



# LOUISIANA ASSOCIATION OF DEFENSE COUNSEL NEWSLETTER

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2010:7

July 1, 2010

## UPCOMING MEETINGS

August 5-7, 2010	LADC Trial Academy, Loyola School of Law, New Orleans	21.0*#
August 13, 2010	LADC Sizzlin' Summer Seminar, Windsor Court, New Orleans	8.0*#
March 9 – 13, 2011	LADC Winter Meeting, The Charter, Beaver Creek, CO (save the date)	10.0*#

(A registration form may be downloaded at [www.ladc.org](http://www.ladc.org) if registration is open at this time.)

\* - includes one credit for professional responsibility (ethics)

# - includes one credit for professionalism

## BULLETIN BOARD

**LAST CALL FOR LADC TRIAL ACADEMY:** The twenty-sixth annual LADC Trial Academy is scheduled for Thursday, Aug. 5-Saturday, Aug. 7 at Loyola Law School. Outstanding lawyers and judges provide excellent training in all phases of litigation for young lawyers, and it is an incredible bargain, offering over 21 hours of CLE credit. Registration materials are available at [www.ladc.org](http://www.ladc.org).

**LADC SIZZLIN' SUMMER SEMINAR, FRIDAY THE 13<sup>TH</sup>:** One of the LADC's most popular seminars is the seminar formerly known as the Attorney-Client Seminar. This year the second annual Sizzlin' Summer Seminar will be at the Windsor Court Hotel on Friday, Aug. 13. Don't take a chance by working on Friday the 13th. Come get 8 hours of CLE credit and enjoy good luck at the seminar. We have a reserved block of rooms and suites at the Windsor Court Hotel at a special rate. Additionally, if the hotel offers summer specials better than our rate, we will get the better rate. Make your hotel reservation by calling 1-800-262-2662. Our room block expires on July 12. The CLE agenda includes the following: Toxic Torts and Class Actions: Oil Spills and Beyond (John Church, David Dugas, David Bienvenu, and Stephen Murray); Overview of the 2010 Legislative Session (State Legislators); Insurance Law Update (Shelby McKenzie); Health Care Reform (Donna Fraiche); Professionalism (Brian Faughnan); Privileges, Liens, Subrogations & Other Snags (Shane Craighead); Ethics (Dane Ciolino and Phelps Gay); and Recent Developments in Louisiana Law (Frank Maraist, Dane Ciolino, and Bill Corbett). Registration materials are available at [www.ladc.org](http://www.ladc.org).

STRATEGIC PLANNING, THURSDAY, AUG. 12: The LADC officers and board of directors will engage in a day-long strategic planning session before the Sizzlin' Summer Seminar. The session will be held in conjunction with the board meeting usually held on that day. The purpose of the session is to assess the state of the organization and plan for the future. A key topic will be member services. Everything is on the table, including the following: newsletter; website; online CLE; email blast notices; CLE seminars and training programs; young lawyers' services; expert witness services; participation in government (legislature, courts, and agencies); dues; travel; opportunities for member involvement and participation; and interaction with other national, state, and local organizations. We encourage all members who have ideas to communicate with us by contacting your district director, an officer, or the LADC office (Ladefensecounsel@aol.com or 225-928-7599). This is your organization, and we ask that you help us make it better.

LADC ANNUAL MEETING 2011: Start planning now to attend the 2011 Annual Meeting. After conducting a survey of the membership, President Ron Sholes has announced that the trip will be to southern France. Stay tuned.

BEAVER CREEK WINTER MEETING 2011: The winter meeting and ski trip to the Charter at Beaver Creek will be during Mardi Gras week, Wednesday, March 9-Sunday, March 13. Because flights book early during Mardi Gras week, you may want to make flight arrangements soon.

DRI 2010 Annual Meeting: The meeting will be in San Diego on Oct. 20-24. Information and registration materials are available at [www.drig.org](http://www.drig.org).

### **NEW MEMBERS**

Jonathan S. Forester, Metairie  
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### **KEY DEVELOPMENTS**

#### Summary Judgment

In Guillory v Chapman, the Third Circuit holds that the trial court abused its discretion in refusing to admit or consider an expert's affidavit, where the proponent filed an unsigned affidavit by the witness on the last day for filing an opposition, and on the following day proponent filed a notarized affidavit in the record and faxed a copy to defendant. There was no allegation of prejudice by the late filing of the affidavit. No. CA 09-1005 (5/12/10) (five judge court; Amy, J, dissenting)

### Damages; Medical Liens

The health care provider's privilege under R.S. 9:4751 prescribes when prescription accrues on the open account which it secures. Dauzat v Financial Indemnity Ins. Co., Third Circuit, No. 10-28 (6/2/10)

### Insurance; Penalties

A claimant may file suit seeking penalties under R.S. 22:1973 (failure to pay the amount of a claim within 60 days after satisfactory proof of loss) although the 60-day period has not yet tolled. Hudson v AIG National Ins. Co., Third Circuit, No. CA 10-63 (6/2/10)

### Prescription

Where the claimant seeks damages caused by the employee's battery, the claim against the employer based on improper hiring, training and supervision prescribes in one year but the claim for vicarious liability prescribes in two years, pursuant to CC Art. 3493.10. Johnson v Littleton, Second Circuit, No. 45,323-CA (5/19/10)

### Prescription; Interruption

An intervention which subsequently is deemed improper nevertheless may be sufficient to judicially notify the defendant of the intervenor's legal claims and interrupt prescription on those claims. Vaughn v City of Baton Rouge, First Circuit, No. 2009 CW 0930R (5/26/10)

### Res Judicata

A judgment determining fault between the owner-buyer of a helicopter and the manufacturer of the helicopter in a suit by one victim of the helicopter crash is res judicata on that issue in a suit by another passenger in the crash. The issue of fault for the crash was actually litigated. See R.S. 13:4231(3). Myers v National Union Fire Ins. Co. of Louisiana, Fourth Circuit, No. 2009-CA-1517 (5/19/10)

## **OTHER SIGNIFICANT DEVELOPMENTS**

### Aircraft Accidents

A state negligence claim by an amputee who falls down a staircase while disembarking from an airplane is not preempted by the Federal Aviation Act or the Air Carrier Access Act. Elssaad v Independent Air Inc., \_\_\_ F 3d \_\_\_ (3d Cir. 2010)

## Appeals

The statutorily mandated time delays for filing an appeal are not suspended pending a trial court's issuance of its reasons for judgment. Williams v Atmos Energy Corp., Fifth (La.) Circuit, No. 09-CA-1061 (5/11/10)

The granting of a rule to appoint an arbitrator is essentially a judgment compelling arbitration which is interlocutory in nature and not subject to an immediate appeal. Neither a denial of a motion for continuance nor a denial of a motion for new trial generally is appealable unless an appealable judgment is rendered in the same case. Barham, Warner and Bellamy LLC v Strategic Alliance Partners, L.L.C., Fourth Circuit, No. 2009-CA-1528 (5/26/10)

On appeal, plaintiff filed a motion to supplement the record on appeal, arguing that newly discovered evidence proved that the defendant manufacturer was aware of the defect in its product and that an alternative design existed. The evidence had been introduced in a Florida case but initially placed under a confidentiality order which later was overruled by the Florida appellate court. Held, the evidence may not be considered in the Louisiana appeal as such would constitute taking of new evidence and the exercise of original jurisdiction. Fields v Walpole Tire Service, L.L.C., Second Circuit, No. 45,206-CA (5/19/10)

## Appeals: En Banc

Absent a quorum, a court is not authorized to transact judicial business en banc. If after granting en banc review a court loses its quorum (one of the nine judges is disqualified and is recused), the en banc court cannot take any action, including reinstatement of the panel opinion which had been vacated. Comer v Murphy Oil USA, \_\_\_ F 3d \_\_\_ (5th Cir. 2010) (Davis, Stewart and Dennis, JJ, dissent)

## Arbitration

Even where the parties agree that the claims ultimately will be settled by arbitration, it is the judge, and not the arbitrators, who must decide whether the express waiver of class arbitration is unconscionable. Puleo v Chase Bank USA N.A., \_\_\_ F 3d \_\_\_ (3d Cir. 2010)

After Hall Street Associates LLC v Mattel, Inc., 552 U.S. 576, a court may not apply judicially created standards, such as "manifest disregard for the law," to vacate or modify an arbitration award. Frazier v CitiFinancial Corp., \_\_\_ F 3d \_\_\_ (11th Cir. 2010)

## Attorneys: Privileges

The Minnesota Lawyers Professional Responsibility Board has issued an opinion holding that an attorney sending an electronic document has a professional duty to avoid

revealing client secrets in metadata. The Board also concludes that the receiving lawyer who discovers the metadata must promptly notify the sender. Opinion No. 22 (3/26/2010).

### Damages

The economic loss rule denies recovery where a product fails to meet the plaintiff's economic expectations, as distinguished from products which pose an unreasonable risk of harm to the plaintiff's property and health. Louisiana does not recognize the rule, and tort damages for economic losses may be recoverable to a plaintiff under laws unique to Louisiana. For one thing, a plaintiff may have a remedy for economic losses under Louisiana rehibition laws. In Re Chinese Manufactured Drywall Products, 680 F Supp 2d 780 (ED La. 2010)

The jury was not manifestly erroneous in failing to award consortium damages where although husband and wife testified that they were "like two kids in love" before the accident, defendant produced evidence in the form of medical records that appeared to show that the wife had complained about marital problems, lack of libido, and domestic abuse on several earlier occasions. Pfefferle v Haynes Best Western of Alexandria, Third Circuit, No. CA 09-999 (6/2/10) (five judge court; Amy, J, dissents in part)

Wrongful death: \$1,500,000 to wife and \$750,000 to each of four children upheld; decedent's death affected widow profoundly and continues to do so, and the children face a future of great life events that will not include the father. Raymond v Government Employees Ins. Co., Third Circuit, No. CA 09-1327 (6/2/10)

Survival: \$50,000 to decedent who feared that he was about to be involved in a head-on collision as he moved over to the shoulder of the road in an attempt to avoid the accident; the attempt was unsuccessful, and there was evidence that decedent grunted and raised his head two or three times immediately after the accident. Raymond v Government Employees Ins. Co., supra.

### Damages; New Home Warranty Act

The daughter of the purchasers, who herself if not the initial purchaser or a successor in title to the original purchasers, is not an "owner" and is not limited to the exclusive remedies between a builder and an owner relative to home construction provided by the New Home Warranty Act. Thus she may recover for her bodily injury allegedly caused by toxic mold in the construction. Allemand v Discovery Homes, Inc., First Circuit, No. 2009 CA 1565 (5/28/10) (Parro, J, concurring)

### Evidence

In a wrongful death case, the trial court did not err in granting a motion in limine excluding evidence of decedent's dishonorable discharge from the Army and incarceration at the Disciplinary Barracks at Fort Leavenworth. Decedent served in the

Army for a very brief period more than 30 years before the medical malpractice at issue, and evidence of his military conviction was not admissible under LCE Art. 609(B). Ratliff v LSU Board of Supervisors, Fourth Circuit, No. 2009-CA-0012 (5/7/10)

#### Evidence; Compromise

The offering of settlement evidence arising out of a shared factual nexus and bearing directly on the issue of liability between many of the same parties falls within the prohibition of Federal Rule of Evidence 408, barring admission of conduct or statements made in compromise negotiations regarding a claim that was disputed as to validity or amount. Lyondell Chemical Co. v EPEC Polymers Inc., \_\_\_ F 3d \_\_\_ (5th Cir. 2010)

#### Immunity; Sovereign Immunity

The Foreign Sovereign Immunities Act does not grant foreign officials immunity from civil lawsuits. Samantar v Yousef, \_\_\_ U.S. \_\_\_ (2010) (Alito, Scalia and Thomas, JJ, concur)

#### Insurance

Brother was listed as the named insured but sister's name appeared on the next line as a driver and household resident. Held, the appearance of the sister's name on the declarations page, in the absence of any countervailing explanation by insurer, creates an ambiguity on the face of the record. Thus summary judgment denying UM coverage to the sister by the insurer is improper. Montz v Daverede, Fourth Circuit, No. 2009 CA-1630 (5/20/10)

Because Louisiana's double recovery bar prevents the insured from recovering in excess of actual loss, a court does not necessarily err by evaluating double recovery prior to the resolution of disputed issues of causation. Where the value of the property in question has been conclusively established the court may find as a matter of law that the insured is limited to a specific recovery. But where the insurer has not conclusively established the value of the property or the cost to rebuild, the court cannot find as a matter of law that the insured is limited to a specific recovery based on the insurer's asserted valuation of the property. Bradley v Allstate Ins. Co., \_\_\_ F 3d \_\_\_ (5th Cir. 2010)

For a case upholding coverage despite claims of intent to deceive and material misrepresentation where insured's 16 year old daughter was not disclosed as a resident of the household over the age of 14, see State Farm Mut. Auto. Ins. Co. v Bridges, Second Circuit, No. 45,162-CA (5/19/10)

#### Insurance; Penalties

An insurer does not violate R.S. 22:1220 by rejecting the insured's form of proof of loss and requesting time to reinspect the property, and the insured files suit nine days later. Jones v State Farm Fire & Cas. Co., 677 F Supp 2d 923 (ED La 2009)

The trial court did not abuse its discretion in refusing to award insured penalties where insurer paid 97% of insured's settlement funds within 30 days after the settlement was reduced to writing, and remitted the interest within 24 hours after being notified that the interest was not included in the funds paid. Hope-Kidd v Stewart, Third Circuit, No. 10-141 (6/2/10)

### Medical Malpractice

Thirty five days after patient was discharged from the hospital, the surgical device used on her was recalled. The Third Circuit concludes that the failure to notify patient of the recall did not fall within the ambit of the Medical Malpractice Act and thus a medical review panel was not required. Derouen v Park Place Surgical Center, LLC, No. 09-1442 (5/6/10)

In Kampmann v Mason, the Fifth (La.) Circuit concludes that rules regulating the practice of pharmacy enacted by the Board of Pharmacy under R.S. 37:1182 do not establish tort liability to third parties. No. 09-CA-993 (5/11/10)

A pharmacist has a duty to accurately fill a prescription and to be alert for clear errors or mistakes in the prescription, but the pharmacist does not have a duty to question a judgment made by the physician as to the propriety of a prescription, or to warn customers, either orally or by way of the manufacturer's package insert, of the hazardous side effects associated with a drug. Kampmann v Mason, supra.

### Medical Malpractice; Prescription

R.S. 9:5628 provides two distinct one-year prescriptive periods; one year from the date of the alleged malpractice and one year from the date the plaintiff discovered the alleged malpractice. There is nothing in the law that supports plaintiff's argument that she had three years, from the date the defendant physician "last saw" the decedent, to file a medical malpractice claim. Hammond v St. Francis Medical Center, Inc., Second Circuit, No. 45,263-CA (6/2/10)

A plaintiff may recover damages sustained when a tortfeasor's fault causes a prenatal injury to a fetus who is subsequently born dead because of that injury. Although it may have its genesis in an act of malpractice, a wrongful death action is not a malpractice action, and therefore it is not controlled by the prescriptive period for medical malpractice actions, but by the one year prescriptive period applicable to delictual actions, CC Art. 3492. Hammond v St. Francis Medical Center, Inc., supra.

### Negligence

While violation of a statute may be negligence per se, it must also be a legal cause of the accident. Violation of R.S. 32:408(C), by driving a motorcycle without an appropriate endorsement on the driver's license, is not the cause in fact and legal cause of the

accident, where the motorcycle rider was experienced and did not have any history of inability to properly operate a motorcycle. Moffitt v Sewerage & Water Board of New Orleans, Fourth Circuit, No. 2009-CA-1596 (5/19/10)

### Prescription

RS 9:5605, providing prescription and peremption for legal malpractice claims, does not apply to a claim by one attorney against another attorney for fees in connection with their association in a legal matter. Williams v Earl K. Long Medical Center, Fourth Circuit, No. 2009-CA-483 (5/28/10)

### Service of Process

Without service of process, a trial court may not exercise personal jurisdiction over a defendant. Thus a default judgment must be annulled where the defendant was never served with the original petition, although he was served with a supplemental and amending petition that set out all of the essential elements of the plaintiff's cause of action. Defendant did not expressly waive service and citation, and did not file anything in the record until he filed the petition to annul the judgment. An unserved party does not waive service and citation unless he takes some action on the record of the case prior to judgment. Ardoin v Daley, Third Circuit, No. CA 10-13 (5/5/10)

### Subject Matter Jurisdiction

In Russell v Shelter Mutual Ins. Co., the city court "splintered" the cause of action by awarding the husband \$50,000 in personal injury damages and awarding his spouse an additional \$50,000 for the community's special damages, and, in addition, her personal damages for loss of consortium. The Third Circuit finds that in this situation the trial court did not have subject matter jurisdiction. No. CA 09-1451 (5/5/10) (Gremillion, J, concurring)

### Summary Judgment

When cross motions for summary judgment are filed simultaneously "or nearly so," they ordinarily should be considered at the same time. Puerto Rico American Ins. Co. v Rivera-Vasquez, \_\_\_ F 3d \_\_\_ (1st Cir. 2010)

While defendant A's declinatory exception was pending, the court granted summary judgment dismissing defendant B. Held, (1) the court was not premature in granting summary judgment, but the summary judgment should have reserved unto defendant A any rights he may have against any person; (2) the summary judgment would not bar A from arguing B's negligence for the purpose of allocation of fault. Rucker v Temps Today, Inc., Fourth Circuit, No. 2009-CA-1257 (5/5/10)

Defendant A filed a motion and obtained a summary judgment; co-defendant B appealed that judgment, but plaintiff did not. The court of appeal reversed. Held, co-defendant B,

but not plaintiff, may benefit from the reversal. When plaintiff failed to appeal or answer the appeal, the summary judgment dismissing defendant A acquired the authority of a thing adjudged and is now final between plaintiff and defendant A. Grimes v Louisiana Medical Mutual Ins. Co., Supreme Court, No. 10-C-0039 (5/28/10) (Kimball, CJ, did not participate)

#### Torts; Causation

A police officer's failure to impound a vehicle may violate R.S. 32:861 but the failure may not be the cause in fact or the legal cause of the subsequent accident by the vehicle's driver nine days later. Dupre & Son Floor Covering Inc. v City of Iota, Third Circuit, No. CA 09-1183 (5/5/10) (Genovese, J, and Chatelain, J pro tem, concurring in the result)

#### Torts; Immunity

The scope of statutory immunity by contract was explored in St. Angelo v United Scaffolding, Inc., Fourth Circuit, No. 2009-CA-1420 (5/19/10). There, the majority concluded that both the principal and the contractor were entitled to statutory employer immunity through the language of a contract between a subdivision of the contractor and the direct employer of the injured employee. The majority also held that the requirement that the contractor carry worker compensation insurance is not an attempt to escape worker compensation liabilities. (Bonin, J, dissents in part)

#### Trials

In Tingle v American Home Assurance Co., the trial judge required counsel to approach the bench with their evidentiary objections. However, the judge did not require that the bench conferences be recorded. Nevertheless, failure to record was not reversible error where some of the objections were captured through a second microphone, the court was able to ascertain the nature of some objections by their context, and counsel did not show specific prejudice with regard to relevant evidence. Third Circuit, No. CA 10-71 (6/2/10)

#### Witnesses; Experts

In a slip and fall case, the trial court did not err in accepting the testimony of an expert as a safety professional with experience in hazard recognition and accident investigation. The witness was a board-certified safety professional who had practiced in the field of safety for approximately 35 years; his company provided safety management services and provided safety training to businesses, taught at seminars and published several articles on the subject of trip and fall prevention, and had investigated hundreds of trip and fall accidents. Peoples v Fred's Stores of Tennessee, Inc., Third Circuit, No. CA 09-1270 (6/2/10)

### Witnesses; Interpreters

The trial court did not err in allowing a Laotian native and social acquaintance of plaintiff, who was a native of Laos, to serve as interpreter; the interpreter might not have been “absolutely disinterested” but there was no showing of clear bias or prejudice. Thongsavanh v Schexnayder, First Circuit, No. 2009 CA 1462 (5/7/10) (Downing, J, concurs; McClendon, J, dissents)

### Worker Compensation

A statutory employer, like a direct employer, is liable for worker compensation benefits to an undocumented worker. Rodriguez v Integrity Contracting, Third Circuit, No. WCA 09-1537 (5/5/10)

Where claimant worked on a commission basis as a truck driver during sugarcane grinding season, his compensation benefits should be calculated pursuant to R.S. 23:1021(12)(d), i.e, his rate of pay based on the wages he received via commission, and not pursuant to R.S. 23:1021(12)(a)(v), which provides for employees engaged in seasonal employment. Lumpkin v A.B.E.L.Trucking of Louisiana, LLC., Third Circuit, No. WCA 10-54 (6/2/10)

R.S. 23:1201(B) provides that the first installment of compensation for temporary total disability shall be payable by the 14th day after the employer or insurer has knowledge of the injury. Held, the 14-day period is based upon the date the payment is received, and not the date of issuance of payment by employer or its insurer. Massingfill v Dunham Price Group, L.L.C., Third Circuit, No. 09-1549 (5/5/10)

### Worker Compensation; Penalties

An employer should not be assessed with penalties where it filed the disputed claim for medical benefits and indemnity after paying medical benefits for four years, raised a serious issue as to causation, and shows that the indemnity claim was prescribed. “While it is unusual for the employer to initiate the claims process, this is preferable to terminating benefits unilaterally -- a decision that probably would have been viewed as arbitrary, capricious and indifferent to the employee’s interest.” City of Bossier City v Colvin, Second Circuit, No. 45,278-WCA (5/19/10)

However, in another case in which the employer and compensation carrier filed a disputed claim for compensation seeking a determination that the employee was no longer entitled to benefits which they had voluntarily been paying him, the court dismissed the claim as premature. See Louisiana Commerce & Trade Association-SIF v Cruz, First Circuit, No. 2009 CA 2014 (5/7/10)

## MARITIME MATTERS OF NOTE

Benefits for offshore oil well workers under the Longshore and Harbor Worker's Act do not hinge on the injury's taking place on the outer continental shelf, but must be substantially related to operations conducted there. Valladolid v Pacific Operations Offshore LLP, \_\_\_ F 3d \_\_\_ (9th Cir. 2010)

The Ryan doctrine, and not the tort-based proportionate share settlement credit rule (McDermott, Inc. v. Amclyde, 511 U.S. 202), applies to a barge terminal's claim against the employer of a Jones Act seaman who suffered personal injury while working as a deckhand shifting barges at the terminal. In Re J.A.R. Barge Lines, L.P., \_\_\_ F 3d \_\_\_ (3d Cir. 2010)

All of the federal circuits have taken a relaxed standard of probable cause under Section 1 of the FELA. Reaching this conclusion, the U.S. Seventh Circuit approves an instruction that "Defendant 'caused or contributed to' worker's injury if defendant's negligence played a part--no matter how small--in bringing about the injury." McBride v CSX Transportation, Inc., \_\_\_ F 3d \_\_\_ (2010). See also, Bancroft v Mitchell Offshore Marine LLC, Third Circuit, No. CA 09-1067 (5/19/10), holding that the correct burden of proof to be applied in a Jones Act negligence case is that any injury the seaman may have sustained is causally linked to the defendant's negligence by slight evidence.

## WRIT GRANTS OF INTEREST

### U.S. Supreme Court:

Arbitration: Does the Federal Arbitration Act preempt a state from conditioning enforcement of an arbitration agreement on the availability of a particular procedure, such as class wide arbitration, when the procedure is not necessary to ensure that the parties to the arbitration agreement are able to vindicate their claims. AT&T Mobility LLC v Concepcion, No. 09-893. Opinion below: 584 F 3d 849 (9th Cir)

Product Liability: Where Congress provides that compliance with a federal motor vehicle safety standard "does not exempt a person from liability at common law," does a federal minimum safety standard allowing installation of seat belts in a certain fashion preempt a state common law claim based upon the manufacturer's installation of a seat belt in a different fashion. Williamson v Mazda Motors of America Inc., No. 08-1314. Opinion below: 167 Cal App. 4th 905, 84 Cal Reporter 3d 545.

### Louisiana Supreme Court:

Dupree v Lafayette Ins. Co., No. 2009-C-2692 -- court below upheld maintenance of class action involving insurance policies on homes damaged by Hurricane Katrina. Opinion below: Fourth Circuit, No. 2009-CA-0321.

Howard v Union Carbide Corp., No. 2009-C-2750 -- main issue was amount of damages to motorist, employees and town residents from exposure to naphtha fumes from chemical leak at plant. Opinion below: 21 So 3d 1084 (5th Cir. 2009)

Tate v Woman's Hospital Foundation, No. 2010-C-0425 -- issue is validity of summary judgment on employee's claim for invasion of privacy by employer's requirement that employee submit to DNA testing. Opinion below: First Circuit, No. 2008 CA 2577

Johnson v Morehouse General Hospital, No. 2010-C-0488 -- issues below include fault of hospital in failing to timely report lab results, negligence of obstetrician, qualification of proffered medical expert who was not practicing medicine, and remarks made during closing argument by patient's counsel. Opinion below: 27 So 3d 1085 (2d Cir. 2009)

Poissenot v St. Bernard Parish Sheriff's Office, No. 2009-C-2793 -- issue below was primarily whether worker compensation claimant was disabled. Opinion below: 26 So 3d 829 (4th Cir. 2009)

Iberia Medical Center v Ward, No. 2009-C-2705 -- issues below were whether evidence was sufficient to prove claimant sustained a work related hand injury and whether employer was arbitrary and capricious. Opinion below: 26 So 3d 784 (3d Cir 2009)

Lastrapes v Progressive Security Ins. Co., No. 2010-C-0051 -- issues below were whether UM carrier was arbitrary, and amount of award of future medical expenses. Opinion below: 24 So 3d 993 (3d Cir. 2009)

Ardoin v Firestone Polymers, LLC, No. 2010-C-0245 -- issues below were whether worker compensation claimant suffered work-related knee accident, whether disabling arthritis in his knee was caused by the injury, and whether he was entitled to penalties and attorney fees. Opinion below: 30 So 3d 177 (3d Cir. 2009)

Taranto v Louisiana Citizens Property Ins. Corp., No. 2010-C-0105 -- issues include whether insurer was estopped from claiming one and two year prescriptive periods and whether any prescriptive period was interrupted by timely filed class action in which insured was putative class member. Opinion below: 28 So 3d 543 (4th Cir. 2009)

Carrier v City of Amite, No. 2010-CC-0007 -- appellate court held that the trial court failed to conduct a Daubert analysis as to the scientific reliability of an expert's proffered testimony. Opinion below: 6 So 3d 893 (1st Cir. 2009)