The Bar Review

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3/27	SBA Membership Luncheon – 12:00 p.m. - Petroleum Club

From The President

by Kenneth P. Haines, kenny@weems-law.com

Arthur Brisbane is credited with having coined the phrase, "A picture is worth a thousand words." You can look it up. I did and my thorough 20 minutes of research revealed Brisbane as the originator, unless of course, the old wives' tale attributing Confucius to having coined the phrase is correct. It is certainly a maxim that is widely regarded as true, and one that many trial lawyers have uttered while holding their exhibit in front of a jury.

After a unanimous United States Supreme Court in NCAA v. Alford, 141 S. Ct. 2141 (2021), enjoined the NCAA from preventing student athletes from benefiting from their "name, image or likeness," the thought was that Brisbane's phrase may become, "A picture is worth a million dollars." But, that's only true if you are fortunate enough to have the good looks of LSU gymnast Livvy Dunne.

One might ask, "What does this have to do with your second President's Message, Kenny?" To which, I would retort ...

It was in 2021 that we last scheduled and sat for our portraits to be published in the Membership Directory of the Shreveport Bar Association. This year we will, once again, gather at the Bar Center on Texas Street to have our pictures made for the 2024 Membership Directory. I am advised and pass along to you that sittings will be scheduled to begin on March 20, 2024. The opportunity will last for approximately three weeks and you should have received a letter so advising by the time you read this message.

Here is your opportunity to benefit from your own name, image and likeness. Do not fall into the belief that no one uses a phone book anymore. I keep my membership directory in a drawer near my phone so that when I need a number for a bar member, I have it within reach. It's a convenience faster than the internet. I do not "Google." Instead, I look you up in my trusty membership directory.

In closing, the Shreveport Bar Association might make a buck or two on the sale of these directories to all of our members. And, in my 35 years of practicing law, I have learned that another maxim holds less truth ... "Money is the root of all evil." Instead, it is the **love of money** that is the root of all evil. 1 Timothy 6:10. So love your money a little less, get your picture taken and then buy a directory.

FEB 2024

SBA Membership Renewal Forms have been mailed. Please renew by February 28, 2024

Women's Section

by Ranee Haynes, raneelmartin@gmail.com

Happy New Year to the members of the Shreveport Bar Association! I am so honored to serve as the 2024 president of the SBA Women's Section. Our officers who will serve with me are: Chandler Higgins – Vice-President, Savannah Meshell – Secretary, Sarah Smith – Treasurer, and Valerie DeLatte Gilmore – Immediate Past President.

Thank you to last year's president, Valerie DeLatte Gilmore. Under Valerie's leadership, the Women's Section hosted a very well-attended CLE in November, several "Thursarita Thursday" happy hours at Casa Jimador and a "Game Night" where female attorneys were able to network and make new friends. Throughout last year, we sponsored new events to increase attendance at our Women's Section events, ending with a very successful Christmas Party at Judge Katherine Dorroh's house. We look forward to growing the size of our group over the next year.

We remain committed to our mission: promoting the empowerment and strengthening of the bond between women lawyers in the Shreveport-Bossier area through social engagement, community involvement and continued legal education. We are excited to continue to host social and networking events, CLE and other activities in the upcoming year. If you would like to see a particular type of event, please reach out to us via email at SBAWomensSection@gmail.com and let us know. We are here to serve you!

The new officers will be getting together soon to plan events for 2024, and we will continue sending out information in our newsletter and posting it to our social media sites. If you are not already receiving our newsletter, please visit https://shreveportbar.com/womens-section/ and enter your email address to stay up to date on all the Women's Section events.

We look forward to another great year in 2024!

Federal Update

by Chris Slatten, Chris_Slatten@lawd.uscourts.gov

Amendments to FRE 702 (experts): Amendments to FRE 702 took effect on Dec. 1, 2023. The rule now reads as follows (new language underlined; deleted language struck through):

"A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the proponent demonstrates to the court that it is more likely than not that:

(a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;

(b) the testimony is based on sufficient facts or data;

(c) the testimony is the product of reliable principles and methods; and

(d) the ~~expert has reliably applied~~ expert's opinion reflects a reliable application of the principles and methods to the facts of the case."

The Advisory Committee notes say that the first change was made to emphasize that a preponderance standard applies under Rule 702. Some courts were applying a looser standard. The second change was made to emphasize that each expert opinion must stay within the bounds of what can be concluded from a reliable application of the expert's basis and methodology. The notes say this is "especially pertinent to the testimony of forensic experts in both criminal and civil cases. Forensic experts should avoid assertions of absolute or one hundred percent certainty--or to a reasonable degree of scientific certainty--if the methodology is subjective and thus potentially subject to error."

LLC Citizenship Allegations (Wholly Owned): A 2022 amendment to FRCP 7.1 required parties in diversity cases to file what the WDLA calls a Diversity Jurisdiction Disclosure Statement. A notice of the requirement, along with basic instructions for how to allege citizenship for individuals, corporations, partnerships, and LLCs is issued in each diversity case. Most folks are doing a good job of complying.

Almost everyone now knows that citizenship of an LLC is determined by the citizenship of all of its members, and to establish diversity in a suit by or against an LLC, a party must specifically allege the citizenship of every member of the LLC. *Settlement Funding, LLC v. Rapid Settlements, Ltd.*, 851 F.3d 530, 536 (5th Cir. 2017). Occasionally someone thinks they are complying by stating that an LLC is "wholly owned by" another entity that is a citizen of state A. That is *not* sufficient. Several states permit non-owner members of LLCs, and the citizenship of those members is relevant to diversity even if someone else wholly owns the LLC. *SXSW, L.L.C. v. Fed. Ins. Co.*, 83 F.4th 405, 408 (5th Cir. 2023). And the court can't tell if that alleged ownership is by direct membership in the party-LLC or through ownership of intervening entities whose citizenship is not disclosed. *Ascentium Cap., LLC v. Digital Sign Sols., LLC*, 2021 WL 864771 (W.D. La. 2021). Don't overthink it. Just list all members of the LLC and allege their citizenship in accordance with applicable rules. It's that simple.

No QI for Taser in Traffic Stop: Cops wrote plaintiff a parking ticket, after which he had a heated exchange with them and began recording with his phone as they drove off and he followed. On the recording, plaintiff noted that the cops did not use a turn signal. At the same time, his car made a noise that sounded like his turn signal. The cops nonetheless stopped him for allegedly not using a signal.

Before plaintiff could unbuckle his seat belt to comply with an order to get out of his car, a cop deployed a taser but did not hurt plaintiff. Once plaintiff exited, the cop told him to turn around and put his hands behind him. Plaintiff turned around with his hands in front, and the cop immediately knocked plaintiff's phone from his hand and tased him in the back.

QI for the cop was denied on an excessive force claim. Even in the 5CA, it is "clearly established that an officer may not use force on a suspect who is complying with his commands." And once a suspect is subdued and not resisting, subsequent use of force is excessive. The court also rejected an argument that tasing alone, absent lasting physical injury, was insufficient. Significant pain and even purely psychological injuries may suffice. *Bagley v. Guillen*, __F.4th __, 2024 WL 107888 (5th Cir. 2024).

Personal Jurisdiction; Contract With LA Resident: Plaintiff, a Shreveport company, alleged that it sold goods on credit to the defendant, a Mexican company with its PPB in Texas. The goods were delivered to a Mexico warehouse. The defendant left a balance unpaid, and the LA plaintiff sued in an LA court. The defendant challenged personal jurisdiction, showing that it had no dealings with LA other than communications with and payments to the plaintiff.

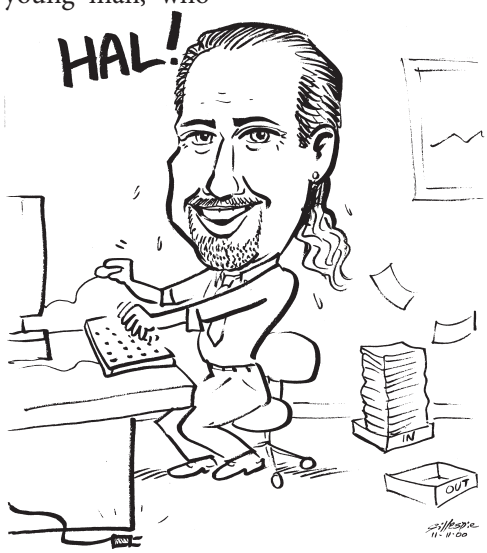
Merely contracting with a resident of the forum state is insufficient to subject the nonresident to the forum's jurisdiction. And many cases hold that the combination of mailing payments to the forum state, engaging in communications related to the execution and performance of the contract, and the existence of a contract between the nonresident defendant and a resident of the forum are insufficient for personal jurisdiction. MJ Hornsby recommended granting the motion to dismiss in *Ultrachem, LLC v. Zarotech*, 2023 WL 7096463, at *1 (W.D. La. 2023), which cites and summarizes *Holt Oil & Gas* and several similar 5CA decisions on this issue.

How Write You Are

by Hal Odom Jr., rhodom@la2nd.org

A few from the Internet. In the run-up to the holiday season, a local historical society hosted a tour of homes. In a news release, the chair of the event was quoted as saying, "We're having the Jay Gould car, the Atalanta, which Jay Gould was a *railroad magnet* back in the time of the Vanderbilts, during the Industrial Revolution, so we have his railcar which he lived in." Myriam Samake, "Lavish historic homes glimmer for Jefferson Candlelight Tour of Homes," https://www.ktalnews.com/holidays/when-is-jefferson-texas-candlelight-tour-of-homes/. Jay Gould was definitely a money magnet (also called a "robber baron") of his era, which might explain the occasional confusion, even in legal writing.

Yes, even in curated legal writing. "In the late 1800's irrigation districts like the Merced Irrigation District * * * were founded primarily by *railroad magnets*." Jeffrey C. Castleton, "Central California Irrigation Districts: Are They the New Standard Oil?" 24 San Joaquin Agric. L. Rev. 131 (2014-2015). "Andrew Carnegie was approached by a young man, who said, 'Andrew, I want to be who you are …' (a very rich *steel magnet*)[.]" Alston R. Martin, "Using ESOPS for Estate and Business Succession Planning," SF17 ALI-ABA 405 (Sep. 2000). In the case of Carnegie, steel is definitely magnetic!



Of course, the intended word is *magnate*, = *mogul* or *tycoon*, or any prominent or influential person. It does smack of the Gilded Age. "In *Warden v. Dean of St. Paul* * * *, an act which exempted '*magnates* and noblemen' from tithes was held not to extend to an ecclesiastical *magnate*, such as a dean, but to include only *magnates* of noble kind." *Israel v. City of New Orleans*, 130 La. 980, 58 So. 850 (1912). However, if you happen to get on a historical commission and need to talk about some old plutocrat, don't get attracted to the wrong word. It's a *magnate*.

This one got me hopping. Another Internet headline grabbed my attention: "30 Years Ago, One Video Game System *Hoplessly* Failed Kids Everywhere." https://www.fatherly.com/entertainment/atari-jaguar-retrospective?utm_source=pocket-newtab-en-us. Surely the Atari Jaguar was not so terrible that it ruined the author's spelling!

There are a few (older) instances of this mistake. "This testimony, too, was in *hopless* conflict." *Marriage of Goldberg*, 23 Or. App. 324, 542 P. 2d 139 (1975). "However, respondent waives this point, considering the fact that National City Finance Company is bankrupt and a recovery against it is *hopless*." *National City Fin. Co. v. Lewis*, 216 Cal. 254, 14 P. 2d 298 (1932). Closer to home, a court corrected a jury foreperson: "After further deliberation, the jury sent another note to the trial judge saying, 'We are hoplessly [*sic*] deadlocked.'" *Gearlson v. State*, 482 So. 2d 1141 (Miss. 1986). These all predated Spell Check, and I am *hopeful* such spelling will never hop back into print.

This sums it up, defiantly. "Also, cautions Tracey Sturgal, a linguist professor and director of business communication at Marquette University, spell-check isn't perfect. 'People still have to have a certain level of spelling competence,' she explains. 'The number one spelling error I get in college papers is when students flip *definitely* with *defiantly*, which is surely a spell-check error.'" https://melmagazine.com/en-us/story/what-happens-to-spelling-bee-champions-when-they-grow-old.

A call for clarity. Consider these two versions of essentially the same text:

- The undersigned counsel do hereby for and on behalf of their client, for the reasons explained hereinbelow, respectfully request that this Honorable Court consider and hereby rule that no issues of material fact do exist in the instant controversy, and that a final judgment be entered in favor of the client of the undersigned counsel (sometimes herein referred to as "Defendant" or "Cross-Plaintiff") and against Plaintiff.
- Johnson requests entry of summary judgment.

The first version, which I hope was fabricated by the authors for emphasis, is a case of legalese gone wild. Still, it illustrates one of the main points of clarity – dropping all the unnecessary words and phrases. The "padding" sounds impressive when you have to ramble extempore, but adds nothing to the document.

Other points of clarity are avoiding "elegant variation" – the same word should always be used for the same key concept, even if synonyms might make the writing a little more interesting. Avoid using any word or phrase that your intended reader might have to look up. Omit digressions that sidetrack the thrust of your argument. The less you say, the lower your chances of saying it wrong.

The example is from Antonin Scalia and Bryan A. Garner, *Making Your Case | The Art of Persuading Judges*. St. Paul, Minn.: Thomson/West, © 2008, 107-108. Although this book is no longer exactly recent, it's still relevant.

Perish the thought. What is one major difference between Louisiana and 49 other states? "Officer Richard Wiseman of Allen *Parrish* Sheriff's Office dispatched at 12:23 AM and arrived at Plaintiff's residence at 12:37 AM." *Langley v. Wiseman*, 2023 WL 2267453 (W.D. La. 2023). "Specifically, the employee explains that he 'wants to take back' the work that Plaintiff was doing in Jefferson *Parrish* and St. John *Parrish*[.]" *Metro Serv. Group Inc. v. Waste Connections Bayou Inc.*, 2022 WL 16739546 (E.D. La. 2022). "Ferguson has two prior felony convictions in Georgia, and at the time of sentencing in this case he had similar charges pending in Jefferson *Parrish*." *State v. Ferguson*, 10-0199 (La. App. 4 Cir. 6/30/10), 43 So. 3d 2010.

Only extreme haste can override basic, eighth-grade Civics, right?

Second Circuit Highlights

by Hal Odom Jr., rhodom@la2nd.org

Why they're called deadlines. Mr. and Mrs. Carroll sued Dr. Khalil and P&S Hospital, in Monroe, alleging medical malpractice arising from heart surgery. P&S moved for summary judgment, which the Carrolls opposed attaching the affidavit of a Dr. David Korn. The district court granted summary judgment in part, denied it in part and, by scheduling order of October 5, 2020, set trial for August 30, 2021. The order contained some explicit language: exhibit lists must be filed *three weeks* before trial; a final will-call list must be named, exchanged and filed *three weeks* before trial; and the court "will strictly adhere to this provision. This court will not permit counsel to call witnesses who are not listed." The court reset trial for April 4, 2022, and then again for December 5, 2022, each time reiterating its initial scheduling order and three-week limit on exhibits and will-calls. P&S and Dr. Khalil filed and exchanged their exhibit and will-call lists; unfortunately, counsel for the Carrolls did not.

Three days before trial, P&S and Dr. Khalil moved *in limine* to exclude all the plaintiffs' evidence and testimony for failure to comply with the order. Counsel then filed a will-call list, belatedly, but no exhibit list. As trial opened, the court granted the motion *in limine*, excluding all the Carrolls' witnesses. P&S and Dr. Khalil moved for directed verdict, which was granted. The Carrolls appealed.

The Second Circuit affirmed, ***Carroll v. Sheikh-Khalil,*** 55,413 (La. App. 2 Cir. 1/10/24), in an opinion by Judge Marcotte. The Carrolls asserted their failure to comply with the order had not prejudiced the defendants: the identity of their expert witness, Dr. Korn, and the substance of his testimony were already disclosed, in the affidavit opposing MSJ; moreover, there was no showing of bad faith, and the clients should not be penalized for their counsel's conduct. However, the Second Circuit cited the trial court's broad discretion in fashioning scheduling orders, La. C.C.P. art. 1551, and jurisprudence that exclusion of evidence is a valid sanction, *Benware v. Means*, 99-1410 (La. 1/19/00), 752 So. 2d 841. The only question is whether the trial court abused its discretion; here, counsel's failure to meet *three deadlines*, extended for well over a year, was "untenable." In addition, the court declined to "undermine" the trial court's authority to set and enforce pretrial procedure.

It's a deadline because if you miss it, your claim might be dead. The facts in *Carroll* are perhaps a bit extreme, with three violations of the same scheduling order, but the case serves as a blistering reminder to get your calendar straight. You can't try a case with no evidence.

Another gap in the LMMA? Ms. Swain had been a resident of Guest House, a skilled rehab and long-term care facility in south Shreveport, since 2016, but her condition took a serious turn for the worse in June 2021. Despite two trips to the hospital to treat deep infections, she did not recover, and passed away in July. Ms. Swain's children filed a request for medical review panel in February 2022, but before the panel had acted, they also filed a petition for damages against Guest House, the hospital and various nurses and doctors. All defendants asserted exceptions of prematurity, based on the protection of the La. Medical Malpractice Act, La. R.S. 40:1231.8 B(1)(a)(i). The plaintiffs countered that the defendants' conduct was so bad that it was intentional and, thus, outside the protection of LMMA. The district court didn't buy it, finding "nothing more than a garden variety medical malpractice claim." It sustained the exceptions and dismissed all tort claims without prejudice. The plaintiffs appealed the judgment against Guest House only.

The Second Circuit affirmed in part and reversed in part, ***Swain v. Lambard,*** 55,377 (La. App. 2 Cir. 1/10/24), in an opinion by Judge Stone. The court noted the fertile grounds of litigating whether various acts are "not healthcare" or "intentional," and thus outside LMMA, but found that Ms. Swain's claims of understaffing and failing to monitor the resident's health simply did not equate to intentional conduct. The court also found no allegation of a loss of dignity, which has been recognized as not healthcare in cases like *Henry v. W. Monroe Guest House Inc.*, 39,442 (La. App. 2 Cir. 3/2/05), 895 So. 2d 680, and *Wendling v. Riverview Care Ctr. LLC*, 54,958 (La. App. 2 Cir. 4/5/23), 361 So. 3d 557. No relief there.

However, parsing the petition, the court found that the plaintiffs alleged paying Guest House nearly $6,000 a month for their mother's care, which they wanted to recover: while *breach* of contract falls under LMMA, *rescission* does not. The court therefore reversed this part of the judgment and remanded with leave for the plaintiffs to amend the petition to state, if possible, a claim for rescission of their contract with Guest House.

Along with truly intentional torts and, provisionally, loss of dignity claims, will rescission of contract become a tiny gap in the coverage of LMMA?

Can you give a dram? Ms. Rugg and her husband went to Horseshoe Casino in Bossier City for a night of dancing at the hotel bar, "Whiskey River." She stated in deposition that she saw a visibly intoxicated person, "John Doe," on the dance floor stumbling around and obviously drunk. She lost sight of him but then, unexpectedly, he fell onto her causing serious injuries. She added that several of the ladies who helped her afterward told her "they had been asking them [the management] for hours to get him out of here"; however, affidavits from Whiskey River employees stated that nobody had lodged complaints about John Doe before he toppled onto Ms. Rugg.

Ms. Rugg sued Horseshoe, its insurers and John Doe, alleging that John Doe fell on her because he was too drunk to stand or balance. Horseshoe moved for summary judgment urging Ms. Rugg could not establish any duty it breached. The district court denied summary judgment, and Horseshoe took a writ.

The Second Circuit granted the writ, reversed and entered summary judgment, ***Rugg v. Horseshoe Ent.,*** 55,239 (La. App. 2 Cir. 1/10/24), in an opinion by Judge Stephens. The analysis addressed the "Anti-Dram Shop" statute, La. R.S. 9:2800.1, which states that the *consumption* of liquor, rather than the sale, serving or furnishing thereof, is the proximate cause of any injury inflicted by an intoxicated person on himself or another; and no seller of liquor will be liable for any injuries suffered "off the premises" because of the intoxication of the person to whom the beverages were sold. Further, if the immunity of § 2800.1 does not attach, the seller can be liable under general negligence principles, *Mayhorn v. McKinney*, 34,789 (La. App. 2 Cir. 6/20/01), 793 So. 2d 225. The court found the statutory immunity did not attach, as the injury occurred *on the premises*, but then found no summary judgment evidence that Horseshoe acted unreasonably. Ms. Rugg admitted that *she* did not report John Doe to Horseshoe staff, and the employees' depositions confirmed this; the only contrary evidence was hearsay from bystanders who helped Ms. Rugg after the incident, but Ms. Rugg did not produce their affidavits or depositions. In short, there was nothing to create a genuine issue that Horseshoe's conduct was reasonable.

This case shows that the court will read the Anti-Dram Shop Act narrowly, giving no immunity for incidents *on the premises*, but then will apply standard negligence principles.

Keep your information and belief out of your affidavit. We often use the phrase "upon information and belief" to frame allegations in a petition. However, at the stage of summary judgment, is this enough to establish personal knowledge and affirmatively show that

the affiant is competent to testify to the matters stated therein, under La. C.C.P. art. 967 A?

Roach, whose family had owned a 35-acre tract in DeSoto Parish for nearly a century, discovered, after a 2019 survey, that his boundary stopped 50 feet short of Linwood Avenue; he and his family had always thought the tract ran all the way to Linwood. He filed suit against the Moffatts, who in 1985 had bought an 18-acre tract which, according to the description, actually lapped over Linwood and encompassed the 50-foot strip. The Moffatts moved for summary judgment, attaching in support two surveys showing that their title encompassed the 50-foot strip, and Mr. Moffatt's affidavit outlining the acts of possession he had exercised over the tract continuously, publicly and unequivocally since 1985.

In opposition, Roach's heirs (he had by then passed away) filed seven affidavits: three from his daughters, three from longtime neighbors and one from his independent executrix. These all recited "upon information and belief" that the boundary was Linwood and that the Roaches had always exercised possession all the way to the road. The Moffatts objected to all these affidavits on grounds that "information and belief" is not "personal knowledge." The district court agreed, struck most of the contents of Roach's affidavits, and granted summary judgment in favor of the Moffatts. Roach appealed.

The Second Circuit affirmed, ***Roach v. Moffatt,*** 55,415 (La. App. 2 Cir. 1/10/24), in an opinion by Judge Ellender. The court cited jurisprudence that a statement based on the best of the affiant's knowledge and belief is not adequate, *Arkla Inc. v. Maddox & May Casing Serv.*, 624 So. 2d 34 (La. App. 2 Cir. 1993); that "information and belief" is universally rejected as a substitute for personal knowledge, *Express Publ'g Co. v. Giana Inv. Co.*, 449 So. 2d 145 (La. App. 4 Cir. 1984); and that such an affidavit is one *not* based on personal knowledge, 2A CJS *Affidavits on information & belief* § 48 (Aug. 2023 update). The parts of the affidavits that survived the objection did not create any genuine issue that Roach exercised any acts of possession of the tract after 1985, when the Moffatts took possession.

The opinion also includes a refresher on the difference between a possessory and a petitory action, a point that apparently caused slight confusion in the district court. Needless to say, once the plaintiff alleges title, this concedes that the other side has possession. La. C.C. art. 3657 A. The principal lesson, though, is that "information and belief" will support a petition or complaint. It will not support an affidavit.

But this *will* support an affidavit. On an August evening, Wilson was operating a zero-turn lawnmower in a ditch on property along North Hood Street in Lake Providence. At that moment Condrey was driving down North Hood in his Ford 350 and, somehow, struck the rear of the lawnmower, hurling Wilson into the ditch and injuring him badly. Wilson sued Condrey and his insurer alleging that Condrey was intoxicated at the time of the accident and seeking punitive damages under La. C.C. art. 2315.4.

Condrey moved for partial summary judgment on the issue of punitive damages. He offered his own affidavit denying he had had anything to drink in over six months before the accident; that of the police officer who investigated the accident, who said he had no reason to suspect Condrey was drunk, and didn't even conduct a field sobriety test; and that of a witness who came on the scene, saw the lawnmower had no head or tail lights, and did not think Condrey was impaired. Wilson opposed the motion, offering affidavits from two other witnesses who came on the scene shortly after the accident and said Condrey's eyes were red and glossy, he smelled of alcohol and, what's more, he went to a nearby house and told the homeowner that he'd been drinking "a little bit." The district court granted Condrey's partial summary judgment, commenting that Wilson's affidavits were "circumstantial" and provided "no direct evidence of intoxication." Wilson appealed.

The Second Circuit reversed, ***Wilson v. Condrey,*** 55,411 (La. App. 2 Cir. 1/10/24), in an opinion by Chief Judge Pitman. The court laid out the basic rules of summary judgment, focusing on the jurisprudence that all affiants must be considered credible and the trial court cannot assess the weight of the evidence; its only role is to decide whether there is any genuine issue of material fact. *Saldana v. Larue Trucking LLC*, 52,589 (La. App. 2 Cir. 4/10/19), 268 So. 3d 430. The court found, on de novo review, that Wilson's eyewitness affidavits provided credible evidence that Condrey showed signs of impairment and admitted having something to drink before the accident, and this was sufficient to create a genuine issue as to intoxication and punitive damages. The court also reversed a concurrent ruling on Condrey's exception of no cause, but affirmed a ruling on Wilson's motion to compel.

Unlike the ones in *Roach*, these contested affidavits contained personal knowledge and showed the witnesses were competent to testify to the matters stated therein, satisfying La. C.C.P. art. 967 A. With that showing, the contradictory affidavits will doom the summary judgment.

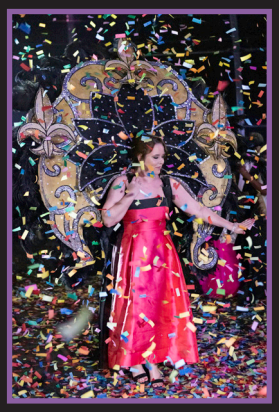
A substantive interpretation. The legislature recently amended the summary judgment law by adding La. C.C.P. art. 966 B(5). See 2023 La. Acts 317 (effective August 1, 2023). The new provision says the trial court *shall not reconsider or revise* the grant of partial summary judgment "on motion of a party who failed to meet the deadlines imposed by this Paragraph," and *shall not consider* any documents filed after those deadlines. A revision comment added, helpfully, that the amendment "is new and would change the result" of *Zapata v. Seal*, 20-01148 (La. 9/30/21), 330 So. 3d 175. However, the legislature declined to say whether this (significant) change would apply retroactively (affecting MSJs already ruled on), or prospectively only.

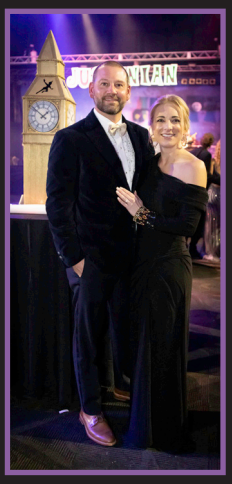
The Second Circuit has now addressed this quandary, finding the amendment was interpretive and, thus, applies retroactively to rulings already made. The facts in ***Rives Plantation LLC v BPX Props. (N.A.) LP,*** 55,301 (La. App. 2 Cir. 12/20/23), are rather complex: after BPX moved for partial summary judgment, Rives failed to attach certain documents to its opposition (under extenuating circumstances of a freak ice storm); the court told Rives to refile its original attachments, but nothing more. Rives, however, moved to supplement with a new attachment; the court denied this, granted BPX's motion for partial summary judgment and, later, denied Rives's motion to vacate the judgment.

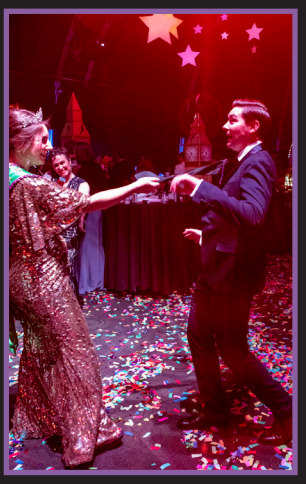
Rives appealed arguing that the new attachment created a genuine issue of material fact and, under *Zapata v. Seal*, the court was obligated to consider it even though it had been available at the time of the hearing (September 2021). The Second Circuit, however, found it missed the deadlines imposed by Art. 966 B(5), and thus the district court was not permitted to consider it. The court then held that the 2023 amendment was merely interpretive and would apply retroactively, under La. C.C. art. 6. As a result, it did not matter that at the time of the hearing the district court could have used *Zapata v. Seal* to accept late-filed summary judgment evidence. The district court refused to do so and, as fate would have it, was validated by the 2023 amendment. On the merits, however, the Second Circuit found that even without the new document, genuine issues remained and summary judgment was improper. The opinion is by Judge Robinson.

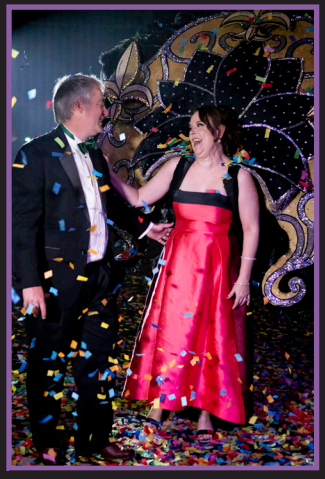
No doubt, the legislature could have been more explicit, as by saying the new provisions were fully retroactive and applied to any case already in the pipeline. However, the reasoning in *Rives Plantation* makes clear that the legislature completely erased *Zapata v. Seal* and there will be no revisiting partial summary judgments.

JUSTINIAN XXX Highlights







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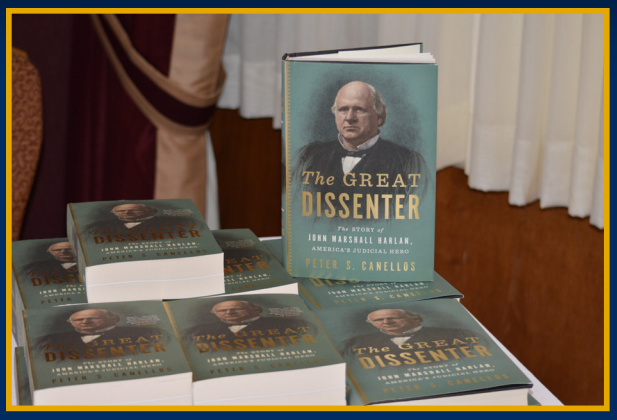
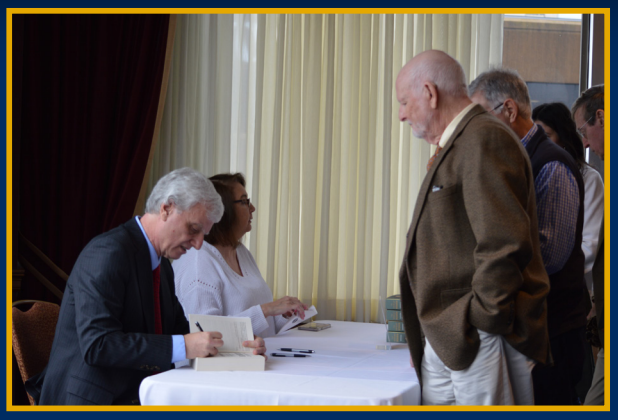
JANUARY LUNCHEON



HIGHLIGHTS



RETIRED ASSISTANT U.S. ATTORNEY MARY J. MUDRICK IS APPOINTED SHREVEPORT CITY COURT JUDGE PRO TEMPORE

Retired Assistant United States Attorney Mary Mudrick has been appointed to serve as judge pro tempore of Shreveport City Court Division C, effective January 8, 2024 through December 31, 2024, or until the vacancy is filled, whichever occurs sooner. The vacancy is the result of the retirement of Shreveport City Court Judge Pammela Lattier on December 31, 2023.

Ms. Mudrick received her bachelor's degree from Southern University A&M College in 1980 and her juris doctor degree from Southern University School of Law in 1983. She has served the United States Department of Justice as Assistant United States Attorney from 1999-2023; Civil Rights Coordinator (Criminal/Civil), 2016-2022; Criminal Chief/Shreveport Office, 2010-2016; Civil Rights Coordinator (Criminal), 2008-2018; and Project Safe Neighborhoods Coordinator, 2002-2008. Ms. Mudrick also served as Assistant Chief Administrative Officer of the City of Shreveport in 1999. She worked at the Shreveport City Attorney's Office as an Assistant City Attorney from 1997-1998, sat as Judge Ad Hoc at Shreveport City Court from 1995-1997; and worked as City Prosecutor from 1989-1995 and Assistant City Attorney from 1986-1989. Ms. Mudrick was also employed as a judicial law clerk to Judge Carl E. Stewart and Judge John Ballard from 1985-1986.

CLASSIFIEDS

Wanted: Staff Attorney for ALSC Disaster Unit

Acadiana Legal Service Corporation (ALSC) seeks a full-time, Louisiana-licensed Staff Attorney to aid survivors of 2020-2021 FEMA-declared disasters. Able to handle civil law matters like title clearing, successions, estate planning, contractor fraud, and landlord/tenant disputes. Join us in making a meaningful impact, providing justice, and supporting vulnerable communities. If you are an attorney eager to assist disaster survivors, apply online today at www.la-law.org/careers.

Brief writing/legal research

Columbia Law School graduate; former U.S. 5th Circuit staff attorney; former U.S. District Court, Western District of Louisiana, law clerk; more than 20 years of legal experience; available for brief writing and legal research; references and résumé available on request. Appellate Practice specialist, certified by the Louisiana Board of Legal Specialization. Douglas Lee Harville, lee.harville@theharvillelawfirm.com, (318)470-9582.

UPCOMING EVENTS

*2024 SBA MEMBERSHIP LUNCHEONS

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

FEBRUARY 3
KREWE OF CENTAUR PARADE
Krewe of Justinian Participates

FEBRUARY 11
KREWE OF HIGHLAND PARADE
Krewe of Justinian Participates

***FEBRUARY 28**
Speaker: Robert T. Mann
Author of Kingfish U: Huey Long and LSU

***MARCH 27**
Speaker: Chief Geoffrey Standing Bear, Principal Chief of the Osage Nation and source for the book Killers of the Flower Moon

***MAY 1**
LAW DAY LUNCHEON
Speaker: TBD

MAY 3
Speaker: Chief Geoffrey Standing Bear, Principal Chief of the Osage Nation and source for the book Killers of the Flower Moon

AMAZON WISH LIST

The Shreveport Bar Foundation is excited to announce the launch of its Wish List program for the Pro Bono Project, Legal Representation for Victims of Domestic Violence programs, and the Shreveport Bar Center through Amazon. This new wish list program allows our supporters to purchase supplies and other items needed to run our programs. This can range from pens (for the AAL clinics) to soap and paper products (for the building)! **Check out the full list of options!**

https://www.amazon.com/hz/wishlist/ls/3EW9JTZSJNVEZ?ref_=wl_share

Or scan the QR code.

amazon wishlist

DEADLINE FOR MARCH ISSUE: FEBRUARY 15, 2024

SBA Luncheon Meeting – February 28

Petroleum Club (15th Floor) – Buffet opens at 11:30 a.m. Program and Speaker from 12:00 Noon to 1:15 p.m.

$50.00 for SBA members includes lunch and one hour of CLE credit or $30 for lunch only.

$60.00 for non-SBA members includes lunch one hour of CLE credit or $35 for lunch only.

Robert T. Mann

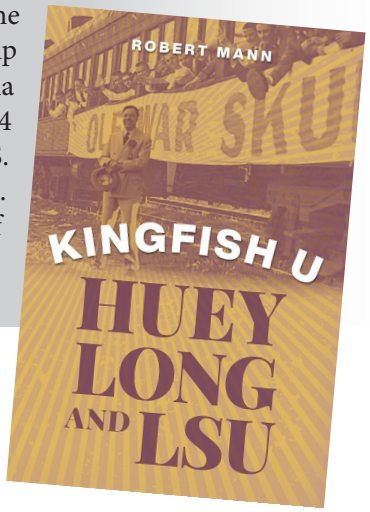
When: **12:00 Noon on Wednesday, February 28**

Where: **Petroleum Club (15th floor)**

Featuring: **Robert T. Mann, author of *Kingfish U: Huey Long and LSU***

This presentation is eligible for 1 hour CLE credit.

ABOUT THE AUTHOR



Robert T. Mann holds the Manship Chair in Journalism at the Manship School of Mass Communication. Prior to joining the Manship School in 2006, he served as communications director to Louisiana Governor Kathleen Blanco. He joined the governor's staff in 2004 after serving 17 years as state director and press secretary to U.S. Senator John Breaux of Louisiana. Before his service on Breaux's staff, he was press secretary to U.S. Senator Russell Long of Louisiana. He was also press secretary for the 1990 re-election campaign of U.S. Senator J. Bennett Johnston of Louisiana, and communications director for the 2003 Blanco campaign. In 2015, he was inducted into the Louisiana Political Hall of Fame.

In the early 1980s, he covered Louisiana politics as a reporter for the Shreveport Journal and the Monroe News-Star. He has published op-eds and book reviews in numerous publications, including The New York Times, the Boston Globe, Smithsonian, Politico, Vox and Salon. From 2013 to 2018, he wrote a weekly column for the New Orleans Times-Picayune. He is editor of the Media & Public Affairs Book Series, a joint series sponsored by the Reilly Center for Media & Public Affairs and LSU Press.

Please join us on Wednesday, February 28, as we welcome Robert Mann who will discuss his book *Kingfish U: Huey Long and LSU*. No political leader is more closely identified with Louisiana State University than the flamboyant governor and U.S. senator Huey P. Long, who devoted his last years to turning a small, undistinguished state school into an academic and football powerhouse. From 1931, when Long declared himself the "official thief" for LSU, to his death in 1935, the school's budget mushroomed, its physical plant burgeoned, its faculty flourished, and its enrollment tripled. Along with improving LSU's academic reputation, Long believed the school's football program and band were crucial to its success. Taking an intense interest in the team, Long delivered pregame and halftime pep talks, devised plays, stalked the sidelines during games, and fired two coaches. He poured money into a larger, flashier band, supervised the hiring of two directors, and, with the second one, wrote a new fight song, "Touchdown for LSU." While he rarely meddled in academic affairs, Long insisted that no faculty member criticize him publicly. When students or faculty from "his school" opposed him, retribution was swift. Long's support for LSU did not come without consequences. His unrelenting involvement almost cost the university its accreditation. And after his death, several of his allies—including his handpicked university president—went to prison in a scandal that almost destroyed LSU. Rollicking and revealing, Robert Mann's *Kingfish U* is the definitive story of Long's embrace of LSU.

We will have a limited number of books for sale at the luncheon for $35. Books will be sold and signed by the author after the presentation.

Confirm your reservation(s) by email at **dsouthern@shreveportbar.com** or by phone at **703-8372.**
Please remember to call and cancel if you can't attend.
The SBA pays for each reservation made. No-shows will be invoiced.