than the Hosston. On appeal, Questar argued that the district court had erred by allowing the Ferraras to introduce evidence of Questar's and other companies' drilling of Haynesville Shale wells on other properties subsequent to the Ferraras filing suit. Questar argued that such evidence was not relevant because both an express clause in the lease and the jurisprudential "suspension doctrine" provided that a lessee's duties to explore and develop are suspended during litigation in which a lessor challenges the validity of a lease. The appellate court concluded, however, that the jurisprudential doctrine applies to servitudes, not leases, and that the lease clause did not apply because the lessors recognized the lease as valid and simply sued for lease cancellation. The appellate court agreed with Questar that post-lawsuit conduct could not prove whether someone breached a duty to explore prior to suit being filed, but held that the trial court did not err in considering post-lawsuit conduct as circumstantial evidence of Questar's intent prior to suit being filed.

Nevertheless, the appellate court reversed. The court noted that lease cancellation is a harsh remedy and that the Ferraras had not presented any expert testimony that a reasonably prudent operator would have drilled a well to the Haynesville formation prior to the time the Ferraras made demand or filed suit. In the absence of such testimony, the mere fact that Questar had not drilled a Haynesville Shale well on the leased premises within five months of Chesapeake's announcement and one week of the Commissioner's announcement was not sufficient to support a finding that Questar had breached its duty of further exploration.

A five-judge 2nd Circuit panel that included Judge Caraway denied rehearing. Judge Caraway, who was not on the three-judge panel that originally decided the case, wrote an opinion stating that he concurred in both the original decision and the denial of rehearing, but that the original panel's statement that the "suspension doctrine" does not apply to leases is inconsistent with Louisiana Supreme Court jurisprudence. Judge Caraway elaborated that a lessor's erroneous suit for lease cancellation breaches the warranty of peaceful possession and justifies a suspension of the duty to develop.

### Primary Term of Mineral Lease; Term Extended by Continuous Operations

***H & K Limited of LA, L.L.C. v. Martin Producing, L.L.C.***, 46,338 (La. App. 2 Cir. 5/18/11), ____ So.3d ____.

H & K Limited's predecessor-in-interest granted a mineral lease to Martin Producing, which later assigned the lease to Chesapeake. The lease's language provided that the lease would remain in effect for a primary term of three years and as long thereafter as minerals were produced in paying quantities. The lease also had a continuous-drilling-operations clause that provided that, if there was not production at the end of the primary term but the lessee was conducting drilling operations, the lease would continue in effect as long as the lessee continued drilling operations or began and continued production in paying quantities without a break of more than 90 consecutive days. At the end of the primary term, there was no production, but Chesapeake had begun drilling operations. Chesapeake continued such operations without any cessation exceeding 90 days and put the well into production. H & K brought suit for a judgment that the lease had terminated, but the district court granted summary judgment in favor of Martin and Chesapeake, holding that plain language of the continuous-drilling-operations clause meant that the lease had been maintained. The appellate court affirmed.

### Pre-Suit Notice of Royalty Litigation by One Person Not Effective for Putative Class

***Williams v. Chesapeake Louisiana, Inc.***, 10-1906 (W.D. La. 5/13/11), 2011 WL 1868750.

Mineral Code article 137 requires a lessor to give written notice to a lessee prior to filing claims based on the nonpayment, underpayment or untimely payment of royalties. Adhering to United States 5th Circuit jurisprudence, the district court held that the required notice cannot be given by one person on behalf of a putative class. The court rejected plaintiff's argument that the notice requirement does not apply if a plaintiff seeks unpaid royalties, but not "damages."

### Mandatory Disclosure of Fracking Fluid Composition

The Louisiana Department of Natural Resources has proposed a regulation that would require operators to publicly disclose the composition of hydraulic fracturing fluid for each well, except that chemicals that constitute trade secrets need not be disclosed. The proposed regulation is available at *http://dnr.louisiana.gov/assets/OC/eng_div/118_NOI_OSR.pdf*.

### Proposed Air Regulations

The United States Environmental Protection Agency has proposed new air regulations that generally would prohibit operators from venting to the atmosphere any natural gas or volatile organic compounds that flow to the surface with flowback water after hydraulic fracturing operations are complete. Operators would have to recover such substances, or could flare them under certain circumstances. The proposed regulations also would address emissions from compressors, pneumatic controllers, condensate and crude oil storage tanks and natural gas power plants. The proposed regulations would go into effect after February 2012.

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Professional Liability

## Panel Opinion Is Not Subject to Mandatory Admission

***McGlothlin v. Christus St. Patrick Hosp.***, (La. 10-2775 7/1/11), ____ So.3d ____.

Following the issuance of a medical-review panel's opinion, the plaintiffs filed suit, in which the principal allegations of negligence involved improper handling of the patient that caused her to fall, or to be dropped, and injured. The patient had earlier, during that same hospitalization, undergone successful bilateral total knee replacement surgery, and her initial recovery was uneventful. She was transferred to a rehabilitation unit and showed consistent improvement for eight days. On the eighth day, she began with left knee pain that was later determined to be caused by a patella dislocation. She subsequently underwent significant medical treatment, including nine surgical procedures and the removal of the prosthesis in her left knee. The McGlothlins claimed that the complications resulted from the two incidents during which Mrs. McGlothlin was moved/transferred once from her wheelchair to her hospital bed and once from her wheelchair to a commode.

A medical-review panel opined that Christus did not breach any standard of care. The reasons set forth as bases for the opinion included denials by staff members of any incident and the absence of any contemporaneous record or report that mentioned any incident that could explain the injury. The opinion concluded with this language:

> [W]e feel that the versions of both of the incidents, by the patient and her family, appear to have numerous inconsistencies.

The trial court redacted that language from the opinion before giving it to the jury.

During the jury trial that followed, it was not disputed that the patient sustained a patella dislocation while under the care of the hospital, nor that, among other things, this "morbidly obese bilateral total knee replacement patient" was owed the duty of coordination of more than one trained individual before she could be moved. One disputed issue was whether the two alleged events actually occurred, and one of the medical-review panelists testified that the dislocation of a prosthetic patella is a known complication of bilateral knee replacement surgery and could result from physical therapy. During this physician's testimony, the panel's opinion was introduced. Prior to its introduction, the plaintiff's motion to eliminate the first sentence of the opinion in its entirety (no breach) and the last clause (quoted above) was granted and this language was redacted.

Following a jury verdict in favor of Christus, the plaintiffs appealed to the 3rd Circuit, which reversed the jury verdict and ruled that the "panel opinion rendered on the merits" was not admissible in its original or edited version: Redacting the offensive language did not cure the panel's violation of its statutory mandate because "the underlying dispute was factual and not legal." The testifying panelist "fully informed" the jury that it reached its opinion in no small part by "discrediting of plaintiff's version and its reliance on the medical records." This tainted the integrity of the trial, leading to the reversal, a finding that the plaintiffs carried their burden of proof, and a rendering of judgment.

### Is a Panel Opinion Always Admissible?

The matter proceeded to the Louisiana Supreme Court, which declared that the primary issue was whether a panel's opinion is admissible if a panel exceeds its statutory duty. La. R.S. 40:1299.47(H) says that any panel opinion "shall be admissible as evidence in any action . . . in a court of law."

Both parties sought an "all or nothing" ruling on the admissibility of the panel's opinion — the plaintiffs seeking to exclude it in its entirety because of the credibility determinations, and the defendant arguing that the mandatory language of the statute requires the admission of any and all opinions in their entirety regardless of content. These questions caused the court to note that Louisiana circuit courts are "clearly split on the admissibility of panel opinions rendered based on panel's credibility determinations," thereby leaving it to resolve the issue.

The court noted that La. R.S. 40:1299.47(H) contains language that says that any "expert opinion" of the panel "shall" be admissible, but what constitutes an expert opinion under the LMMA is clearly defined in Section 40:1299.47(G), which specifies that the panel must render one or more of four categories of opinions, the third of which requires the panel to state whether there exists one or more material issues of fact that do not require expert opinion and that bear on the liability aspect of the case. An expert panel opinion must opine as to whether there was a departure from a standard of care unless there is a material issue of fact that does not require expert opinion and that bears on liability: "In performing this duty, the panel is not permitted to render an opinion on any disputed issue of material fact that does not require their medical expertise."

The standard of care was not in dispute in the instant case: the issue was whether the alleged negligent acts ever occurred. The court found that these were material facts that required no expert medical opinion. The court found that the panel superseded its statutory authority by answering the factual question. It explained:

> More significantly, by discrediting plaintiff's evidence, and relying strictly upon the medical records, the panel impermissibly rendered an opinion based on resolution of an issue (that .47(G)(3)) clearly and explicitly reserved for the jury. Simply stated, although a panel may render more than one opinion, the panel in this circumstance was not permitted to render one on whether the hospital's action complied with the applicable standard of care. . . because there existed a material issue of fact bearing on that very issue of liability, which did not require their medical expertise.

The panel's opinion did not conform to any of the statutory definitions that the law requires but instead made impermissible credibility determinations, thus removing it from the realm of an expert opinion as contemplated by the LMMA; it was thus inadmissible.

Nevertheless, the court continued that any error by the district court's admission of the opinion was rendered harmless by its redaction, making the opinion "merely corroborative and cumulative of other properly introduced evidence." The court also determined that allowing the panelist to testify was not error because the trial court is granted much discretion in determining whether a witness should be allowed to testify as an expert, and this witness only testified regarding "his" opinions on causation and breach and not to the panel's impermissible and inadmissible conclusions on these same issues, hence no abuse of discretion by the district court, which further convinced the court to determine *de novo* that the appellate court erred in determining that a review was necessary.

The court then reasoned that the harmlessness of the district court's error, combined with the absence of any abuse of discretion in allowing the physician to testify as to his expert opinions, required it to review the jury's verdict under the manifest error standard, thus granting "great deference" to the jury's verdict.

After its review, the court concluded that the jury was presented with conflicting but equally plausible views of how the injury occurred and, therefore, the fact-finder's choice between two permissible views of the evidence "cannot be manifestly erroneous or clearly wrong, and reasonable evaluations of credibility and inferences should not be disturbed upon review." *Rosell v. ESCO*, 549 So.2d 840 (La. 1989). Therefore, despite the panel's having superseded its authority, any error in the admission of its opinion was rendered harmless by the redaction of the offending language, especially in light of other evidence that was corroborative and properly admitted into evidence. The appellate court did not err in finding the opinion inadmissible, but it did err in ruling that its admission perverted the integrity of the trial. Finding no manifest error, the Supreme Court reversed the appellate court's judgment and reinstated the judgment of the district court.

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Taxation

## 2011 Regular Legislative Session Incentives Update

### Digital Interactive Media

**Act 415:** Changes the Digital Interactive Media Program by changing the tax credits earned for expenditures made on or after Jan. 1, 2012, to refundable tax credits. The refundable tax credits are good against the individual or corporate *income* tax liability of the company or the financiers of the project. For credits that are earned in connection with expenditures made on or after Jan. 1, 2012, the new language has removed: (i) the applicability of the credits against corporate franchise tax and (ii) the transferability of the credits. The legislation also gives the digital interactive media company (company) the option to elect to receive a direct rebate from the Department of Revenue of 85 percent of the face value of the credits (essentially an 85 percent buy-back provision similar to the motion picture program). Also changes the initial certification coverage for expenditures by stating that initial certification shall be effective for expenditures made no more than six months prior to the date of initial certification but shall be valid until the project is complete. Also adds a provision whereby LED can request additional audits of project expenditures, the cost of which shall be borne by the company.

### Angel Investor Tax Credit Program

**Act 414**: Revives the Angel Investor Tax Credit Program. The legislation began as a conversion from a tax credit program to a rebate program. That path was derailed in the Senate, and the legislation was changed to a normal transferable tax credit program. There are many revisions, however, from the original tax credit program as it existed before the resurrection. There is a $5 million cap annually on the amount of credits that can be issued. The credits are earned at the rate of 35 percent of the investment and issued in equal portions over a five-year period. The tax credits are not available for use until 24 months after LED certifies the amount of the investment. Pay close attention to the strict recapture provisions in the new legislation.

### Quality Jobs Program

**Act 353**: Clarifies and specifies the value of health-care benefits offered to employees as a factor in the determination of qualification for tax rebates under the Louisiana Quality Jobs Program. The provisions of the new Act are applicable to rebate requests filed on or after July 1, 2012.

**Act 410**: Present law prohibits new applications for incentive tax credits or rebates under the Louisiana Quality Jobs Program Act from being approved by the Department of Economic Development on and after Jan. 1, 2012. Act 410 extends the deadline to Jan. 1, 2018.

### New Markets Tax Credits

**SB 99 (Morrell)**: SB 99 would have authorized the issuance of $37.5 million more New Markets Tax Credits and would have extended the period tax credits are allowed from ending on Dec. 31, 2013, to an indefinite period if the qualified equity investment is issued prior to Dec. 31, 2014. SB 99 was vetoed by the Governor on July 1, 2011.

### Research and Development Tax Credit Program

**Act 407:** Extends the sunset date from Dec. 31, 2013, to Dec. 31, 2019. Like the Angel Investor bill, this legislation also began as a conversion from a tax credit program to a rebate program. However, in the end, all of that changed, and the program was put back to its original tax credit form. The credit remains refundable and applicable against both *income and corporation franchise* taxes. The credit is not transferable. The new legislation reduces the amount of the rebate by requiring all employees to be counted in the size of the business, rather than only resident employees; and establishes a qualified research expense baseline for use in calculating the credits earned. The new provisions are applicable to tax years beginning on or after Jan. 1, 2011.

### Technology Commercialization Program

**Act 416:** Extends the sunset of Technology Commercialization Credit and Jobs Program from Dec. 31, 2011, to Dec. 31, 2017. Like the Angel Investor and R&D bills, the original legislation proposed to change the Technology Commercialization program from a refundable tax credit program to a rebate program. The final legislation remains a refundable tax credit applicable against both *income and corporation franchise* taxes. The credit is not transferable.

### Rehabilitation of Historic Structures

**Act 409**: The tax credit program is set to expire Jan. 1, 2012. Act 409 extends the tax credit program to Jan. 1, 2016.

**Act 412**: Increases the amount of the tax credit for the rehabilitation of certain residential structures and extends the taxable periods in which the tax credit applies.

### Motion Picture

**Act 154:** Creates the Acadiana Cultural and Entertainment Special District and authorizes certain parishes within the district to provide an exemption from their sales tax for purchases by a motion picture production company for a specific state-certified movie production by that company.

### Miscellaneous

**Act 365:** Requires review of the tax exemption budget by legislative committees every odd-numbered year.

**Act 415** (Digital Interactive Media), **Act 407** (R&D Tax Credit Program) and **Act 416** (Technology Commercialization Program): Each of these new Acts provides a requirement that LED submit an annual report to the Joint Legislative Committee on the Budget listing each recipient of the tax incentives as well as those applicants that were denied the tax incentives.

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## Trusts, Estate, Probate & Immovable Property Law

### Legislative Update

Below is a summary of recent Louisiana legislation affecting real estate that was passed during the 2011 regular session.

**Act 325** amends the definitions provision of the Title Insurance Act by redefining an "abstract" as a written history, synopsis or summary of the recorded instruments in the public records affecting title to the immovable property that (i) is prepared and certified by the abstractor in accordance with the minimum search periods and requirements of a title opinion; (ii) includes a photocopy or electronic copy of such recorded instruments or extracts of such documents prepared by the abstractor who personally reviewed the documents; and (iii) is dated and signed by the abstractor and presented to an attorney duly licensed and authorized to practice law in Louisiana. The Act defines "public records" as all instruments, including actual attachments, that are recorded in the mortgage and conveyance records, and the ad valorem property tax records for the parish and political subdivision in which the property is located. Act 325 also amends the current law by providing that any title insurance report or title insurance policy relating to immovable property shall be based on an examination of the public records or a personal examination of an abstract, rather than just "an examination of title." Finally, the Act amends the definition of "practice of law" to include rendering a title opinion as a basis of any title insurance report or title insurance policy.

**Act 164** enacts La. R.S. 22:513.1, which provides that every sale, conveyance or other act transferring an interest or ownership in a one- to four-family residential property that is insured by an owner's title insurance policy and every mortgage encumbering such property that is insured by a loan title insurance policy shall contain all of the following information: (i) the name, address and Louisiana license number of the issuing title insurance producer; (ii) the name of the title insurance underwriter issuing the policy; and (iii) the name and bar roll number of the attorney licensed to practice law in Louisiana who provided the title opinion on which the title insurance policy is based. The inclusion of this information on the recorded document shall not create additional liability for those named therein, nor shall it create a separate cause of action against the title insurance producer, title insurance underwriter, lender or examining attorney.

**Act 124** enacts La. R.S. 5166 in an attempt to create a uniform cancellation affidavit to be used in connection with all mortgage and vendor's lien inscriptions other than judgments or legal mortgages. The Act states that the uniform cancellation affidavit may be used in lieu of any other affidavit otherwise required by law, and no additional affidavit shall be necessary for cancellation. The uniform cancellation affidavit shall (i) contain the information required by this section; (ii) recite the statutory authorization for the cancellation, any other recitation as may be required by law for cancellation and a declaration that the party executing the affidavit has complied with all requirements of law for the cancellation; and (iii) be sworn to and subscribed in the presence of a notary public or other properly authorized official, but shall not be required to be an authentic or witnessed act. The filing of the uniform commercial affidavit with the clerk of court shall operate as a release and authorization to the clerk of court to cancel and erase from the mortgage records any mortgage or vendor's lien inscription described in the uniform cancellation affidavit. The party executing the affidavit shall be liable to and indemnify the clerk of court and any person relying on the cancellation for any claims or damages suffered if the uniform cancellation affidavit contains materially false or incorrect statements. Further, the preparing, signing or filing of a uniform cancellation affidavit with the knowledge that it contains materially false or incorrect statements shall subject the offender to civil and criminal liability. A form of uniform cancellation affidavit is set forth in the statute.

**Act 275** amends La. R.S. 47:2161 relative to improvements to property located in the city of New Orleans made by a tax-sale purchaser. If a tax-sale purchaser has made improvements to abandoned or blighted property located in the city of New Orleans to bring the property into compliance with one or more municipal code ordinances prior to the property being redeemed, the person redeeming the property shall reimburse the tax-sale purchaser for those costs. The maximum amount of reimbursement for improvements shall be $1,500 for abandoned property and $3,000 for blighted property, per property per year. The failure by a person redeeming the property to reimburse the tax-sale purchaser in accordance with this section shall not terminate or otherwise impair the right of such person to redeem his property.

**Act 84** enacts La. R.S. 9:1123.113 to provide that any condominium unit owners' association collecting assessments for common expenses shall obtain and maintain a blanket fidelity bond covering the officers, directors and persons employed by the association, and any managing agent and employees of the managing agent in the amount provided in Section B. The association shall make the proof available for inspection by a member of the condominium unit owners' association upon request of the member.

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