



What is a Fastland? *Percle v. Lafourche Parish Government*

Under Louisiana’s State and Local Coastal Resources Management Act, La. R.S. 49:214.21, *et seq.* (SLCRMA), potential users of land in the state’s coastal zone must obtain coastal-use permits to undertake certain activities that threaten coastal waters. This requirement is not unique to Louisiana, but rather applies to all coastal states in one form or another pursuant to federally delegated authority under the Coastal Zone Management Act of 1972, 16 U.S.C. §§ 1451, *et seq.* Under Louisiana law, not all activities that occur within the coastal zone require SLCRMA review. Certain activities—those located in land classified as “fastlands”—are generally exempt from the need to obtain a state- or parish-issued coastal-use per-

mit (CUP).

Several cases in recent years challenging CUP issuances have, in part, turned on the meaning and classification of certain lands as fastlands. *See, e.g., Joseph v. Sec’y, La. Dep’t of Nat. Res.*, 18-0414 (La. App. 5 Cir. 1/30/19), 265 So.3d 945; *Healthy Gulf v. Sec’y, La. Dep’t of Nat. Res.*, 24-0286 (La. App. 4 Cir. 12/23/24), 407 So.3d 705. In each of these cases, allegations that fastlands within the coastal zone must obtain a CUP that ensures avoidance or mitigation of possible adverse effects of the permitted activity have failed. Generally, if the contemplated activity is above a certain elevation or is in fastlands, it is exempt from permitting and mitigation requirements. However, the recurrence of this term in CUP challenges suggests ambiguity regarding its meaning. La. R.S. 49:214.34. Indeed, the recent case of *Percle v. Lafourche Par. Gov’t*, 24-1277 (La. App. 1 Cir. 8/8/25), 419 So.3d 390, in which the parish permitting entity classified lands on a small residential tract in Lafourche Parish as requiring a CUP (i.e., not fastlands) represents an example of the same potential ambiguity over the meaning of fastlands, albeit in an inverse manner to the prior cases (i.e., that the subject property *was* fastlands

and *did not* need a CUP as opposed to the earlier cases in which litigants asserted that certain lands *were not* fastlands and thus *did* require a CUP).

The question of whether an activity does or does not need a CUP can be critical to the siting of proposed development, as the CUP analysis by the permitting agency examines effects of proposals to coastal waters according to more than 90 environmental criteria ranging from water course changes to effects on cultural resources to wildlife impacts—a potentially expensive analysis (see La. Admin. Code 43:I.701, *et seq.*).

Fastlands are defined by statute (La. R.S. 49:214.23(6)) as:

lands, including areas that would otherwise be considered wetlands..., that are surrounded by validly existing levees, berms, flood protection structures, or natural formations, whether privately or publicly owned or maintained, ... which levees, berms, flood protection structures, or natural formations would normally prevent activities ... within the surrounded area from having a continuous surface connection to waters of the United States or direct and significant impacts on coastal waters.



Jessica D. LeBlanc CPA, CFF

- Expert Witness Testimony
- Business Consulting
- Forensic Accounting
- Marital Dissolution
- Successions
- Personal Injury
- Insurance Claims
- Economic Damages

504-812-7105

www.JessicaLeBlanc.cpa

JessicaL@JessicaLeBlanc.cpa

In *Percle*, a private landowner in Thibodaux cleared a 1.359-acre tract of her land to make way for residential development. The parish government informed Ms. Percle that she had improperly cleared an area subject to SLCRMA permitting jurisdiction and that she must apply for an after-the-fact CUP. This process would likely include undertaking any remediation or mitigation deemed necessary to offset identified impacts to coastal waters. Upon application, the parish determined that Percle's property, situated within a ring levee constructed by the parish, was covered by SLCRMA and that she had violated the law by clearing the land. Percle disagreed and sought judicial review in the 17th Judicial District. The district court, sitting in an appellate capacity under the Administrative Procedure Act, agreed with Percle that her land was properly classified as fastlands (surrounded by a ring levee) and that the parish's decision was incorrect. The parish appealed to the 1st Circuit Court of Appeal. Agreeing with the district court, the 1st

Circuit affirmed and provided some additional insight into the nature of the term "fastlands."

In this case, the ring levee constructed by the parish was itself done without state or federal authority. 419 So.3d at 395-396. Based on the definition of fastlands requiring that such constructions be "validly existing," the parish (supported by the state) found that, though Percle's lands would be fastlands under normal circumstances and would thus be exempt from needing a CUP, the fact that the parish constructed the levee at issue without state or federal authority (i.e., that the parish obtained its own CUP) meant that the levee was not "validly existing." *Id.* The 1st Circuit observed that the parish had created the invalidity that it now sought to enforce against Percle when it noted that the parish "changed the character of Ms. Percle's land without proper authority to do so." *Id.* at 396. When it ultimately upheld the district court's decision, the 1st Circuit stated that "under these circumstances the substantial rights of Ms.

Percle were prejudiced [and] the administrative findings of [the parish] were an abuse of discretion" *Id.* Specifically, the court observed that the parish could not require someone to obtain a CUP "due to the changed nature of her land after [the parish's] actions, which were taken without proper authority" were the proximate cause of any potential need for a CUP in the first place. *Id.*

Reading the statutory law along with the interpretations in *Joseph*, *Healthy Gulf* and *Percle* demonstrates that the term "fastlands," despite its increasing use in litigation, is fairly clear. Nonetheless, the addition of *Percle* to the fastlands jurisprudence in Louisiana should assist in further elucidating the proper application of that term.

— **Ryan M. Seidemann, Ph.D.**
Treasurer, LSBA Environmental
Law Section
The Water Institute of the Gulf
1110 River Road S., Suite 200
Baton Rouge, LA 70802

PERRY DAMPF

DISPUTE SOLUTIONS

Arbitration

The Timely Out-of-Court Resolution for Disputes

Are you tired of years of expensive delays before your dispute proceeds to final judgment? Our selective panel of neutrals features individuals with extensive backgrounds and expertise in the field of arbitration who have conducted arbitrations (even personal injury) locally as well as nationally. Our arbitrators are widely recognized as among the best in the business and are available on an hourly or per project basis.

Speakers Available upon Request to Discuss the Benefits of Arbitration

Baton Rouge
225-389-9899

Lafayette
337-905-3128

New Orleans
504-544-9899

PerryDampf.com



Divorce

Guillot v. Guillot, 25-0149 (La. App. 5 Cir. 12/16/25), ___ So.3d ___, 2025 WL 3640604.

Cecile Guillot appealed the trial court’s judgment granting Jules Guillot’s rule for an article 102 divorce and rendering her rule for an article 103(2) divorce moot. She argued that the trial court erred in refusing to hear her rule when it was the first rule properly set before the district court, as opposed to Mr. Guillot’s rule, which was initially set before the domestic commissioner and then reset before the district court.

The 5th Circuit affirmed, holding that there was no statutory or jurisprudential requirement that a trial court must hear competing divorce rules and decide which one to grant. It noted that any prejudice Ms. Guillot may have suffered was at least partly attributable to her own delay in filing her rule over one year after filing her petition.

Judge Windhorst dissented, finding that the trial court’s decision not to hear

Ms. Guillot’s rule deprived her of procedural due process by denying her the opportunity to be heard. The deprivation was significant because it divested her of the presumption of entitlement to final spousal support under Louisiana Civil Code article 112, which a post-deprivation declaration of fault could not remedy.

Custody – Ex Parte Orders

Baker v. Lowe, 25-1258 (La. App. 1 Cir. 12/09/25), ___ So.3d ___, 2025 WL 3527326 (unpublished).

Krystle Lowe sought supervisory review of the Family Court’s ex parte orders granting and extending temporary custody of her son to Jeremy Baker. Mr. Baker sought ex parte relief through a combined ex parte motion for custody and request for non-parent sole custody under Louisiana Civil Code article 133. At the time the ex parte order was issued, the parties were involved in a pending custody proceeding in East Feliciana Parish, where the district court had determined that Mr. Baker lacked a right of action for custody because the acknowledgment of paternity affidavit on which he relied was absolutely null for lack of authentic form, as well as lack of biological paternity. In support

of ex parte relief, Mr. Baker nevertheless alleged that the child would suffer immediate and irreparable injury by being “ripped from his father’s house” and likewise suffer substantial harm by being “bastardized.”

The 1st Circuit granted the writ application in part and vacated the ex parte order and the portion of the order extending it, holding that the allegation of irreparable injury advanced in support of ex parte relief was insufficient under Louisiana Code of Civil Procedure article 3945(B)(1).

Contempt

Ragland v. Ragland, 25-0032 (La. App. 1 Cir. 01/14/26), ___ So.3d ___, 2026 WL 120486.

Katherine Diamond Ragland appealed the Family Court’s Feb. 20, 2024, judgment finding her noncompliant with a contempt judgment and ordering her to serve jail time, complete additional community service and pay monetary sanctions. The challenged judgment arose from a compliance review of a Dec. 6, 2023, contempt judgment that contained purge clauses allowing Ms. Ragland to avoid incarceration through compliance.

The 1st Circuit affirmed, holding that the Family Court did not abuse its discretion in finding Ms. Ragland non-



Claim Your FREE Trust & Billing Software

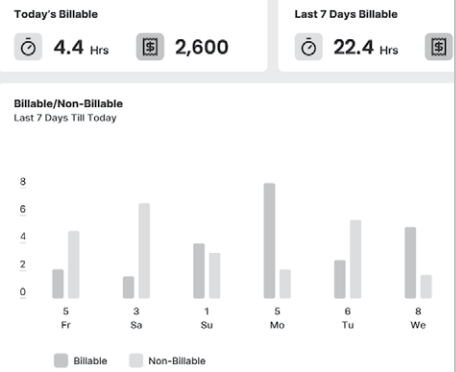
for LSBA members



SCAN NOW

Or visit smokeball.com/louisianabill

Billing Dashboard



Louisiana State Bar Association

Larry Smith
General

Unpaid

compliant with the Dec. 6, 2023, contempt judgment, where she failed to make the required payments and did not complete all the ordered community service. The court rejected her arguments that the compliance review constituted criminal contempt or violated due process, emphasizing that the contempt remained civil in nature because the underlying judgment included purge clauses and that notice to counsel constituted notice to the client. The court also affirmed sanctions imposed under Louisiana Code of Civil Procedure article 863 against Ms. Ragland and her former counsel for filing a frivolous motion barred by res judicata, and awarded attorney fees to Mr. Ragland for defending the appeal.

Community Property – Partition

Finta-Volpati v. Volpati, 24-0624 (La. App. 5 Cir. 12/10/25), ___ So.3d ___, 2025 WL 3534976.

Lori Finta-Volpati appealed a judgment that modified the Nov. 11, 2021, consent judgment partitioning the community property between her and Walter Volpati. The consent judgment included detailed provisions governing the family residence, including responsibility for mortgage payments, elevation expenses and distribution of net sale proceeds. It also waived reimbursement claims except as expressly provided. After the elevation project was delayed, Mr. Volpati sought reimbursement for mortgage payments and other expenses, arguing that changed circumstances and principles of co-ownership entitled him to relief. The trial court granted reimbursement in part and reallocated certain obligations.

The 5th Circuit reversed in part, holding that a consent judgment partitioning community property is not subject to modification based on changed circumstances and is governed by principles of contract interpretation and res judicata. The court concluded that the consent judgment’s allocation of “net proceeds”

necessarily contemplated satisfaction of the mortgage from the sale price and foreclosed later reimbursement claims absent a showing of nullity or a vice of consent. Finding no evidence that Mr. Volpati’s consent was vitiated by error, the court rejected his attempt to recast the dispute as one arising under co-ownership principles. The judgment was affirmed only as to a discrete expense that the record showed Ms. Finta-Volpati had expressly approved under the consent judgment’s terms.

Kyles v. Kyles, 25-CA-0526 (La. App. 1 Cir. 01/09/26), ___ So.3d ___, 2026 WL 123278.

Rashanda Kyles and Derrick Kyles both appealed the Family Court’s judgments partitioning their community property, including a Sept. 20, 2023, “Final Community Property Judgment” and a March 8, 2024, judgment awarding Ms. Kyles an equalizing payment. The parties’ disputes centered on the Family Court’s treatment of the family residence built on Mr. Kyles’ separate



THE LOUISIANA NATIONAL GUARD IS LOOKING FOR A FEW GOOD LAWYERS






CONTACT: CPT Demetrus Franklin
demetrus.r.franklin.mil@army.mil
504-638-7591

property, reimbursement and offset issues tied to the community mortgage, and the valuation of vehicles and associated liabilities.

The 1st Circuit vacated in part, reversed in part, amended in part and remanded. The court held that the Family Court legally erred in:

- (1) Awarding Ms. Kyles reimbursement for one-half of the increased value of the family residence, rather than for one-half of the value of the community property at the time it was used;
- (2) Not offsetting that reimbursement claim by the amount of her share of the mortgage;
- (3) Not including the mortgage in its calculation of the net value of the property allocated to each spouse;
- (4) Valuing two vehicles based on evidence not admitted into evidence.

However, the court held that the Family Court did not err in:

- (1) Valuing the liabilities associated with vehicles based on Ms. Kyles' testimony;
- (2) Denying Mr. Kyles' reimbursement claim for the community's use of his separate property during the marriage; and
- (3) Denying Ms. Kyles' reimbursement claim for Mr. Kyles' exclusive use and occupancy of the family residence under La. R.S. 9:374(A).

Grandparent Visitation

Ives v. Ives, 25-0413 (La. App. 5 Cir. 12/15/25), ___ So.3d ___, 2025 WL 3625918.

Nicholas Ives appealed a judgment denying his exception of no cause of action and granting his mother, Pamela Quigley, grandparent visitation with his two children. He argued that the trial court erred in finding that Quigley met her burden of proof and that it did not properly consider the factors under

Louisiana Civil Code article 136(D), e.g., his fundamental right to make decisions concerning the care, custody and control of his children.

The 5th Circuit affirmed. The court held that the trial court did not err in denying Ives' exception of no cause of action because Quigley's pleading sufficiently stated a cause of action by alleging that she is the paternal grandmother, that it is in the children's best interests that she have visitation privileges, that the children lived with her for an extended period of time and that she has a close bond with them.

Further, the court held that the trial court did not err in granting Quigley grandparent visitation. The record showed that there was ample evidence to support a finding that Quigley met her burden of proof, and the trial court's reasons for judgment showed that it had considered each of the factors under article 136(D). The court concluded that the limited visitation schedule, two Saturdays per month, with an alternate option for an overnight visit once every three months, was reasonable and that the children's best interests justified the intrusion on Ives' parental decision-making.

Mandamus

Raymond v. Raymond, 25-0616 (La. App. 5 Cir. 01/06/26), ___ So.3d ___, 2026 WL 60079 (unpublished).

Diamond Raymond sought supervisory review of a judgment denying her petition for writ of mandamus by

which she sought to compel the clerk of court to assign her petition for divorce a separate case number and random allotment under Louisiana Code of Civil Procedure article 253.1. Ms. Raymond argued that the clerk had a ministerial duty to randomly assign her petition as a new suit, rather than assigning it the same case number and division as a previously filed divorce petition involving the same parties. The trial court denied mandamus relief and ordered the termination of a new case number that had briefly been assigned.

The 5th Circuit denied the writ. The court held that the allotment and reallocation of cases by clerks of court generally involves discretionary, not ministerial, functions, rendering mandamus relief unavailable. The court emphasized that while article 253.1 mandates random assignment of cases, clerks retain discretion in case assignment where no specific local court rules prescribe a mandatory procedure. Because the 40th Judicial District Court lacks local rules governing the allotment of multiple divorce petitions filed between the same parties, the clerk could not be compelled by mandamus to assign a separate case number or reallocate the matter.

—Elizabeth K. Fox

Member, LSBA Family Law
& Appellate Practice Sections
EKF Family Law, L.L.C.
23422 Cypress Cove
Springfield, LA 70462



Steven D. Crews

Your Trusted Full Time Mediator

Results So Impressive the Republicans and Democrats Should Book Me

To schedule call Tina Coffey • 318-332-2941
or email tina@sdcmmediator.com • 616 Front Street, Natchitoches, LA 71457



**Labor and
Employment
Law**

EEOC Rescinds Workplace Guidance on Harassment

On Jan. 22, 2026, the Equal Employment Opportunity Commission (EEOC) voted to rescind its enforcement guidance addressing workplace harassment. The withdrawn guidance, issued during the prior administration, outlined the agency’s interpretation of employer obligations under federal anti-discrimination laws, including expectations related to sexual orientation and gender identity.

Background on Prior Guidance

The rescinded guidance stemmed from the EEOC’s earlier effort to align its enforcement position with the U.S. Supreme Court’s 2020 decision in *Bostock v. Clayton Cnty.*, 590 U.S. 644 (2020). In *Bostock*, the Court held that Title VII’s prohibition on discrimination “because of...sex” includes discrimination based on sexual orientation and gender identity. The Court concluded that firing an employee for being gay or transgender necessarily involves sex-based considerations. At the same time, the Court noted that it was not resolving questions beyond the specific issue of termination, leaving open how Title VII applies to related workplace conduct and policies.

Relying on *Bostock*, the EEOC’s prior guidance interpreted Title VII to require certain accommodations for transgender

and gender-nonconforming employees. It also identified forms of conduct that could constitute unlawful harassment, including “outing” an employee, repeatedly using a name or pronoun inconsistent with an employee’s gender identity and denying access to bathrooms or other sex-segregated facilities aligned with an individual’s gender identity.

Judicial Developments Leading to the Rescission

In May 2025, the U.S. District Court for the Northern District of Texas vacated portions of the EEOC’s guidance. *Texas v. EEOC*, 785 F. Supp. 3d 170 (N.D. Tex. 2025). The court concluded that *Bostock* did not redefine “sex” under Title VII but instead clarified how sex-based classifications apply in the context of termination decisions. According to the district court, the Supreme Court’s ruling reaffirmed that “sex” refers to biological distinctions between male and female. On that basis, the court held that the EEOC exceeded its statutory authority by expanding the definition of sex “beyond the biological binary” and by requiring employers to adopt bathroom, dress and pronoun accommodations not expressly grounded in the statute.

The Commission’s January 2026 Action

The EEOC’s decision to rescind the guidance aligns with the district court’s ruling and with the current administration’s stated intention to remove gender-identity-related interpretations from agency materials. During the public meeting in which the vote occurred, EEOC Chair Andrea Lucas emphasized the limits of the agency’s authority, stating that the Commission “cannot make affirmative statements of policy interpreting Title VII” and may only issue procedural rules that implement congressional directives. With the rescission, the EEOC’s prior interpretation of what constitutes illegal harass-



Alesia M. Ardoin

Blair Naquin

R. Gray Sexton

Blane A. Wilson

OUR SERVICES

Five decades of experience in state ethics, campaign finance, professional licensing and governmental compliance, together with construction and commercial litigation – with passion and commitment, yielding unmatched service and quality.

**LAW OFFICES
OF
R. GRAY SEXTON**

**YOU’VE WORKED HARD TO
BUILD YOUR REPUTATION
AND BUSINESS.**

**WE WORK
HARD TO
PROTECT THEM!**

LA-24-16611



225-767-2020



8680 Bluebonnet Boulevard, Suite D
Baton Rouge, Louisiana 70810



sextonlaw.net

ment based on sexual orientation and gender identity is no longer in effect as agency guidance.

Practical Impact on Employers

Despite the withdrawal of the guidance, the core legal landscape remains unchanged. Title VII continues to prohibit discrimination based on sex, which—under *Bostock*—includes sexual orientation and gender identity. Chair Lucas underscored this point, noting that federal laws prohibiting discrimination, harassment, and retaliation “remain firmly in place,” as does Supreme Court precedent interpreting those laws.

For employers, the rescission may reduce reliance on the EEOC’s prior examples and explanations, but it does not alter the underlying statutory obligations. Most day-to-day compliance practices are expected to remain the

same, and employers must continue to evaluate workplace conduct and policies in light of existing federal anti-discrimination requirements.

– **Kate C. Brownlee**

Member, LSBA Labor Relations & Employment Law Section
Brownlee Law LLC
346 Helios Ave.
Metairie, LA 70005

5th Circuit Denies NLRB Ability to Award Full Compensatory Relief

Hiran Management, Inc. v. NLRB, 157 F.4th 719 (5th Cir. 2025).

In this unfair-labor-practices action, the U.S. Court of Appeals for the 5th Circuit addressed whether the National Labor Relations Board was within its authority to award “full compensatory

damages” as a “make whole” monetary remedy. There is a split among the circuits as to the NLRB’s ability to expand monetary remedies against employers in unfair-labor-practices cases.

Hiran Management is a restaurant operator that ran a Texas-based karaoke restaurant, employing 20 nonunion employees. A dispute arose when eight of the twenty employees went on strike after their complaints about performing extra duties without receiving additional promised compensation weren’t addressed. Subsequent to the strike, Hiran discharged the employees.

The NLRB filed an administrative complaint alleging that Hiran violated Section 8(a)(1) of the National Labor Relations Act (NLRA) by discharging the striking employees. The NLRA prohibits employers from interfering with an employee’s right to engage in concerted protected activity such as a strike, regardless of whether the employees are unionized.

Bourgeois Bennett

CERTIFIED PUBLIC ACCOUNTANTS | CONSULTANTS
A LIMITED LIABILITY COMPANY

WHEN YOUR CASE
INVOLVES NUMBERS,

SEE HOW MUCH
WE CAN ADD.

While we are known as an accounting firm that is an important resource to many of the area’s top companies, we are also recognized as a valuable asset to some of the top law firms. We have done this by adding specialized litigation support including financial damage analysis, discovery assistance, business valuations and commercial litigation to the services we offer. To add even more value to our clients, we also offer expert testimony, class action administration and even forensic accounting. Call today and see first hand what we can offer to you and your clients.

bourgeoisbennett.com

New Orleans 504.831.4949 | North Shore 985.246.3022 | Houma 985.868.0139 | Thibodaux 985.447.5243

The Administrative Law Judge ruled for the NLRB. Pursuant to the traditional remedies under Section 10(c) of the NLRA, the NLRB ordered relief of reinstatement and back pay, in addition to “full compensatory damages” for “all direct or foreseeable pecuniary harm” suffered by the affected employees. The NLRB’s order was supported by its 2022 opinion in *Thryv, Inc.*, which allowed compensation beyond back pay, as a means to “make whole” the employees “for any loss of earning and other benefits, and for any other direct or foreseeable pecuniary harms suffered as a result.”

On appeal, Hiran contended that the NLRB lacked statutory authority to order damages for “all direct and foreseeable” harms stemming from an employee’s termination. In its Oct. 31 opinion, the 5th Circuit rejected the NLRB’s expansive remedies under *Thryv*. The 5th Circuit held that the NLRA allows the Board to award for equitable remedies, such as reinstatement and back pay, but does not permit the Board to award compensation for consequential damages for “all direct or foreseeable pecuniary harm.”

The 5th Circuit further reasoned that under the standard set in *Thryv*, the NLRB would effectively have no boundaries on its remedial authority.

Only Congress can authorize the Board to award full compensatory damages, and there is no congressional directive supporting this authority.

The issuance of this decision is significant for employers in Texas, Louisiana and Mississippi, as they are now protected from the NLRB’s broad remedial orders that seek damages beyond reinstatement and back pay. This reduces the risk that employers face against unfair-labor-practice charges.

The 5th Circuit’s ruling of the Board’s remedial powers coincides with the 3rd Circuit’s restrictive interpretation but directly conflicts with the 9th Circuit’s expansive interpretation. As the gap increases between the circuits, it calls into question whether the U.S. Supreme Court will address the issue.


– **Sophie Raines**
Member, LSBA Labor Relations &
Employment Law Section
Fisher & Phillips LLP
201 St. Charles Ave., Ste. 3710
New Orleans, LA 70170



Appellate Court Reverses Act 312 Summary Judgment and Determines Rights and Obligations under Assignment


WMH Farms, LLC v. Apache Corp., 25-0305 (La. App. 3 Cir. 1/28/26), ___ So.3d ___, 2026 WL 217156, presented two main issues to the Louisiana 3rd Circuit Court of Appeal: (1) whether summary judgment was properly granted, finding “contamination” of property under Act 312, despite countervailing expert testimony; and (2) whether summary judgment was properly granted dismissing third-party claims against a former lessee. The 3rd Circuit held genuine issues of material fact precluded summary judgment in favor of the landowner under Act 312, and the 3rd Circuit affirmed the dismissal of claims against the former lessee.

In 2017, JP Oil Company, LLC acquired and began operating a well on property owned by WMH Farms, LLC,




ClerkConnect.com


One portal for Louisiana court access. File, search, retrieve, and manage court records in one secure platform designed for today’s legal professionals.




Notifications



eRecording



Public Inquiry



eFiling

pursuant to an assignment from Walter Oil and Gas Corporation. In May 2020, WMH filed an Act 312 claim against JP Oil and former mineral lessees (including Walter, which later settled with WMH), seeking remediation of its property and damages pursuant to La. R.S. 30:29. JP Oil filed a third-party demand against Walter, seeking recovery of any amounts it might be ordered to pay. A few months later, the Louisiana Department of Conservation and Energy (LDCE) notified JP Oil and former operators that “there appears to be soil and groundwater parameters with analytical results in excess of regulatory allowances ... which may be indicative of potential impacts from historic oil and gas exploration and production activities.”

WMH sought summary judgment declaring JP Oil legally responsible for environmental damage and referring the matter to the LDCE for a remediation plan. Walter sought summary judgment to dismiss JP Oil’s claims and declare it waived any warranties owed by Walter. The district court granted both motions, and JP Oil appealed.

Existence of “Contamination” under Act 312

After rejecting WMH’s prematurity argument, the 3rd Circuit discussed the propriety of summary judgment, holding JP Oil legally responsible for “environmental damage” under Act 312 based on soil and groundwater sampling and analyses by ICON Environmental Services, showing exceedances.

The prior version of Act 312 at issue defined “environmental damage” as “any actual or potential impact, damage, or injury to environmental media caused by contamination resulting from activities associated with oilfield sites or exploration and production sites.” “Contamination” is defined as “the introduction or presence of substances or contaminants into a usable groundwater aquifer, an underground source of drinking water (USDW) or soil in such quantities as to render them unsuitable for their reasonably intended purposes.”

The 3rd Circuit found

- (1) the ICON data was not properly authenticated;
- (2) no record evidence estab-

lished contamination—that substances entered a usable groundwater aquifer, an USDW, or soil in such quantities as to render them unsuitable for their reasonably intended purposes; and

(3) JP Oil’s expert opined concentrations met regulatory standards per the property’s use or were within natural tolerances, creating genuine issues of material fact. The Third Circuit also found JP Oil did not admit liability by following LDCE’s request for written notice of its efforts to assess and address soil and groundwater conditions.

Rights and Obligations under Assignment

The 3rd Circuit found JP Oil “agreed to assume” “obligations to properly plug and abandon the Wells...and to restore the surface thereunder to as near its original condition as possible” and obligations “incident to the ownership and operation of the Assets” or related to “the environmental status or condition of the Assets” The Assignment defined “Assets” as certain oil and gas well (“Wells”) and “all lease and surface equipment ... or other equipment of any kind, appurtenant thereto used or held for use in connection with the operation or production of the Assets ... and all personal property, fixtures, plants, improvements, joint accounts, easements, rights-of-way, surface leases and appurtenances used or related to the Wells or Leases.”

JP Oil argued that it detrimentally relied on Walter’s failure to advise it of liability for a closed pit under Louisiana Civil Code article 1967. Walter argued any warranties were waived because the Assignment conveyed the Assets “as is,

where is” and “with all faults.” JP Oil argued the waiver was inapplicable and the closed pit on the property was never assigned because the closed pit was not designated; it had no value; and it was not an “appurtenance.” The 3rd Circuit, with limited explanation, found that “[t]he pit is a portion of the property that was assigned” and thus “the two are indivisible.” JP Oil also argued it detrimentally relied on a 2007 certificate by Laboratory and Analytical Business Services, Inc. stating the pit was closed per Statewide Order 29-B when executing the Assignment. The 3rd Circuit rejected that claim because the representation came from a third party, as opposed to the contracting parties.

Finally, the 3rd Circuit affirmed dismissal of JP Oil’s contribution claim against Walter. For any environmental damages owed to WMH, the 3rd Circuit held Walter’s settlement constituted a remission of a debt under Louisiana Civil Code article 1803, reducing WMH’s recovery “by the amount of the released obligor’s portion of fault,” eliminating JP Oil’s contribution claim. For any obligations owed to the State under Act 312, the 3rd Circuit stated the right to contribution is a matter of contract. The court apparently accepted Walter’s argument that JP Oil contractually assumed those obligations.

– Keith B. Hall

Mineral Law Section
LSU Law Center
1 E. Campus Drive
Baton Rouge, Louisiana

– Lauren Brink Adams

Mineral Law Section
Baker Donelson
201 St. Charles Ave., Suite 3600
New Orleans, Louisiana



David F. Bienvenu
Mediator

Bringing parties together throughout Louisiana

PERRY + DAMPF
DISPUTE SOLUTIONS

World-Class Dispute Resolution, Right Here at Home.

BATON ROUGE • LAFAYETTE • NEW ORLEANS | PERRYDAMPF.COM



Allocation of Fault

Driver v. Willis Knighton Pierremont Health Ctr., 25-1057 (La. 11/19/25), 422 So.3d 769.

In an earlier opinion, the Louisiana Supreme Court reversed an appellate court’s finding that it was not necessary to allocate fault between the two defendants found liable at trial. *Driver v. Willis Knighton Pierremont Health Ctr.*, 25-0391 (La. 6/25/25), 412 So. 3d 215. The Court remanded the case to the appellate court to perform a comparative-fault analysis. It noted that when multiple tortfeasors negligently injure a patient, “the liability between them will be a joint and divisible obligation; they

will not be solidarily liable, and each tortfeasor will be liable only for their portion of fault.” *Id.* at 216. The Court further held that “comparative fault must be allocated prior to imposition of the Louisiana Medical Malpractice Act’s damages cap.”

On remand, the court of appeal awarded the plaintiffs \$500,000 in damages plus \$130,995.41 in medical expenses, and it apportioned 75% fault to the defendant/physician and 25% fault to the hospital.

The Louisiana Supreme Court granted a supervisory writ and ruled that the appellate court erred in awarding such damages without applying the statutory damages cap of \$100,000 as to each defendant, with the PCF bearing the responsibility for amounts over \$200,000 (subject to the \$500,000 cap, plus medical expenses incurred prior to trial).

How Many Health Care Providers on a Panel

In re: Med. Rev. Panel Proceeding of Walker, 25-0431 (La. App. 5 Cir. 12/10/25), 2025 WL 3539126 (unpublished).

The Louisiana 5th Circuit Court of Appeal considered whether a district court possessed the authority to expand the statutory composition of a medical-review panel under the Louisiana Medical Malpractice Act (LMMA).

Plaintiffs filed a request for a medical-review panel with the Division of Administration. They alleged that Ochsner Health System and several physicians failed to timely diagnose and treat Walker for a stroke. The original request for review included claims against an internal medicine physician and an emergency medicine physician. Plaintiffs supplemented their request for review to include a psychiatrist. In March 2022, a medical-review panel was duly constituted in accordance with

Ready, Set, Let’s Go!



Do you have an Office Manager, Firm Admin, CFO, or HR Professional that is currently not a member of ALA?

The 2026 ALA New Orleans Chapter Board formally invites these individuals to attend our 2026 Business Partner EXPO to experience what ALA is all about and discover how ALA can help increase proficiency and save your firm money.



Please Join ALA New Orleans Chapter’s
Business Partner Expo 2026

When: June 18, 2026 from 4pm-7pm

Where: Westin Hotel New Orleans

Cost: Free

Register Here: alanola.org/BPEXPO

the LMMA's procedural requirements.

More than two years later, on Oct. 9, 2024, plaintiffs filed a second supplemental request for review, adding a radiologist as an additional defendant. In response, the defendant health-care providers moved to appoint a four-member medical review panel. They argued that the existing panel composed of physicians specializing in internal medicine, emergency medicine and psychiatry lacked the specialized expertise necessary to evaluate the radiological standard of care applicable to the newly added defendant. Citing La. R.S. 40:1231.8(G), which requires the panel to render an expert opinion on whether the defendants complied with the appropriate standards of care and whether any deviation caused the alleged damages, defendants contended that the absence of a radiologist would frustrate the panel's statutory function. Although acknowledging that La. R.S. 40:1231.8(C) provides that a panel "shall consist of three health care providers," they urged the court to interpret the statute flexibly to avoid what they characterized as an absurd or impractical outcome. The trial court accepted this reasoning, and on Aug. 20, 2025, granted the defendants' motion.

Plaintiffs sought supervisory review, asserting that the trial court exceeded its authority by altering the panel's composition in contravention of the statute's explicit terms.

The 5th Circuit reversed the trial court and remanded for further proceedings. The court reiterated that legislation is the "solemn expression of legislative

will" under Louisiana Civil Code article 2 and that courts must apply clear and unambiguous statutory language as written, without resort to equitable considerations or policy preferences. *See* La. C.C. art. 9; La. R.S. 1:4. Applying these principles, the court found La. R.S. 40:1231.8(C) to be unequivocal. The statute mandates that a medical review panel "shall consist of three health care providers" and one attorney chairman. The use of the term "shall" denotes a mandatory directive, leaving no discretion for courts to increase the number of healthcare-provider members. The court further observed that the legislature expressly addressed the composition of panels in cases involving multiple parties. Under La. R.S. 40:1231.8(C)(3)(h), when there are multiple plaintiffs or defendants, each side collectively selects only one health-care-provider panelist. This provision demonstrates legislative awareness of complex, multi-defendant litigation while maintaining a fixed panel size.

The court also examined La. R.S. 40:1231.8(C)(3)(j), which provides guidance regarding the professional specialties from which panelists may be selected when multiple types of health-care providers are involved. That provision permits, but does not require, the selection of panelists from the same class or specialty as the defendants. Relying on prior jurisprudence, the court emphasized that the statute affords some flexibility in panelist selection but does not entitle each defendant to a panelist from his or her precise specialty. The statutory scheme reflects a legisla-

tive balance between ensuring relevant medical expertise and preserving administrative efficiency and uniformity in the panel process.

Although courts possess authority to address issues such as panelist disqualification for conflicts of interest, the 5th Circuit noted the absence of any statutory or jurisprudential support for enlarging the number of health-care-provider panelists beyond three. The defendants' policy arguments regarding the desirability of radiological expertise could not supersede the legislature's explicit directive.

Concluding that the trial court's ruling contravened the mandatory language of the LMMA, the 5th Circuit held that the lower court committed legal error. The court granted the writ application, reversed the trial court's Aug. 20, 2025, judgment authorizing a four-member panel and remanded the matter for proceedings consistent with the statutory requirement that a medical-review panel be composed of only three health-care provider members.

— **Robert J. David**

Gainsburgh, Benjamin, David,
Meunier & Warshauer, LLC
601 Poydras St., Ste. 2355
New Orleans, LA 70130

And

— **Michael J. Ecuyer**

Gainsburgh, Benjamin, David,
Meunier & Warshauer, LLC
601 Poydras St., Ste. 2355
New Orleans, LA 70130



J · L · A · P
JUDGES AND LAWYERS ASSISTANCE PROGRAM, INC.

*Your call is absolutely
confidential as a matter of law.*

Toll-free (866)354-9334

www.louisianajlap.com
Email: jlapp@louisianajlap.com



DAVID R. SOBEL
Full-Time Mediator

Trusted Mediator for
Malpractice and Personal Injury Claims

(318) 769-9567
www.sobel-law.com