Disease Coverage Possible, Even After 36-Month Exclusion

On June 11, 2025, the Fourth Circuit Court of Appeal, through a five-judge panel, found liability insurance coverage for an insured employer and its injured employee despite the presence of a temporal-coverage exclusion. *May v. Cooper/T. Smith Stevedoring Co.*, 24-0272 (La. App. 4 Cir. 6/11/25), ___ So.3d ___, 2025 WL 1663633. This appeal arose in the context of mesothelioma litigation, but the 4th Circuit's opinion may apply in other long-latency-disease cases.

The policy form in issue in *May* could be read to exclude coverage for disease "unless prior to thirty-six months after the end of the policy period written claim is made or suit is brought against the insured for damages because of such injury or death resulting therefrom" (the 36-month exclusion). Mesothelioma, like other dust diseases, almost never manifests less than 10 years after exposure. For this reason, medical science has classified mesothelioma as a long-latency disease.

Monroe May worked as a stevedore at the Port of New Orleans during the 1960s and '70s. May's family filed civil survival and wrongful death actions against his employers and insurers of employers for the asbestos exposures that caused Monroe to develop mesothelioma and die.

Liberty Mutual Insurance Company and the Louisiana Insurance Guaranty Association (LIGA) defended the actions by asserting the 36-month exclusion. The district court considered the exclusion in the context of three motions for summary judgment addressing a certain liability policy form known in the 1960s and '70s as the Workers' Compensation and Employer's Liability form (the WC/EL Form).

Liberty and LIGA argued, and the district court agreed, that the WC/EL Form clearly and unambiguously offered no coverage for mesothelioma because suit had been filed more than 36 months after the end of the policy period. The district court also denied the plaintiffs' competing motion regarding policy form ambiguity. On appeal, the 4th Circuit considered whether Liberty and LIGA met their burdens to prove that the 36-month exclusion existed in their insured's policy and whether the 36-month exclusion was ambiguous and, therefore, capable of being interpreted in favor of coverage.

After de novo review, the court concluded that Liberty and LIGA failed to meet their burdens of proof because they could not place the actual policies into evidence or offer direct evidence that their policies contained the 36-month exclusion. Liberty and LIGA instead had relied on secondary and circumstantial evidence, including the opinion of an insurance expert that the WC/EL Forms issued by Liberty and the insurer represented by LIGA would most likely have included the 36-month exclusion. The court found this kind of evidence inadequate because

an insurer sought to use it to enforce an exclusion to liability coverage.

The next inquiry proved to be more involved, as it included consideration of other WC/EL Form provisions alongside testimonial evidence about both the form and the occurrences that led to Monroe May's mesothelioma. The court considered the form's definition (c) because its phrasing appeared in the 36-month exclusion. Definition (c) reads as follows about disease claims: "only such disease as results directly from a bodily injury by accident is included within the term 'bodily injury by accident.'"

The court then considered the testimony of experts because the phrasing of definition (c) and the 36-month exclusion beg the question, "What is bodily injury by accident?" Liberty's industrial-hygiene expert indicated that asbestos exposures described by fact witnesses in the case could be described as accidents. LIGA's insurance expert indicated that the WC/EL Form underwent a transformation in the mid-1980s because the insurance industry found it to be less than clear and likely not understandable by anyone outside the insurance industry.

The court then transitioned to jurisprudential analysis, including its historical opinion about the same liability-policy form language in the context of another long-latency dust-disease case in which an insurer sought to apply the 36-month exclusion, *Faciane v. Southern Shipbuilding Corp.,* 446 So.2d 770 (La. App. 4 Cir. 1984). The *Faciane* court thought definition (c) was unclear and opined, as follows:

On one hand it seems to exclude contraction of disease as an injury by accident. However, the next clause of the same sentence seems to allow the contraction of some diseases to be classified as accidental injury. Given these circumstances it seems that a genuine issue of material fact as to the classification of appellant's injury existed. The granting of summary judgment was therefore inappropriate.

Id. at 774.

Defendants countered that the court had issued two subsequent opinions on the same WC/EL Form at issue here, and those opinions applied the 36-month exclusion in mesothelioma cases. Those opinions were *Hayes v. Eagle, Inc.,* 03-1575 (La. App. 4 Cir. 5/12/04), 876 So.2d 108, and *Courville v. Lamorak Insurance Co.*, 20-0073 (La. App. 4 Cir. 5/27/20, 301 So.3d 557. The *May* panel distinguished those later opinions because they did not address whether mesothelioma should be classified under the WC/EL Form as "bodily injury disease" or "disease caused by bodily injury by accident."

Ultimately, the court concluded that definition (c)'s declaration that "the contraction of a disease is not an accident within the meaning of the word 'accident' in the term 'bodily injury by accident'" does not unambiguously exclude mesothelioma as a disease caused by accident. Hence, long-latency disease plaintiffs and their employers have legitimate coverage claims under the WC/EL Form.

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The U.S. Supreme Court Clarifies NEPA Judicial Review

On May 29, 2025, Justice Kavanaugh, writing for a unanimous court (with Justices Sotomayor, Kagan and Jackson joining and concurring and Justice Gorsuch recusing), set forth the standard for judicial reviews of challenges to environmental impact statements (EIS) under the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 et seq., in what many observers have called a game-changer in environmental law for several reasons. The primary holdings of significance relate to the scope of NEPA judicial reviews and the deference due to agency decisions under NEPA.

At issue in *Seven County Infrastructure Coalition v. Eagle County*, 145 S.Ct. 1497 (2025), was whether the United States Surface Transportation Board (Board), in permitting an 88-mile rail line in rural Utah, had adequately considered the upstream and downstream implications of the railroad construction when conducting its EIS analysis pursuant to NEPA. What the Board did not consider and what a coalition of local governments and environmental groups challenged was what environmental impacts the railroad would ultimately cause by way of increased mineral exploration and production (the upstream impacts) and by way of increased refining-related contamination in Texas and Louisiana, where the products would ultimately be received for processing (the downstream impacts). Instead, the Board's EIS focused specifically on the environmental impacts of the railroad and its construction. This case was a direct appeal from the Board to the D.C. Circuit Court of Appeals, where the EIS was vacated due to the absence of these upstream and downstream considerations.

Before embarking on its legal analysis, the Court reviewed the history and nature of NEPA and how it is intended to function. Specifically, the Court observed that "[t]he goal of [NEPA] is to inform agency decision-making, not to paralyze it." *Id.* at 1507. In this vein, the Court also observed that "some courts have assumed an aggressive role in policing agency compliance with NEPA." *Id.* at 1511. This aggressive role, according to the Court is particularly troubling for a law that "'does not mandate particular results, but simply prescribes the necessary process.'" *Id.* at 1510 (quoting *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989)). The Court stated that NEPA's environmental-review process, including EIS and other instruments, do "not require [an] agency to weigh environmental consequences in any particular way," but rather require agencies to undertake thorough

environmental analyses of specific projects to inform decision-making by those agencies, to "ensure good project management" and to provide an analysis on which the public may comment. *Id.* at 1507, 1510.

With this context in mind, the Court reversed the appellate court's decision. The Court distinguished between separate projects and the primary project subject to NEPA review and stated that such projects as mineral exploration and production in remote Utah and refining on the Gulf Coast are too attenuated from the authorization to construct a rail line in Utah to fall within the ambit of a single NEPA project. Specifically, the Court observed that "the separate project breaks the chain of proximate causation between the project at hand and the environmental effects of the separate project." *Id.* at 1516. The Court observed that the exploration and production as well as the refining would be subject to separate federal and state actions that would ensure consideration of environmental effects via their own project-specific EIS or other review documents. Moreover, the Court cautioned that NEPA does not permit agencies to "analyze the effects of projects over which they do not exercise regulatory authority." *Id.* In other words, because the upstream and downstream activities with which the appellate court was concerned would be subject to other state and federal regulatory schemes and because the Board's jurisdiction was narrowly tailored to reviewing and permitting railroad projects, such matters would be properly managed by other entities.

Another noteworthy aspect of this case is the Court's return to matters of administrative deference. Since *Loper Bright Enterprises v. Raimondo*, 144 S.Ct. 2244 (2024), federal court deference to agency decisions has been all but eliminated. However, in *Seven County*, the Court explicitly noted that substantial deference is due to agency decisions under NEPA. Indeed, the Court explicitly restored such deference in NEPA contexts thusly: "The bedrock principle of judicial review in NEPA cases can be stated in a word: Deference." *Id.* at 1515. Though the Court alludes to the fact that this deference was explicitly provided by Congress in NEPA alone, the term is absent from the law. The Court instead cites to pre-*Chevron v. NRDC*, 104 S.Ct. 2778 (1984), cases noting the limited role of the federal judiciary in NEPA cases and cautioning against courts substituting their judgment for expert-based agency analyses.

At present, this case sets a narrower NEPA review standard than what has existed for decades. It remains to be seen whether *Seven Counties* indicates a return to agency deference or whether Louisiana courts will follow the U.S. Supreme Court's lead in similar environmental-review cases.

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DOL Retracts FLSA Guidance Regarding Independent Contractors (Again)

A worker's classification as an employee or independent contractor under the Fair Labor Standards Act (FLSA), 29 U.S.C. §§ 201–219, determines whether that worker is entitled to receive a minimum wage and overtime pay. The U.S. Department of Labor's Wage and Hour Division (DOL), which is responsible for administering and enforcing the FLSA, issues regulatory guidance on worker classification that has varied with different presidential administrations, particularly in recent years. On May 1, 2025, DOL announced it will no longer apply its January 2024 guidance regarding independent-contractor classification under the FLSA, signaling yet another shift in the regulatory winds regarding this hotly contested topic.

Worker Classification Under the FLSA

The FLSA establishes various workplace rights for many private and public sector employees, including the federal minimum wage, 29 U.S.C. § 206, and overtime pay, 29 U.S.C. § 207. However, these protections cover only employees, not "independent contractors" — a term that is not defined in the FLSA or its implementing regulations. In the absence of a clear standard for independent-contractor classification, federal courts have "focus[ed] on whether, as a matter of economic reality, the worker is economically dependent upon the alleged employer or is instead in business for himself." *Hopkins v. Cornerstone Am.*, 545 F.3d 338, 343 (5th Cir. 2008), *cert den.*, 129 S.Ct. 1635 (2009). The DOL, which is responsible for administering and enforcing the FLSA, has traditionally applied a similar "economic reality" test when tasked with interpreting which workers may be properly classified as independent contractors. In July 2008, the Bush-era DOL issued Fact Sheet #13 highlighting seven economic-reality factors the agency deemed "significant":

1. The extent to which the services rendered are an integral part of the principal's business;
2. The permanency of the relationship;
3. The amount of the alleged contractor's investment in facilities and equipment;
4. The nature and degree of control by the principal;
5. The alleged contractor's opportunities for profit and loss;
6. The amount of initiative, judgment, or foresight in open market competition with others required for the success of the claimed independent contractor; and
7. The degree of independent business organization and operation.

DOL Fact Sheet #13: Employment Relationship Under the Fair Labor Standards Act (FLSA), *available at* https://www.dol.gov/sites/dolgov/files/WHD/fact-sheets/whdfs13.pdf; *see also* DOL Opinion Letter 2019-6 at 5, *available at* https://www.dol.gov/sites/dolgov/files/WHD/opinion-letters/FLSA/FLSA2019-6.pdf (describing "six factors derived from Supreme Court precedent" that DOL applies when evaluating a worker's "economic dependence" on his or her employer).

The 2021 Rule

At the end of the first Trump administration, DOL promulgated a business-friendly rule that made it easier for employers to classify workers as independent contractors. 86 Fed. Reg. 1168 (Jan. 7, 2021) (2021 Rule). The 2021 Rule prioritized "two core factors" over all others: (1) The nature and degree of the worker's control over the work; and (2) The worker's opportunity for profit or loss. 86 Fed. Reg. at 1168. DOL claimed that these two factors were "more probative of the question of economic dependence" than the other traditional economic reality factors and should "carry greater weight in the analysis than any others." Id. The 2021 Rule was widely viewed as a more lenient standard that, for better or worse, made it easier for businesses to classify workers as independent contractors. However, DOL rescinded the 2021 Rule after President Biden took office on Jan. 20, 2021. See 86 Fed. Reg. 24303 (May 6, 2021).

The 2024 Rule

On Jan. 10, 2024, the Biden-era DOL issued a new final rule regarding independent contractor classification under the FLSA. 89 Fed. Reg. 1638 (Jan. 10, 2024) (2024 Rule). DOL cited concerns about the 2021 Rule's material departure from "the longstanding analysis applied by courts" regarding independent-contractor classification and the prevalence of employee misclassification under the FLSA. 89 Fed. Reg. at 1653-1660. The 2024 Rule returned to a fact-based "totality-of-the-circumstances" test based on six non-exclusive factors:

(1) Opportunity for profit or loss depending on managerial skill;

(2) Investments by the worker

and the potential employer;

(3) Degree of permanence of the work relationship;

(4) Nature and degree of control;

(5) Extent to which the work performed is an integral part of the potential employer's business; and

(6) Skill and initiative.

89 Fed. Reg. 1638, 1742-1743.

The 2024 Rule provided that other factors could be taken into consideration so long as they "in some way indicate whether the worker is in business for themself, as opposed to being economically dependent on the potential employer for work." *Id*. at 1743. Numerous employers and business groups challenged the 2024 Rule, and at least five related lawsuits are still pending across the country, including in the Fifth Circuit (*Frisard's Transportation, LLC v. LABR*, No. 2:24-CV-347 (5th Cir. Apr. 8, 2024)).

DOL's Revocation of the 2024 Rule

On May 1, 2025, DOL announced that it "will no longer apply the 2024 Rule's analysis when determining employee versus independent-contractor status in FLSA investigations." DOL Field Assistance Bulletin No. 2025-1 (May 1, 2025), *available at* https://www.dol.gov/sites/dolgov/files/WHD/fab/fab2025-1.pdf (FAB). Instead, DOL will apply the economic-reality factors described in Fact Sheet #13 and DOL Opinion Letter FLSA2019-6 when determining independent-contractor status in ongoing FLSA enforcement matters. However, the 2024 Rule will still apply in private FLSA litigation "[u]ntil further action is taken" by DOL.

Looking Forward

DOL has not formally rescinded the 2024 Rule just yet, nor has it proposed a new rule regarding independent contractors to replace it. However, a new proposed rule is almost certainly forthcoming: as stated in the FAB, DOL is actively "reviewing and developing the appropriate standard for determining FLSA employee versus independent contractor status." It is probable – though by no means certain – that the second Trump administration's DOL will attempt to resurrect the 2021 Rule developed during the first Trump administration. It is also unclear if DOL's shifting stances will have a significant impact on private FLSA classification lawsuits, particularly given the death of *Chevron* deference brought about by the Supreme Court in *Loper Bright Enter. v. Raimondo*, 144 S.Ct. 2244 (2024). In any event, the DOL's shifting regulatory guidance since early 2021 highlights the volatile nature of policymaking, particularly when it comes to the American workforce. For employers, workers and labor organizations alike, the only certainty appears to be continued uncertainty.

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Mineral Law

Louisiana Court Says Pipeline Owner Cannot Block Pipeline Crossings

In *Louisiana Energy Gateway LLC v. Trunkline Gas Co.*, 24-0544 (La. App. 3 Cir. 4/2/25), ___So.3d___, 2025 WL 982045, the defendants—the owners of existing natural gas pipelines—asserted that the plaintiff could not construct a new gas pipeline that crossed under the defendants' existing pipelines without getting consent from the defendants. The trial court disagreed and granted a judgment for the plaintiff. The Louisiana Third Circuit Court of Appeal affirmed.

Background

The defendants own existing natural gas pipelines that carry gas from northwest Louisiana to southwest Louisiana. The plaintiff is the owner of the Louisiana Energy Gateway project, which will consist of a 176-mile natural gas pipeline that runs from northeast Texas to southwest Louisiana. The plaintiff's pipeline will cross under the defendants' pipelines in about 42 locations, including three locations in Beauregard Parish.

The defendants' pipelines in Beauregard Parish were built pursuant to a conventional servitude executed in 1950 that granted them "a right-of-way and easement to construct, lay, maintain, operate, alter, repair, … and replace pipe lines … for the transportation of oil, gas, petroleum products or any other … substances which can be transported through pipe lines." The 1950 agreement provided that the landowners could "[f]ully use and enjoy said premises except for the purposes herein granted to the said Grantee and provided Grantor shall not construct or permit to be constructed any house, structures or obstructions on or over that will interfere with the construction, maintenance or operation of any pipe line or appurtenances constructed hereunder…."

The plaintiff contacted the defendants about constructing pipelines that cross under the defendants' pipelines. The parties had discussions but could not reach an agreement, and the defendants asserted that the plaintiff could not construct pipelines crossing under the defendants' pipelines without the defendants' consent.

The litigation

The plaintiff filed suit, seeking an injunction to prohibit the defendants from interfering with the plaintiff's construction of its pipeline within Beauregard, including the portions that would cross under the defendants' pipelines. After a trial, the district court issued a judgment that granted the permanent injunction the plaintiff sought. The defendants appealed.

The 3rd Circuit noted that, under Louisiana law, servitudes are not presumed to give the servitude owner an exclusive right to use the land. Parties can agree to the granting of an exclusive servitude, but the defendants' 1950 servitude agreement did not purport to be "exclusive." Further, the servitude agreement did not expressly prohibit pipeline crossings or require the landowner to obtain the defendants' consent prior to authorizing a pipeline crossing. The servitude agreement does prohibit the landowner from making or authorizing constructions that would "interfere with" the defendants' servitude rights, but the district court had held a trial and made a factual finding that the plaintiff's pipeline crossings would not interfere with the defendants' pipeline operations. For these reasons, the 3rd Circuit affirmed the district court's judgment that granted a permanent injunction, barring the defendants from interfering with the plaintiff's construction of its pipeline within Beauregard Parish, including the portions that crossed under the defendants' pipelines.

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Evidence Of Informed Consent

Cantrelle v. Sargent, 24-1545 (La. 04/08/25), 404 So.3d 642.

A medical-review panel concluded that the defendant, Dr. William Sargent, did not breach any standard of care. The plaintiff, Valarie Cantrelle, then filed a lawsuit that was met with the defendant's motion for bond for medical-review-panel costs, pursuant to La. R.S. 40:12311.8(I)(c), which requires a plaintiff to post a cash or surety bond when a panel unanimously rules in favor of the healthcare provider. The parties then entered into a "consent judgment" that required Cantrelle to post a cash or security bond by August 9, 2024. The consent judgment further provided that no action could be taken in the case until the bond was posted, and if plaintiff failed to meet the deadline, "then Defendant may file an ex parte motion to dismiss the suit, which shall be granted without the need of a hearing." *Id.* at 642.

The plaintiff did not post the bond by August 9, 2024, so the defendant filed an ex parte motion to dismiss the claim with prejudice. On August 26, 2024, the plaintiff filed an opposition to the motion to dismiss, contending that "[u]nfortunately, due to unforeseen circumstances, the plaintiff was not able to meet the August 9, 2024 deadline." She then posted the bond that day.

The district court denied the defendant's motion to dismiss, and the court of appeal denied the defendant's writ. The Louisiana Supreme Court granted the defendant's writ and granted his motion to dismiss, reversing the lower court rulings. The court observed: "A judgment, whether it results from the assent of the parties or is the result of a judicial determination after a trial on the merits, is and should be accorded sanctity under the law." *Id.* at 643. The plaintiff's failure to meet the requirements of the "bilateral contract" required the court to "give effect to consent judgment and grant defendant's ex parte motion to dismiss the suit." *Id.*

Immunity Under The LHEPA

Welch v. United Med. Healthwest–New Orleans LLC, 24-0899 (La. 3/21/25), 403 So.3d 554.

Plaintiff, Kathleen Welch, filed a medical malpractice claim against United Medical Physical Rehabilitation Hospital, alleging that she developed pressure ulcers due to ordinary negligence while under its care from April 16 to May 6, 2020—after the COVID-19 public-health emergency was declared by the Governor on March 11, 2020. In response, the defendant invoked La. R.S. 29:771(B)(2)(c)(i), a provision under the Louisiana Health Emergency Powers Act (LHEPA) that limits liability for healthcare providers during a declared public-health emergency to cases involving gross negligence or willful misconduct.

The trial court dismissed Welch's claim, finding that she failed to meet the gross negligence threshold. The court of appeal affirmed the dismissal but remanded for a ruling on the constitutional claims that Welch raised in her opposition to the defendant's exceptions. Welch amended her petition and challenged the constitutionality of the statute, asserting violations of due process, the right of access to the courts under the Louisiana Constitution, and alleging that the provision constituted an unconstitutional special or overbroad law.

The trial court upheld the statute's constitutionality, and the court of appeal affirmed. The Louisiana Supreme Court granted the writ and likewise upheld the constitutionality of La. R.S. 29:771(B)(2)(c)(i), applying a rational-basis review. The court found the statute to be reasonably related to the legitimate state interest of ensuring continued access to healthcare services during emergencies. Because Welch's injuries occurred after both the declaration of the public-health emergency and the enactment of the statute, the court concluded that her claims did not implicate any vested right.

The court also rejected arguments that the statute was a prohibited "special law," noting that it applied uniformly to all healthcare providers, and dismissed the overbreadth challenge as inapplicable outside of First Amendment contexts.

Justices Griffin and Knoll dissented. Justice Griffin contended that immunity should apply only in instances in which the negligence specifically arose from emergency-related medical care. Justice Knoll concurred in that reasoning and emphasized that the case should have been resolved on statutory interpretation, rather than constitutional grounds, as Welch's care was unrelated to the public-health emergency – COVID-19.

The Court affirmed the dismissal of Welch's claim.

See also: *Cortes v. Univ. Healthcare Sys.,* 24-0543 (La. App. 5 Cir. 4/2/25), ___ So.3d ___, 2025 WL 999776. The Louisiana Fifth Circuit Court of Appeal remanded to enable the plaintiff to amend her petition to address the gross negligence standard under the LHEPA as raised by the defendants as an affirmative defense to the plaintiff's original petition.

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Solar Tax Credit Suit Seeking Class Action Dismissed as Moot

Gross v. Richard, BTA Docket No. 13677D (5/7/25).

Sarah Gross, individually and on behalf of all other similarly situated individuals, brought suit in tort and contract to have La. R.S. 47:6030, the Solar Energy System Tax Credit, and any other "post hoc limitation, restriction or requirement" thereon, declared unconstitutional. Gross also asked for consequential damages suffered due to the delayed payment of the credit because of the retroactive application of La. R.S. 47:6030, as amended by 2015 Act 131.

In a prior hearing before the Louisiana Board of Tax Appeals (BTA), the BTA granted an exception of no cause of action filed by the Louisiana Department of Revenue, finding Gross' claims based on theories of negligence, conversion and contract did not properly arise within the tax code. The BTA allowed Gross an opportunity to amend to raise any claims that arise under Louisiana's laws related to taxes and fees or pursuant to the BTA's jurisdiction over claims against the state. Gross amended the petition to add claims against the state under La. R.S. 47:1621 for delayed damages based on detrimental reliance and statutory interest. The Department filed exceptions of prescription, mootness, no cause of action, no right of action and lack of procedural capacity in response to the amended petition.

The BTA considered the mootness exception in light of the Louisiana Supreme Court's ruling in *Ulrich v. Robinson*, 18-0534 (La. 3/26/19), 282 So.3d 180, which considered similar arguments to those raised by Gross regarding the credit. The BTA noted that the Louisiana Supreme Court had already found the voluntary-cessation exception to the mootness doctrine does not apply to the curative effects of Act 413 (which provided additional funding to pay credits that had been deferred due to Act 131 credit caps). Further, the court had already found the collateral-consequences doctrine does not apply to claimants whose sole claim for relief was a declaration that Act 131 is unconstitutional.

The issue before the BTA was whether Gross' purported consequential-damage claims distinguish this case from *Ulrich*. Gross maintained that her claims are in the nature of the secondary claims that did not exist in *Ulrich*. The BTA disagreed. The BTA noted that the court in *Ulrich* had addressed the same arguments that Gross was making. In *Ulrich*, the court held that the 19th JDC erred in improperly conflating the constitutional argument relative to Act 131's elimination of the tax credits with the concept of damages and a consideration of whether the enactment of Act 413 made the plaintiffs whole. Moreover, the court held that Act 413 reinstated the plaintiffs' right to the full amount of the tax credit. Thus, under *Ulrich*, claims for delay damages and interest resulting from the deferral of the credit do not trigger the collateral-consequences exception to the mootness doctrine. The BTA held the factual and statutory timeframe for the Gross and the *Ulrich* plaintiffs were the same with respect to Act 413 and its effects on interest on the credits. The BTA held the result for Gross must be the same as it was for the plaintiffs in *Ulrich*. The BTA dismissed the matter as moot. Because of the ruling, the BTA did not reach the Department's remaining exceptions.

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First Circuit Upholds BTA's Ruling on Nontaxability of Purchases for Nursing Home Meals

Camelot of N. Oaks, LLC v. Tangipahoa Par. Sch. Sys., Sales & Use Tax Div., 24-0840 (La. App. 1 Cir. 5/22/25), 2025 WL 1477685 (unpublished).

The First Circuit Court of Appeal of Louisiana affirmed the BTA ruling in favor of Camelot of North Oaks, LLC, Kentwood Manor Nursing Home, LLC and Summerfield of Hammond, LLC (Taxpayers), against the Tangipahoa Parish School System, Sales and Use Tax Division (Collector).

The Taxpayers, licensed as nursing homes and an Adult Residential Care Provider by the Louisiana Department of Health and Hospitals (DHH), are required to provide residents with meals. The Taxpayers contract with residents to provide daily meals, along with other services, for a lump-sum fee. During the periods at issue, the Taxpayers paid state and local sales-and-use taxes on purchases of ingredients used to prepare the meals. After internal audits, the Taxpayers filed refund claims for sales taxes they paid on the ingredients, arguing that the purchase of the ingredients was a nontaxable "sale for resale" under La. R.S. 47:301(10)(a)(ii). The Collector denied the refunds on the basis that the meals were not sold to the Taxpayers' residents and, as such, the Taxpayers were the end users of the ingredients.

The BTA ruled in the Taxpayers' favor, finding that the "sale" definition at La. R.S. 47:301(12) includes "furnishing, preparing or serving, for a consideration, of any tangible personal property, consumed on the premises ... ." Further, the absence of separate itemization of the meals among the various services provided for a lump-sum fee was not fatal to the Taxpayers' argument. The Collector appealed.

The 1st Circuit agreed with the BTA and concluded that the meals were sold to the Taxpayers' residents and thus the purchase of the ingredients was a nontaxable purchase for resale because the ingredient costs were factored into residents' lump-sum fees, and the meals would not be provided without payment of those fees. In so holding, the Court rejected the Collector's reliance on *S & R Hotels v. Fitch,* 25,690 (La. App. 2 Cir. 3/3o/94), 634 So.2d 922, in which a luxury hotel's purchases of ingredients used to provide complimentary food to guests was held taxable. The Taxpayers case differed from *Fitch* because the Taxpayers were required by DHH to provide the meals and the Taxpayers sold the meals to residents.

In addition, the 1st Circuit concluded that La. R.S. 47:305(D)(2)(a)(ii), which exempts sales of meals to the staff and patients of hospitals and to the staff and residents of nursing homes, adult-residential-care providers and continuing-care retirement communities, applied. Therefore, the Taxpayers' sales of meals to residents were exempt from sales tax. The court's conclusion relied on *City of Baton Rouge v. Mississippi Valley Food Service Corp.*, 396 So.2d 353 (La. App. 1 Cir. 1981), which held that a hospital's purchases from a contracted food vendor were entitled to the exemption under La. R.S. 47:305(D)(2)(a)(ii) because the exemption would otherwise be nullified if hospitals were required to pay tax and pass on the cost to residents. Because there was no dispute that the Taxpayers were licensed by DHH and sold meals to residents as required by DHH, the court concluded there was no genuine issue of material fact and the Taxpayers were entitled to the exemption under La. R.S. 47:305(D)(2)(a)(ii) as a matter of law. The court therefore affirmed the BTA's judgment.

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