



THE BAR REVIEW

PUBLICATION OF THE SHREVEPORT BAR ASSOCIATION Volume XXVIII, Number 10 • December 2021



2021 HIGHLIGHTS





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EVENTS AT A GLANCE

12/15-16 December CLE by the Hour Seminar at Petroleum Club of Shreveport

12/19 SBA and Area Law Student Christmas Party

1/26 SBA Membership Luncheon – 12:00 p.m. - Petroleum Club

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From The President

by Donna Frazier, dfrazier@caddo.org

"I'm so glad we had this time together, just to have a laugh, or sing a song. Seems we just got started and before you know it, comes the time we have to say, 'So long.'" When I was a kid, I LOVED "The Carol Burnett Show," which, as you know, always ended with her singing this verse and tugging her ear. It's funny how, as a child, you never realize that things you take for granted will become part of your life's fabric. My year as president of the Shreveport Bar Association seems to have passed at light speed. I hope that most of you will agree with me that it was a pretty good year.

As 2021 started, we were in the thick of the pandemic. Mask and social distancing mandates were still in place, so limitations were placed on our monthly luncheons. Thankfully however, as the year wore on, restrictions lessened and now, at least for the time being, we are back to normal seating and serving at our luncheon meetings. Hopefully, this will continue as our "norm," without interruption.

We were also able to return to in-person CLE this year. This is the point at which I must thank our outstanding CLE Chair, Magistrate Judge Mark Hornsby. We started off with a stumble by having to cancel our appellate seminar in August, due to a second wave of COVID, but the Bar has had two successful in-person seminars and is about to have the third and final seminar of the year – CLE by the Hour on December 15 and 16. Judge Hornsby gathered great speakers and did a wonderful job presiding over each program. Let me just also point out that he has the shortest introduction known to lawyers and judges anywhere. It is literally about three sentences. I have it memorized. Speaking of CLE, we could not have put any of them on without the generosity of our members/sponsors. To each and every solo practitioner and firm, I thank you from the bottom of my heart. The Shreveport Bar Association thanks you.

To the program and committee chairpersons – you rock! Our Women's Section and Young Lawyers chairpersons, Courtney Harris and Luke Whetstone, respectively, have done a great job, as has Jimmy Franklin, Captain of the Krewe of Justinian. Thanks to Sherron Phae Williams and her committee, we had an outstanding Law Week featuring then-Louisiana Bar President, Alainna Mire, as our Law Week luncheon speaker. At the end of October, Marshall Johnston chaired a wonderful Memorial and Recognition Event, an event which we were not able to have in 2020. Although it is a solemn occasion to remember our

colleagues who have passed on, it is an occasion full of hope for the future of our profession. Lastly, a few weeks ago, we had our Veterans Day Recognition Luncheon, planned by Charles Grubb and his committee. Let me just say that the Shreveport Bar Association veterans are amazing. They are logisticians and tacticians of the first order. At the very last minute, the planned speaker, Major General Armagost, had to go TDY, and SBA member Graham Todd had to step in for his boss. Graham's talk was moving as well as informative – just an outstanding presentation and we are so grateful that he stepped up.

In addition to our special programs, we had some great luncheon speakers both virtually and in-person, on some cutting-edge issues. From Ben Griffith's presentation on legal issues arising from the 2020 presidential election, to Alainna Mire's presentation on pro bono services, to Ron Kramer's update on legal issues surrounding COVID, to Representative Thomas Pressly stepping in to present Alston Johnson's "Legislative Update" – our membership has remained informed of the latest in legal developments throughout 2021.

As I prepare to close, I would also like to thank those of you who personally supported and encouraged me in any way during this bar year. Several of you went out of your way to send kind notes and emails, or to pull me aside, when you saw me in person, and tell me I was doing a good job. Those gestures really kept me going and kept me enthused. I don't know if you will ever know how much they really meant to me.

Lastly, I want to thank the Shreveport Bar and Foundation staff and officers that work so hard for us. The 2021 Executive Committee has been so committed and has run like a well-oiled machine. These members have faithfully shown up to monthly meetings, and spent lots of time addressing issues via email. They are truly dedicated to the vibrancy and well-being of the Shreveport Bar Association, and we are so blessed to have them. Lucy Espree (Shreveport Bar Foundation) and Mary Lauren Slack (our newest employee) always show up to get our business taken care of and help with those "devils" in the details. Lastly, I especially want to thank Dana Southern, our Executive Director. Dana is one of those people who is an angel on earth. She is the perfect mix of logic, reason, encouragement, historical data, common sense and love. NOTHING would happen without her. Dana is the glue that holds this organization together and all of us who are lucky enough to work with her are extremely blessed.

And with that, as I tug my ear, thank all of you and "so long."



December CLE By The Hour

December 15 & 16, 2021

Petroleum Club, 15th Floor
416 Travis Street, Shreveport

13 Louisiana CLE Credits (including 1 Hour Ethics & 1 Hour Professionalism)

13 Texas CLE Credits Approved (including 2 Hours Ethics)

(Please Circle Classes Attending)

Wednesday, December 15, 2021

- 7:30 A.M. Registration & Continental Breakfast
- 8:30 A.M. Estate Planning
60 Minutes *Lee B. Aronson – Gilsoul and Associates*
- 9:30 A.M. Break
- 9:35 A.M. Taking Better Depositions
60 Minutes *Scott J. Chafin Jr. – Gregorio, Chafin & Johnson and Marcus Edwards - Mayer, Smith & Roberts*
- 10:35 A.M. Break
- 10:45 A.M. Oil & Gas Update
90 Minutes *Katherine Smith Baker- Bradley Murchison Kelly & Shea and Andrew D. Martin - Davidson Summers*
- 12:15 P.M. Lunch (included with all-day registration, or \$25)
- 1:00 P.M. DWI Defense
60 Minutes *Katherine Gilmer - Gilmer & Giglio and Craig Smith– Smith & John*
- 2:00 P.M. Break
- 2:10 P.M. Employment Law Update
60 Minutes *Meg Frazier - Wiener, Weiss & Madison and Brian Carnie - Kean Miller*
- 3:10 P.M. Break
- 3:20 P.M. Meta Data, Audio and Video Evidence Update
60 Minutes *Marion K. Marks - MMCC Forensic*

Thursday, December 16, 2021

- 7:30 A.M. Registration & Continental Breakfast
- 8:30 A.M. Professionalism
60 Minutes *Judge Michael Pitman – First Judicial District Court*
- 9:30 A.M. Break
- 9:35 A.M. Effective Mediation Strategies
90 Minutes *Donald Armand Jr. – Pettiette, Armand, Dunkelmann, Woodley, Byrd & Cromwell and Brian Homza - Cook, Yancey, King & Galloway*
- 11:05 A.M. Break
- 11:15 A.M. Ethics
60 Minutes *Magistrate Judge Joseph Perez-Montes– U.S. District Court, Western District of Louisiana*
- 12:15 P.M. Lunch (included with all-day registration, or \$25)
- 1:00 P.M. 10 Things All Attorneys Need to Know About Bankruptcy
60 Minutes *Judge John Hodge - U.S. Bankruptcy Court*
- 2:00 P.M. Break
- 2:10 P.M. Workers' Compensation Update
60 Minutes *Mary Lou Salley Bylsma - The Law Offices of Jack M Bailey Jr. and Robert Dunkelmann - Pettiette, Armand, Dunkelmann, Woodley, Byrd & Cromwell*
- 3:10 P.M. Break
- 3:20 P.M. Taking the Fear Out of Federal Court
60 Minutes *Jerry Edwards - U.S. Attorney's Office, Western District of Louisiana*

Registration Fees: [Complete this form or register online at shreveportbar.com](https://www.shreveportbar.com)

Individual Session Rates (individual sessions are In person only)

Non-Member - \$65 per session (\$75 after Dec. 1)

SBA Member - \$55 per session (\$65 after Dec. 1)

All Day Wednesday Non-Members - \$400 (\$450 after Dec. 1)
(6.50 hours) SBA Members - \$300 (\$350 after Dec. 1)

All Day Thursday Non-Members - \$400 (\$450 after Dec. 1)
(6.50 hours) SBA Members - \$300 (\$350 after Dec. 1)

Both Days Non-Members - \$550 (\$600 after Dec. 1)
(13 hours) SBA Members - \$450 (\$500 after Dec. 1)

I plan to attend (check one) In Person Webinar (Wed/Thur/Both only)

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(Please include email for materials to be sent)

Materials: The registration fee includes course materials provided electronically. A link to the seminar materials will be sent to you via email prior to the seminar. Because neither internet access nor electrical outlets are guaranteed, we suggest that you either print or save the PDF materials to your laptop, and fully charge your batteries if you wish to review the materials at the seminar.

Important Note: The webinar option is available for all day Wednesday, Thursday and both day attendees only.

Full registration refund until November 15, 2021, less a \$25 admin. fee. After November 15, full credit less a \$25 admin. fee may be applied to future SBA sponsored CLE for up to one year.

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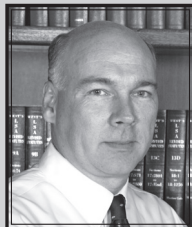
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Divorce Settlements/Marital Disputes

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Veterans Program Luncheon Highlights



Federal Bar Donates \$10,000 to Barksdale Charity

The Federal Bar Association of North Louisiana recently held its 8th Annual Clay Shoot Fundraiser at the Shreveport Gun Club. The beneficiary of the event was Operation Bright Holiday, a project exclusive to Barksdale Air Force Base that helps send first-year airmen home for the holidays.

Chief Judge Maury Hicks and Scott Chafin, on behalf of the FBA, presented a \$10,000 check to the Captain Victoria Bowyer, Operation Bright Holiday Program Chair; and Captain Glenn Hill, Company Grade Officer Counsel President. Among the many beneficiaries of the fund have been a young service member who was able to return home for a last visit with an ill grandparent, and a young couple who were able to visit family members they had not seen since their wedding. Thanks to Operation Bright Holiday, scores of other airmen, chosen by officers based on exemplary work and need, have been able to enjoy a well deserved holiday with family.

There were more than 60 shooters at the Clay Shoot, and the staff at Gregorio, Chafin, Johnson, Tabor, & Fenasci did a great job with the details and making sure the event was a success. The current officers of the Local FBA chapter are President-Whitney Howell; Vice President-Will Huguet; Treasurer-Jason Nichols; & Fundraising Chair-Scott Chafin.

Sponsors for the 2021 Clay Shoot were BRF; Blanchard, Walker, O'Quin & Roberts; Rice & Kendig; Cook Yancey King & Galloway; Boeing; Kean Miller; Dr. Mody with The Orthopedic Clinic; Scott J. Chafin, Attorney at Law; Wiener, Weiss, & Madison; Fischer Law; Bradley Murchison Kelly & Shea LLC; Wilkinson, Carmody, & Gilliam; Lawn Masters; Colvin Smith McKay & Bays; and Brian C. Flanagan.





Ashleigh Adams
Cook, Yancey, King & Galloway

Judge Marcus L. Hunter
Second Circuit Court of Appeal

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Donald J. Armand Jr. Will Lead the SBA in 2022



Donald J. Armand Jr.
President

Donald J. Armand Jr. begins his term as president of the Shreveport Bar Association on January 1, succeeding Donna Y. Frazier to the one-year post. Don was born and raised in Alexandria. He graduated from Menard High School in 1978. He graduated from LSU in Baton Rouge with a major in English Literature in 1982 and from Tulane Law School in 1986. Don and his wife Lori are the proud parents of their daughter Allinder and sons Joseph and Jackson. Don represents clients throughout Louisiana in litigation involving general casualty, industrial accidents, personal injury, construction and construction defect litigation, products liability, insurance coverage litigation and other general civil litigation. He has extensive experience in mediation as both attorney and mediator. He also serves on the adjunct faculty of Centenary College as an Instructor in Negotiations for the Executive MBA Program. Don served as 2011-2012 Captain for the Krewe of Justinian with a krewe membership of 400 members.

Serving with Don on the 2022 SBA Executive Council are **Nancy G. Cooper**, president- elect; **Donna Y. Frazier**, immediate past president; **Kenneth P. Haines**, vice-president; **Brian Flanagan**, secretary-treasurer; **Valerie DeLatta**, member-at-large; **Christopher G. Forester**, member-at-large; **Heidi Kemple Martin**, member-at-large; **Emily S. Merckle**, member-at-large; **Judge Donald E. Hathaway Jr.**, judicial liaison; **Joy Kilgo Reger**, Young Lawyers' Section president; **Audrius M. Reed**, Women's Section president; and **James E. Franklin III**, Krewe of Justinian Captain.



Nancy G. Cooper
President-Elect



Donna Y. Frazier
Immediate Past President



Kenneth P. Haines
Vice-President



Brian Flanagan
Secretary Treasurer



Valerie DeLatta
Member-At Large



Christopher G. Forester
Member-At Large



Heidi Kemple Martin
Member-At Large



Judge Emily Merckle
Member-At-Large



Judge Donald E. Hathaway Jr.
Judicial Liaison



Joy Kilgo Reger
Young Lawyers' Section



Audrius M. Reed
Women's Section



James E. Franklin III
Captain, Krewe of Justinian

Congratulations!

BAR BRIEFS

E-Filing Now Permanent at Second Circuit



The Second Circuit Court of Appeal has now officially adopted electronic filing. E-filing was previously permitted by an emergency rule, but as of November 1, 2021, **Rule 5-2** makes it the official policy of the court. According to a court statement, “E-filing is voluntary, but strongly encouraged by authorized users.” In fact, most filings are already electronic.

As before, any licensed La. attorney in good standing, *pro hac vice* attorney or self-represented party may e-file but must first register by providing their name, bar roll number and contact information to the clerk’s office, 2ndcir@la2nd.org. E-filed documents must be in PDF with a minimum resolution of 300 dpi, and cannot be password-protected or secured; exhibits must also be in PDF. All items so filed will become the official court record; paper copies are not required in addition. The registered user still must serve copies on other parties in accordance with URCA 2-14.1.

The new part of Rule 5-2 is the convenience fee, which is \$25 for any e-filing up to or including 250 pages, and \$50 for 251 pages or more. This is in addition to the standard filing fee. The court’s system is not yet configured to accept online payment; cash, check or money order must still be delivered (preferably by USPS, FedEx, etc.) to the clerk’s office.

For additional details and to register for the new e-filing system, visit the court’s website, www.la2nd.org, and click on the link **Electronic Filing (“e-filing”) Rule 5-2**.

Louisiana Mandatory Continuing Legal Education Carry Forward to 2022



A reminder to anyone who needs CLE credit before December 31, 2021. We will sponsor our annual December CLE by the Hour seminar on December 15 & 16, 2021. On April 27, 2021, the Supreme Court issued an Order amending the online carry-over limit, permitting a maximum of 4 “self-study” credits to carry over to compliance year 2022. Attorneys remain permitted to carry forward a maximum of 8 hours of CLE to compliance year 2022, but only 4 of those hours may be self-study credits.

*Best Wishes from Your Shreveport Bar Association and Foundation Staff,
SBA Executive Council and SBF Board Members
for a Merry Christmas and a Peaceful, Prosperous New Year!*

Tom Arceneaux
Donald Armand
Brittany Arvie
Elizabeth Carmody
Nancy Cooper
Ted Cox
Valerie DeLatte
Judge Karelia Stewart
Lucy Espree
Brian Flanagan

Chris Forester
Jimmy Franklin
Donna Frazier
Sarah Giglio
Courtney Harris
David Hemken
Callie Jones
Drew Martin
Heidi Martin
Judge Emily Merckle

Larry Pettiette
Audrius M. Reed
Mary Lauren Slack
Dana Southern
Becky Vishnefski
Angela Waltman
Luke Whetstone
Stacey Williams
Mary Winchell



Beware the Remote Deposition

by Tom Arceneaux, tarceneaux@bwor.com

With the advent of Zoom and other virtual depositions, issues arise about the admissibility of virtual depositions and the procedural requirements that form the basis for later admissibility. The Executive Council of the Shreveport Bar Association received a letter from the National Court Reporters Association (NCRA) alerting the Association to some practices that could become problematic for admissibility of depositions at trial. Let's briefly look at the issue.

In the haste to take virtual depositions, some attorneys and so-called court reporting services have taken shortcuts that have very short-term benefits but risk usefulness at trial. The shortcut is having the deposition recorded by an operator (not a certified court reporter), and then transcribed from the recording by someone else. There is a "recorder" rather than a certified court reporter.

Article 1440 of the Louisiana Code of Civil Procedure (Code) covers non-stenographic recording of a deposition. With respect to a video deposition, a certified court reporter must be present. In addition, at least one court has held that, even if a court reporter prepares a transcript, the video deposition is not admissible unless the deposition is recorded by a professional videographer. *Brigsten v. Southern Baptist Hospital*, 96-2564 (La. App. Cir. 12/13/96), 690 So. 2d 810.


Article 1434 of the Code requires that a deposition other than a video deposition be taken before a certified shorthand or general reporter. A non-video deposition taken in the manner described by the NCRA letter would not meet that standard.

In a video deposition, any person authorized to administer oaths may swear the witness. Unless the parties have agreed, the result in the *Brigsten* case would require a professional videographer as a prerequisite to using the video at trial. La. Code Civ. Pro. art. 1432.


The Federal Rules of Civil Procedure seem to be a bit more flexible. Rule 28(a) permits a deposition to be taken before "an officer authorized to administer oaths either by federal law or by the law in the place of the examination." Note that the Rule does not require a court reporter.

Rule 30(b)(3) requires the notice of deposition to state the method for recording the testimony, and, unless a court orders otherwise, "testimony may be recorded by audio, audiovisual, or stenographic means." Fed. R. Civ. Pro. 30(b)(3)(A). The noticing party bears the recording costs, but any party may arrange to transcribe the deposition. *Id.* Accordingly, it appears that under the Federal Rules of Civil Procedure, a party could notice that the deposition would be taken in the manner described in the NCRA letter, so long as the oath is administered by an officer authorized to administer oaths. If so, then the deposition could be used as any other deposition.

SHREVEPORT BAR FOUNDATION
LEGAL REPRESENTATION FOR VICTIMS OF DOMESTIC VIOLENCE



Information on Filing a Protective Order



Where: The Shreve Memorial Library— Hamilton/South Caddo Branch, 2111 W. Bert Kouns Industrial Loop, Shreveport, LA
When: Tuesday, December 14, 2021 at 5:30 p.m.
Speakers: Attorneys Audrius M. Reed and Mary E. Winchell

The SBF LRVDV program who provide legal assistance to victims of domestic violence is inviting the public to a speak up to spark change event. Recognizing and acknowledging how domestic abuse affects our communities, our families and our lives. We have to be brave.

The SBF LRVDV Program is able to provide services because of the support we receive from our grantors: Louisiana Bar Foundation, The Community Foundation, Carolyn W. and Charles T. Beard Family Foundation, First United Methodist Church, Grayson Foundation and the SBA Krewe of Justinian.

PRO BONO PROJECT
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GET INVOLVED

Being involved in Pro Bono is a rewarding experience as you give back to the community, gain experience in the court room, and earn CLE credit. Contact the SBF office to get involved.

Lucy Espree, Pro Bono Coordinator,
lucy@shreveportbar.com | 318.703.8381.



Second Circuit Highlights

by Hal Odom Jr., rhodom@la2nd.org

Last month I posed the question whether state courts ever have to consider jurisdiction? Yes, occasionally; sometimes obliquely, sometimes head-on.

Personal jurisdiction to enforce a foreign judgment was the shadow issue in *O'Reilly Auto. Stores Inc. v. White*, 54,057 (La. App. 2 Cir. 8/11/21). In October 2020, Terry White received a notice of foreign judgment, served at his P.O. box in Winnfield. This stated that some time earlier, O'Reilly Auto Stores had sued "Terry White dba The Shop" in state court in Missouri for the balance due on goods, wares, merchandise and services purchased under a credit application; the defendant was "lawfully summoned," but made no appearance; and O'Reilly took a default judgment of \$14,743. The Eighth JDC signed an ex parte order making the Missouri judgment executory, and notice of this is what White received at his P.O. box.

White answered challenging the jurisdiction of the Missouri court and alleging fraud and ill practices. He admitted he had been served with the Missouri complaint and taken no action; however, he denied that he signed the credit agreement, did (or had ever done) business as "The Shop," or had any connection with the state "aside from passing through." The Eighth JDC signed another ex parte order, staying enforcement of the Missouri judgment, without security.

O'Reilly, of course, countered that there were no grounds for a stay under La. R.S. 13:4244 and that, at any rate, a stay would require security, R.S. 13:4244 B. In a hearing that the Second Circuit described as "rather unusual," the district judge essentially disallowed orderly argument or the presentation of evidence; instead, he indulged his overwhelming (some might say overweening) suspicion that White was not the same person who signed the credit application. The court continued the stay, did not require security, and designated the judgment final and appealable. O'Reilly appealed.

The Second Circuit reversed the stay and remanded, in an opinion by Judge Garrett. The court traced the basic concept of Full Faith and Credit, and the particulars of the Enforcement of Foreign Judgments Act, La. R.S. 13:4241-4244. Specifically, the judgment debtor has 30 days to prove, by contradictory motion, (1) that an appeal has been, or will be, taken, or a stay of execution has been issued, or (2) any ground exists that would stay the execution of a Louisiana judgment (this is where lack of personal jurisdiction comes in). The court found that O'Reilly had complied with all the creditor's requirements, but White had not made either showing required by § 4244. The court commented that the district judge (who was on the eve of retirement) had not allowed the parties to make an adequate record. The court therefore reversed the stay and remanded for a contradictory hearing that would comply with § 4244.

The court did not have to determine whether Missouri could exert personal jurisdiction over White, but the issue looms large over the case. Mostly, the opinion shows the need for utter compliance with EFJA.

Personal jurisdiction over a corporate successor was the issue in *Hayes v. Air & Liquid Sys. Corp.*, 54,017 (La. App. 2 Cir. 8/11/21). For about 10 months in 1953-'54, Hayes worked as a general laborer at an

ammonia plant, and then at a fertilizer plant, owned by Commercial Solvents in Sterlington, La. He was diagnosed with mesothelioma in 2016. Alleging the disease was caused by exposure to asbestos at the Sterlington plants, he filed suit in the Fourth JDC against various defendants; by amended petition, he added an entity called "SYSTRA (f/k/a SFB Construction Corp. and Ford, Bacon & Davis)." SYSTRA Engineering, a New York corporation, filed an exception of lack of personal jurisdiction: it never manufactured, designed or distributed any asbestos products, it was never registered to do business in Louisiana, and it never did or contracted any business, or directed any business, here.

Hayes, however, recalled that Ford, Bacon & Davis, an engineering firm in Monroe, had performed construction and maintenance at the plants when he worked there. He showed that an entity called EI Associates Inc. had filed a certificate of incorporation in New York State, in 1931, "under the name of Ford, Bacon & Davis Construction Corp."; La. Secretary of State records also showed a 1931 registration for Ford, Bacon & Davis, with a principal business address in Monroe. Further, New York records showed that Ford, Bacon & Davis changed its name to SFB Construction Corp. in 1996; La. records listed SFB as "inactive" after 1996; nevertheless, New York records showed that SFB changed its name to EI Associates in 1998. Then in 2000, in a complicated business transaction, the corporate owner of EI Associates sold to an entity called SYSTRA USA 100% of EI stock, and SYSTRA USA later changed its name to SYSTRA Engineering.

SYSTRA admitted much of the corporate history but reiterated its total lack of contacts with Louisiana and argued its predecessor, Ford, Bacon & Davis, was not the same company as (today's) Ford, Bacon & Davis. Still, SYSTRA's counsel admitted not knowing whether his client assumed the liabilities of its predecessor. The Fourth JDC initially denied SYSTRA's exception.

Shortly after this, the First Circuit rendered, and the Supreme Court denied writs in, *Bannister v. SFB Cos. Inc.*, 2019-0079 (La. App. 1 Cir. 11/15/19), 290 So. 3d 1134, writ denied, an asbestos claim against the same defendants. *Bannister* found that SYSTRA *did not* have sufficient minimum contacts with Louisiana; hence, no personal jurisdiction. Armed with this opinion, SYSTRA moved for reconsideration. The Fourth JDC, through an ad hoc judge hearing nothing but asbestos cases, sustained the exception and dismissed all claims against SYSTRA. It held that *Bannister* was "on all fours." Hayes had by then passed away; his heirs appealed.

The Second Circuit reversed and remanded, in an opinion by Judge Robinson. After tracing the basics of personal jurisdiction, *International Shoe* and R.S. 13:3201, the court cited a case approving the exercise of personal jurisdiction over "an alter ego or successor of a corporation that would be subject to personal jurisdiction in that court." *Patin v. Thoroughbred Power Boats*, 294 F.3d 640 (5 Cir. 2002). The court found, "without question," that the predecessor, Ford, Bacon & Davis, had sufficient contacts with Louisiana, and that the established corporate history did not exclude the possibility that SYSTRA assumed Ford, Bacon & Davis's liabilities. The court especially noted that SYSTRA's counsel told the district court, "There is

no limitation of liability,” and found this distinguished *Bannister*. The court reversed and remanded, adding that the assertion of personal jurisdiction over SYSTRA “is reasonable under these circumstances.”

Despite the apparent divergence from *Bannister*, the Supreme Court denied SYSTRA’s writ application on November 23. Ford, Bacon & Davis’s corporate history is still open to litigation.

Summary judgment evidence. In 2015, the legislature amended La. C.C.P. art. 966 to add subparagraph A(4): “The only documents that may be filed in support of or in opposition to the motion are pleadings, memoranda, affidavits, depositions, answers to interrogatories, certified medical records, written stipulations, and admissions.” The official comment drives home that A(4) “contains the exclusive list of documents” and “intentionally does not allow the filing of documents that are not included in the exclusive list, such as photographs, pictures, video images, or contracts, unless they are properly authenticated by an affidavit or deposition to which they are attached.” The Second Circuit had previously held that this list *really is exclusive*, in cases like *Ag Resource Mgmt. LLC v. Bunge N. Am. Inc.*, 53,417 (La. App. 2 Cir. 3/4/20), 293 So. 3d 1179, and *Newsome v. City of Bastrop*, 51,752 (La. App. 2 Cir. 11/15/17), 245 So. 3d 248.

The court has now reiterated the notion, forcefully, in *Dietle v. LaFleur*, 54,100 (La. App. 2 Cir. 9/22/21), an opinion by Chief Judge Moore. The plaintiff, Ms. Dietle, claimed that a defendant, LaFleur, either burned down or allowed to burn down the house they jointly owned; LaFleur and his insurer moved for summary judgment, arguing she could produce no proof of what he did or didn’t do. Ms. Dietle opposed, and attached a typed transcript of a phone call between herself and LaFleur shortly before the fire occurred. In this call, allegedly, LaFleur threatened to burn down the house because he was distraught over their failed relationship. Ms. Dietle had disclosed, during a deposition, that she recorded the call, and promised to forward “the tape” to LaFleur’s lawyer; the lawyer’s office actually transcribed the call (with many blank spaces where they couldn’t make out the dialog), and returned the typed document to Ms. Dietle with a cover letter saying they no longer had the recording. She contended that this call created a genuine issue of material fact, but LaFleur and the insurer objected that the transcript did not satisfy Art. 966 A(4). The district court disallowed the transcript, and granted the defendants’ MSJs; Ms. Dietle appealed.

The Second Circuit affirmed. It acknowledged that the transcript had *some indicia* of reliability, in that Ms. Dietle described the call in a deposition (which, in turn, was admitted on the motion), LaFleur admitted making several calls (his deposition was also admitted), defense counsel actually listened to and typed up the conversation, and then sent it to Ms. Dietle’s lawyer. However, the transcript is not a memorandum, affidavit or anything else in A(4). Also, LaFleur, by deposition, denied making the particular threats printed in the transcript, providing an indicium of *unreliability*.

It is possible that Ms. Dietle could have got the transcript in, by swearing an affidavit that the phone call took place, that she recorded it, that the other side’s lawyer transcribed it, that it is fully accurate, and attaching it to the affidavit. In other words, a close reading of A(4) might have made a difference in the case.

Trial evidence. Plaintiff and defendant went to trial in June 2019; plaintiff’s counsel held up a bench book and said he intended to offer it into evidence. Defense counsel said he would accept some items but object to others; discussion followed. The district court briefly recessed and, when it came back, defense counsel had taken ill. To accommodate the defendant, the court recessed until October 2019,

when the defendant returned with new counsel. Apparently, all counsel, and the court, thought the bench book had been introduced into evidence, but this had not actually happened. They held a trial, constantly referring to items in the bench book; almost a year later, the district court rendered judgment rejecting the plaintiff’s claims. The plaintiff appealed.

When the record came to the Second Circuit, the situation became apparent: neither side had ever actually introduced the evidence in the case. In a divided action, the court affirmed, *McNeill v. Lofton*, 54,066 (La. App. 2 Cir. 9/22/21). The lead opinion, by Judge Stone, recited that evidence not officially offered and introduced cannot be considered, even if it is physically placed in the record, *Denoux v. Vessel Mgmt. Servs. Inc.*, 07-2143 (La. 5/21/08), 983 So. 2d 84, and a party who fails to introduce his evidence at trial is not entitled to a remand, *Dalton v. Graham*, 53,452 (La. App. 2 Cir. 4/22/20), 295 So. 3d 437, *writ denied*. Finding nothing to review, the court affirmed.

Judge Garrett, joined by Judge Robinson, concurred, stating there is ample authority for allowing the parties to supplement the record, such as La. C.C.P. arts. 2088, 2132 and 2161, and that unlike in *Dalton*, everybody here *thought* the evidence was properly admitted. Further, these judges looked at the copies of the critical documents that were present in the pleadings and found that even if they had been properly admitted, they would support the judgment for the defendant. Ironically, the plaintiff’s case hinged on the existence of a revocable living trust, which even the plaintiff admitted he did not have a copy of; he had only an “extract of trust,” authorized for limited purposes by La. R.S. 9:2092 but not for circumstances present in this case. The absence of the actual trust instrument essentially negated the plaintiff’s claim to the property; the absence of evidence negated his appeal.

This odd case should underscore the importance of creating your record, properly introducing the evidence and not just relying on everybody’s vague recollection.

Unpleasant evidence. Mr. Odom (no relation to this writer) passed away suddenly in May 2015; his daughter and his wife, from whom he was separated, entrusted his remains to Rose-Neath Funeral Home in Logansport. Several things went wrong, not least of which was the failure of the air conditioning in Rose-Neath’s facility. The sultry heat contributed to an unsightly distortion of the loved one’s body and a penetrating, nauseous smell; nobody at Rose-Neath suggested closing the box. The daughter and wife sued Rose-Neath; a jury found in their favor, awarding general damages and future medical expenses but denying past medicals. The plaintiffs appealed, seeking additional damages.

The Second Circuit reversed the denial of past medicals and made a de novo award, but otherwise affirmed, *Weir v. Kilpatrick’s Rose-Neath Funeral Homes*, 54,030 (La. App. 2 Cir. 9/22/21), in an opinion by Judge Thompson. The court found it was inconsistent for the jury to find liability and award future medicals but deny past, proven medicals. Other elements of damage were within the jury’s discretion.

Mostly, though, the facts are what rivet the reader’s interest. It shows that on very rare occasions, funeral arrangements can still go as badly as those depicted in Jessica Mitford’s classic exposé, *The American Way of Death*, published in 1963. This is a book that’s still worth reading.



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29

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12:00 Noon at the Petroleum Club (15th Floor)

DECEMBER 15-16

December CLE by the Hour Seminar
Petroleum Club (15th Floor)

DECEMBER 19

SBA and Area Law Student Christmas Party
3:00 p.m. to 5:00 p.m.
Silver Star Grille • 9462 Ellerbe Road, Shreveport

*JANUARY 26

SBA Member Luncheon
Speaker: TBD



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