Bankruptcy Law

In *re Babcock & Wilcox*: Bankruptcy Court Limits Scope of Plan Discharge

On June 13, 2026, Judge Meredith S. Grabill of the U.S. Bankruptcy Court for the Eastern District of Louisiana issued a memorandum opinion and order in adversary proceeding No. 21-1014 in the reopened case of *In re Babcock & Wilcox Co.*, Case No. 00-10992. The Reorganized Babcock & Wilcox sought a declaratory judgment that products-liability claims asserted against it in a Pennsylvania state court action by Philadelphia Energy Solutions Refining & Marketing, LLC and PES Liquidating Trust (collectively PES) were discharged by the confirmed joint plan of reorganization of Babcock & Wilcox (B&W), which became effective on February 22, 2006. PES' claims arose from a June 21, 2019, explosion at the Girard Point Refinery, allegedly caused by the failure of an elbow joint manufactured by B&W and installed in the refinery's hydrofluoric-acid alkylation unit in the early 1970s.

After a four-day trial, the court denied the Reorganized B&W's declaratory action, holding that PES' products-liability claims are not prepetition bankruptcy claims discharged by the confirmed joint plan. The court placed the burden of proof on PES as the party seeking to be excepted from the consequences of the confirmation order, following the reasoning of *In re Waterman Steamship Corp.*, 200 B.R. 770 (Bankr. S.D.N.Y. 1996).

The court first addressed whether PES was bound by the confirmed joint plan at all. Applying the 5th Circuit's res judicata framework, the court found sufficient identity between Sunoco — which had received actual notice of B&W's bankruptcy, participated in the case and filed a proof of claim — and PES, which was a joint venturer with or successor-in-interest to Sunoco's interest in the Girard Point Refinery. The court therefore concluded that PES would be bound by the discharge injunction if the claims at issue were indeed prepetition bankruptcy claims. The court then turned to the central issue and applied the 5th Circuit's "prepetition-relationship" test from *Lemelle v. Universal Mfg. Corp.*, 18 F.3d 1268, 1277 (5th Cir. 1994), which requires "some prepetition relationship, such as contact, exposure, impact or privity, between the debtor's prepetition conduct and the claimant." The court identified two conditions that must exist for a future claim to qualify as a dischargeable prepetition claim: first, the future injury must be relatively certain to manifest itself at some point and be attributable to the debtor; and second, the debtor must be able to identify the claimant to provide notice sufficient to satisfy due process.

The court found on the critical first prong that the injury caused by the T-1 Elbow's failure was not relatively certain to manifest at any point during B&W's bankruptcy case. The evidence established that the industry was only beginning to understand the impact of residual elements such as nickel and copper on carbon-steel piping in hydrofluoric-acid environments in the early 2000s, and operators were reasonable in assuming that pre-1985 piping was made of high-purity carbon steel and thus extremely resistant to corrosion. Inspection programs at the refinery complied with recognized and generally accepted good engineering practices and revealed no corrosion concerns in the relevant circuit as late as 2001. The T-1 Elbow performed for over 45 years before the 2019 explosion, and no statistical or other evidence suggested it was destined to fail. The court also rejected the Reorganized B&W's argument that broadly worded plan definitions of "Claim" and "Contingent Claim" could independently discharge all future claims, holding that due process requires the independent application of the prepetition-relationship test regardless of plan language.

Thus, for bankruptcy and restructuring counsel, the opinion makes clear that broadly drafted discharge and injunction provisions may not, standing alone, insulate a reorganized debtor from post-confirmation liability. Practitioners drafting plans of reorganization for manufacturing debtors or other companies with long-lived products in the market should not rely exclusively on sweeping plan language to capture future tort exposure. Instead, debtors' counsel should conduct a diligent prepetition analysis of the debtors' product portfolio, identify categories of products that could foreseeably give rise to future injury claims and build a record during the case that demonstrates whether each category of potential future claim satisfies both prongs of the prepetition-relationship test. Where the foreseeability prong cannot be established, counsel should advise clients that those claims will survive discharge and plan accordingly rather than assuming the plan's discharge injunction will provide a complete shield.

The ruling underscores the importance of notice in the bankruptcy case itself. Because the court assessed foreseeability based on the state of scientific and engineering knowledge available during the pendency of the bankruptcy case, counsel should document what was known and knowable about product risks at the time of filing and confirmation. The existence of a contemporaneous record could be critical in any future proceeding regarding the scope of the discharge. On the creditors' side, the decision equips tort claimants' counsel with a framework for challenging discharge in cases involving latent product defects — particularly where the risk was not scientifically understood during the bankruptcy proceeding and the injury manifested simultaneously with its discovery, years after confirmation.

Finally, the opinion is persuasive and directly applicable authority across all Louisiana federal courts. For state-court litigation practitioners, the ruling confirms that bankruptcy courts will not automatically enjoin post-confirmation tort actions where the prepetition-relationship test is not satisfied, preserving the ability to pursue products-liability claims in forums like the Pennsylvania state court action at issue.

– **Christopher T. Caplinger**
Chair, Bankruptcy Law Section
Kean Miller, LLP
909 Poydras St. Ste. 3600
New Orleans, LA 70112

Environmental Law

State or Federal Court? It Depends.

In 2013 and the years following, various parish governments brought 42 distinct lawsuits against oil-and-gas companies alleging violations of the State and Local Coastal Resources Management Act of 1978 (La. R.S. 49:214.21–214.42). By and large, these suits alleged that oil-and-gas exploration and development in Louisiana's coastal zone — going back to its origins in the early twentieth century — damaged the integrity of the state's defenses against storms and rising sea levels. The suits sought to force the companies to commit substantial sums (or in-kind remediation) to the protection and restoration of Louisiana's coastal zone. In the succeeding 13 years, two of those cases went to trial. During that same time, all, then most, and then a few of the cases originally filed in respective state district courts have been removed to and remanded from federal court. By the early 2020s, the handful of cases still remaining in federal court were there under a theory that the subject companies or their corporate ancestors were acting under the color of a federal officer due to activities undertaken in the area during World War II and thus were entitled to federal court jurisdiction.

The removals giving rise to the recent U.S. Supreme Court opinion in *Chevron USA Inc. v. Plaquemines Parish, La.*, 146 S.Ct. 1052 (2026), were based on allegations in a preliminary plaintiffs' expert report that stated that Chevron used earthen pits instead of steel tanks, used canals instead of building roads and used vertical drilling techniques — all of which allegedly contributed to environmental damage — during their wartime exploration and development activities. The defendant companies argued that the same report alleged that they were in "'bad faith' and failed to protect the 'marshland from contamination and excessive land losses.'" *Id*. at 1059. Because these alleged activities occurred partially related to wartime activity, the defendants maintained that the suits sounded in federal rather than state jurisdiction.

Specifically, several of the companies' arguments ran thusly: Pursuant to direction from Franklin D. Roosevelt's Petroleum Administration for War (PAW), companies such as Chevron and its predecessors were directed to refine crude oil into special aviation fuel called "avgas" to support the U.S. war effort. As quoted by the Supreme Court, PAW, which was vested with oversight of the entire petroleum industry, declared, "[F]orget economic considerations — forget everything except getting out more and more … [avgas] as quickly as you can." *Id.* at 1058. As the modern lawsuits were further honed regarding their jurisdictional bases, the cases moved back and forth between federal and state court for several years.

Ultimately, the basic theory of many of the parishes' suits that avgas (among other things) derived from crude-oil exploration and development from damaging activity in Louisiana's coastal marshes was the nexus of the jurisdictional dispute. Thus, the legal question of whether the exploration and development activity was "relating to" the federal wartime directive for refining became the critical focal point of the cases. Several judges in the Eastern and Western Districts of Louisiana, following removal on the theory that the exploration and development was related to the refining, remanded the cases, finding no meaningful relationship between the refining on behalf of the federal government and the exploration and development of the oil from Louisiana's coastal zone sufficient to support federal jurisdiction. The federal Fifth Circuit Court of Appeals agreed with the lower courts. The U.S. Supreme Court granted certiorari for the 2025-2026 term, hearing arguments of the parties on January 12, 2026. The Supreme Court reversed these decisions.

For its part, in support of its conclusion that Chevron's activity was "related to" avgas refining, the Court observed: "In this all-hands-on-deck, wartime context, Chevron needed to produce more crude oil as quickly as possible to facilitate more avgas refining, including its own." *Id.* at 1062. From this directive, Chevron, its contemporaries, and their corporate ancestors were, at least as to the refining, acting "under color of" a federal officer (i.e., PAW). On the refining end, the Supreme Court noted, "In 1942, Chevron was refining 4,000 barrels of crude oil per day from fields in Plaquemines Parish." *Id*. at 1058. Based on this support, the Court concurred that the theory of refining under color of a federal officer was not in dispute in these cases, largely because the refining was not the subject activity challenged by the lawsuits.

What was challenged was the exploration for and development of crude oil from Louisiana's coastal zone. Thus, whether some of the defendants in these coastal lawsuits were entitled to try the cases in federal court revolved around whether the exploration for and development of crude oil in Louisiana's coastal zone was similarly classified — as was the refining activity — as unquestionably representing an action "for or relating to any act under color" of a federal officer (28 U.S.C. 1442(a)(1)).

In a unanimous decision authored by Justice Clarence Thomas on April 17, 2026, the Court held that, in this situation, there was a sufficient connection between the refining of avgas and the exploration and development of crude oil from Louisiana's coastal zone such that the exploration and development of crude oil was sufficiently "relating to" avgas refining to warrant federal court jurisdiction under 28 U.S.C. 1442(a)(1). *Id*. at 1057. Accordingly, this case and the other similarly situated cases would remain in federal court.

Thus, whether Louisiana's coastal cases will end up in state or federal court is somewhat clearer than it was 13 years ago and depends on the involvement of the exploration-and-development activities in World War II-era refining activities. Cases involving parties operating under the World War II directives to produce avgas will likely remain in federal court. For many of the other suits, the removal delay has lapsed or the underlying facts are different, and they will most likely remain in state court.

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

Custody – Joint Custody Implementation Orders

Crovetto v. Crovetto, 26-0131 (La. App. 5 Cir. 05/08/26), ___ So.3d ___, 2026 WL 1262545.

Danielle Crovetto appealed a judgment awarding her and Giuseppe Crovetto equal shared custody of their children. Ms. Crovetto argued that the trial court failed to render a legally sufficient joint custody implementation order under La. R.S. 9:335, failed to properly analyze the children's best interests and erred in its school-placement determination.

The 5th Circuit vacated the judgment and remanded, holding that the trial court failed to render a legally sufficient joint custody implementation order because it failed to allocate the legal authority and responsibility for the children, declined to designate a domiciliary parent without articulating good cause and omitted the emergency evacuation provision required by La. R.S. 9:335. The court declined to conduct a de novo review because resolution of the custody issues depended heavily upon witness credibility and factual determinations.

Custody – Modification

Lepetich v. Lepetich, 26-0160 (La. App. 4 Cir. 04/06/26), ___ So.3d ___, 2026 WL 925612.

Malena Lepetich sought supervisory review of a judgment modifying an earlier temporary custody order awarding her sole custody of their children. She argued that, among other things, Mathew Lepetich's motion to modify failed to state a cause of action because "the allegations are not true and lack evidentiary proof," and that he failed to satisfy the heightened burden for custody modification under *Bergeron v. Bergeron*.

The 4th Circuit exercised its supervisory jurisdiction but denied the writ application. The court held that Mr. Lepetich's motion sufficiently alleged a material change in circumstances. In doing so, the court emphasized that an exception of no cause of action tests the legal sufficiency of the pleadings and does not consider whether the allegations are true or supported by sufficient evidence. The court further held that *Bergeron* did not apply because the judgment at issue was a temporary custody order rather than a considered permanent decree. Applying the standard governing modification of interim custody orders, the court found no abuse of discretion in the trial court's determination that changed circumstances and the children's best interests supported modification of the temporary custody arrangement.

Custody – Nonparents

J.P. v. L.T., 25-0482 (La. App. 1 Cir. 04/30/26), ___ So.3d ___, 2026 WL 1191824.

J.P., a nonparent who had obtained temporary sole custody of a child pursuant to an ex parte order, appealed a judgment dismissing her petition for sole custody. J.P. argued, among other things, that the trial court erred by failing to consider the best-interest inquiry and factors of Louisiana Civil Code articles 131 and 134, by failing to apply the standard governing modification of a consent custody decree, and by improperly modifying custody through an ex parte procedure.

The 1st Circuit affirmed. The court held that the matter was an initial custody dispute between a parent and a nonparent governed by article 133, under which J.P. bore the burden of proving by clear and convincing evidence that an award of custody to the biological mother would result in substantial harm to the child. Because the trial court reasonably found that J.P. failed to meet that burden, it was not required to proceed to a best-interest analysis under articles 131 and 134. The court further held that the consent judgment between J.P. and the child's father did not require application of the standard governing modification of consent custody decrees because the mother was not a party to that agreement. The court also rejected J.P.'s reliance on Louisiana Code of Civil Procedure article, explaining that the judgment under review was rendered after an adversarial custody hearing and was not an ex parte custody order.

Custody – UCCJEA

Morris v. Morris, 25-0746 (La. App. 3 Cir. 05/13/26), ___ So.3d ___, 2026 WL 1322044.

Mason Morris appealed a judgment denying his petition to make executory in Louisiana an Alabama divorce and custody judgment awarding him sole legal and physical custody of the parties' daughter. Mr. Morris argued that Alabama's jurisdiction over the custody proceedings had already been conclusively determined and could not be relitigated in Louisiana.

The 3rd Circuit reversed and remanded. The court held that Alabama's prior determination of its own jurisdiction constituted a valid final judgment entitled to res judicata effect. The court further held that its prior decision recognizing Alabama's exclusive, continuing jurisdiction constituted law of the case and precluded further litigation of the jurisdictional issue in Louisiana.

Child Support

Simon v. Zaunbrecher, 25-0576 (La. App. 3 Cir. 04/08/26), ___ So.3d ___, 2026 WL 947303.

Burton Zaunbrecher appealed a judgment requiring him, a nonparty, to produce attorney-fee invoices he paid on behalf of his ex-wife, Sarah Zaunbrecher, in litigation with Scottie Simon. Mr. Zaunbrecher argued the invoices were not discoverable because they were protected by the attorney-client privilege, irrelevant to child support and sought from a third party.

The 3rd Circuit affirmed in part, reversed in part, and remanded with instructions. The court held that the trial court did not abuse its discretion in ordering production of the invoices for in camera review to determine whether they satisfied the requirements of Louisiana Code of Evidence article 506(B). The court also found no abuse of discretion in ordering the invoices produced for the court's review because Mr. Simon alleged that payments made on Ms. Zaunbrecher's behalf could be relevant to determining her income for purposes of child support. However, the court held the trial court erred by ordering redacted copies produced to Mr. Simon before conducting the in camera review and determining whether the invoices were subject to attorney-client privilege.

Hebert v. Hebert, 25-0843 (La. App. 4 Cir. 04/13/26), ___ So.3d ___, 2026 WL 982913.

Judy Hebert appealed an order dismissing her claim for child support as abandoned. Ms. Hebert argued that multiple motions to continue and reset the child support hearing constituted steps in the prosecution of the action and interrupted abandonment under Louisiana Code of Civil Procedure article 561.

The 4th Circuit reversed and remanded. Relying on *Board of Supervisors of Louisiana State University & Agricultural & Mechechanical College v. Bickham*, 23-1364 (La. 10/25/24), 395 So.3d 792, the court held that motions to continue accompanied by orders resetting hearing dates constitute steps in the prosecution of a case because they advance the matter toward judgment. The court found that the last qualifying step occurred in September 2022, when the parties reset the child support hearing to a specific future date. Accordingly, the trial court erred in concluding the child support claim had been abandoned and prematurely dismissed the action.

Scaife v. Scaife, 25-0735 (La. App. 3 Cir. 05/20/26), ___ So.3d ___, 2026 WL 1407815.

Timothy Scaife appealed a judgment establishing his child support obligation. Mr. Scaife argued that, among other things, the trial court erred in finding him voluntarily underemployed and in imputing income from an inflatable-rental business and a vacant residence he owned.

The 3rd Circuit affirmed. The court found no manifest error in the trial court's determination that Mr. Scaife was voluntarily underemployed despite his testimony that a disabling back injury prevented him from working. The court noted that the evidence showed he remained active in farming and other outdoor activities. The court further upheld the imputation of income from Mr. Scaife's inflatables-rental business and potential rental income from a vacant second home. In doing so, the court found no abuse of discretion in the trial court's rejection of Mr. Scaife's testimony that the residence was not rentable, noting evidence that the home had previously been occupied by a family friend.

Contempt

Bridges v. Jones, 25-1192 (La. App. 1 Cir. 05/20/26), ___ So.3d ___, 2026 WL 1428709.

Brandon Jones appealed a judgment holding him in constructive contempt for failing to comply with a court order requiring him to produce funds necessary to complete the sale of immovable property he co-owned with his former wife, Kashanna Bridges.

The 1st Circuit reversed and remanded with instructions. The court did not reach the merits of the trial court's judgment that found Mr. Jones in constructive contempt, finding instead that the trial court failed to comply with the mandatory procedures governing constructive contempt proceedings under Louisiana Code of Civil Procedure article 225. The court noted that no rule to show cause was issued stating the facts constituting the alleged contempt and that Mr. Jones was not provided the notice and opportunity to defend required by article 225 before being adjudged guilty of contempt.

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

Labor and Employment Law

Essential Employer Technology Policies in Today's "WFH" ChatGPT Workforce

It has been said that millennials are the last generation to remember life before the internet, and that millennials form the bridge between the pre- and post-internet generations. It is no secret in my office, though, that I, a millennial raised in a small town in Louisiana with dial-up internet and AOL, despise keeping up with advances in technology. However, an employer's failure to stay informed about new technologies can lead to legal exposure or outdated policies that do not match the reality of the workplace. This article seeks to provide a practical overview for drafting essential technology policies that an employer in Louisiana should consider implementing after thoughtful consideration of the realities of its workplace.

Generative AI Policy

As artificial intelligence (AI) technology develops at a staggering pace, our employer clients grapple with "keeping up with the times" while also avoiding the risks with "generative AI." Generative AI uses a language-learning model to create new content, including images, video, audio, text or computer code. Examples include ChatGPT, Google Gemini and Claude.

Due to the breadth of uses for generative AI in the employment space, including recruitment, onboarding, payroll, email drafting, document summarization and meeting transcription, employers should consider drafting a policy that addresses its use in a way that aligns with the employer's preferences. Although outside the scope of this article, employers should also familiarize themselves with the latest guidance and legal challenges on the use of generative AI in wage-and-hour compliance and its potentially discriminatory use in talent searches.

When drafting a policy regarding generative AI, an employer should include guidelines, including authorized and unauthorized uses, to balance productivity with technology and privacy concerns. At a minimum, such a policy should include a requirement that the employee thoroughly review all outputs from generative AI, especially with its tendency to fabricate information, to (1) ensure it does not contain biased discriminatory content, (2) confirm it does not use or disclose confidential information and (3) verify the accuracy with primary sources.

Another consideration is whether the employer wants to require and implement mandatory training *prior to* use of generative AI by any employee. It can be worth the time and expense to train employees at the front-end when some might be unfamiliar or inexperienced with generative AI. The employer should also conduct regular audits to ensure that generative AI is not being misused by employees.

Information Technology Policy

A comprehensive information technology (IT) and communications-systems policy (an IT policy) that conditions an employee's continued employment on compliance is crucial in today's technology driven world. Of particular importance is the need to protect the employer from hackers who can upend the entire network. These invasions often start with an employee who was uninformed about sophisticated phishing and spam e-mails. In addition to training, another way to combat this threat is by requiring strong passwords, frequent password changes and multi-factor authentication in a well-written policy. Practically, this policy should be balanced by an IT administrator who has access to all IT in the event of sudden employee departure or unavailability.

When drafting the IT policy, employers should consider whether to include provisions that disallow logging into someone else's account, downloading software from the web (which may include viruses or malware) and infringing on confidentiality rights or third-party copyrights, trademarks or patents. With the different methods of communication, including email, text messaging, "chats" such as Slack and Teams, internet, social media use, telephone and voicemail, it is important to also consider whether personal use of these communication methods is allowed while employees are "on the clock." For policy drafting purposes, it should be explicitly written that the company will monitor all websites visited and that employees should have no expectation of privacy while using the employer's IT systems.

Remote Work Policy

The option for remote work, or its counterpart of "hybrid" work, has become exponentially prevalent with advances in technology. Therefore, we recommend to our clients that they include a remote-work policy, if applicable, as part of their technology policies.

A thorough remote-work policy clearly defines eligibility, procedures for requesting approval, employee responsibilities and employer expectations. Such a policy should also address specifics related to timekeeping practices, including set work hours for non-exempt employees, technology and equipment support hours, workplace injuries, e-signature concerns and any state-specific laws applicable to remote employees who reside in a separate state from the employer's place of business. One issue we see frequently is whether a remote worker from a different state is subject to Louisiana's employment laws, or vice versa, and the answer varies depending on the state where the employee resides.

Remote work also brings with it the potential for theft of company property, along with data-security concerns, as the employee works from a location not under the control of the employer. Consequently, a remote-work policy should cover secure remote-access procedures such as the use of a VPN and passwords for confidentiality. The policy should also clarify that the employee is responsible for securing the employer's property from theft.

One final consideration when drafting a remote-work policy is whether to allow the employees to have their children present at the work site during business hours. Whether a company chooses to allow this or not, the expectation should be clearly communicated to the remote employee.

Conclusion

By implementing these policies, employers place themselves in a stronger position to comply with the law while still benefiting from technological innovation. In the modern workplace, the question is no longer whether employers should regulate the use of technology, including generative AI, and remote access to the employer's files, but whether they can afford not to.

– **Brittanie Wagnon Carpenter**
On behalf of the Labor Relations and Employment Law Section
Bradley Murchison Kelly & Shea LLC
401 Edwards St., Ste. 1000
Shreveport, LA 71101

Professional Liability

Gross Negligence

Stevens v. CLHG-Oakdale, LLC, 26-0078, 432 So.3d 122 (La. 4/28/26).

The Louisiana Health Emergency Powers Act (LHEPA) established the standard of care in medical malpractice cases during the Covid era. The definition of "gross negligence" was debated throughout the state. In the Louisiana Supreme Court's most recent opinion, on a writ of certiorari, the court wrote:

> There is a distinction between a medical standard of care and a legal standard of care. The medical standard of care is a determination made by the medical review panel, *medical experts*, whose duty it is to apply their medical expertise and

> opine on whether the defendant health care provider failed to adhere to the appropriate medical standard. By contrast, the LHEPA sets forth a legal standard of care, *which is a determination left to the trier of fact*, lay persons, who consider all of the evidence, including the medical review panel's opinion, in making a determination of whether the defendant health care provider's conduct was grossly negligent. In other words, a finding by a medical review panel that there was a breach in the standard of care is a "baseline" determination; *the degree of that breach is a judicial determination by the trier of fact*.

Id. at 122-23 (quoting *Sebble ex rel. Estate. of Brown v. St. Luke's #2, LLC*, 23-0483 (La. 10/20/23), 379 So.3d 615, 621).

The court concluded that LHEPA "plaintiffs do not have the burden of establishing gross negligence on a motion for summary judgment. The degree of negligence is a question for the trier of fact. Given the evidence of negligence presented by plaintiffs, summary judgment is inappropriate at this juncture." *Id.* at 123. The trial court's grant of summary judgment for the defendants was reversed.

Negligent Credentialing Claim

Soileau v. Khan; 25-0481, ____ So. 3d ____ (La. App. 3 Cir. 2/11/26), 2026 WL 380256.

The 3rd Circuit considered whether a hospital's alleged negligent credentialing of physicians constitutes medical malpractice subject to the Louisiana Medical Malpractice Act (LMMA) or ordinary negligence that may proceed directly in district court. The court reversed the trial court's judgment sustaining an exception of prematurity and held that plaintiff's claims sounded in general negligence.

Soileau, a 70-year-old woman who was living independently and actively employed before her treatment, underwent a cardiac procedure at Our Lady of Lourdes Heart Hospital of Lafayette in September 2020 under the care of Drs. Azeem Khan and Imtiaz Khan. Following the procedure, she suffered catastrophic complications that ultimately resulted in the amputation of all four limbs. In addition to pursuing malpractice claims against the physicians through the medical-review-panel process, Soileau alleged that Heart Hospital was independently negligent in granting privileges to the physicians despite allegedly known concerns regarding their complication rates, questionable procedures, postoperative-monitoring practices, scheduling habits and patient-safety culture.

The Heart Hospital argued that the credentialing allegations fell within the LMMA and therefore required submission to a medical-review panel before suit could proceed. The district court agreed and dismissed the claim as premature.

Finding that the issue concerned a question of law, the 3rd Circuit conducted a *de novo* review, focused on the distinction between negligent credentialing and claims involving the staffing, training or supervision of health-care providers. The court emphasized that the LMMA must be strictly construed because it limits tort remedies otherwise available to injured patients. While the statutory definition of malpractice under the LMMA includes liability arising from staffing, training and supervision, it does not expressly encompass the initial credentialing of physicians, which instead is governed under a separate statute, La. R.S. 40:2114.

The court relied heavily on the Louisiana Supreme Court's decision in *Billeaudeau v. Opelousas General Hospital Authority*, 16-0846 (La. 10/19/16), 218 So.3d 513, which recognized that a hospital's decision to grant privileges is fundamentally an administrative function rather than a medical one. Like the plaintiff in *Billeaudeau*, Soileau alleged that the hospital failed to follow its own bylaws, policies and credentialing procedures when granting privileges to the physicians involved.

Although the hospital attempted to analogize the case to *Thomas v. Regional Health System of Acadiana*, 19-0507 (La. 1/29/20), 347 So.3d 595, which involved repeated re-credentialing reviews and ongoing peer oversight, the court found the evidence lacking in the case before it. The hospital merely established that the physicians were "subject to" credentialing review. The record contained no evidence of actual peer-review activity, re-credentialing decisions or meaningful supervisory efforts. Accordingly, the court concluded that the allegations remained administrative in nature and did not transform into medical-malpractice claims.

The court further rejected the argument that the issue had become moot because Soileau's medical-review panel proceedings had concluded. Reversing the judgment sustaining the exception of prematurity, the court remanded the matter for further proceedings.

— 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

Taxation

Officer of Business Held Personally Responsible for Taxes Collected and Not Remitted

Destiny Home Health Care, Inc. v. La. Dep't. of Rev, BTA Docket No. 13799C (3/5/26).

Destiny Home Health Care, Inc. (Taxpayer) is a Louisiana corporation in the home healthcare business operated by Penny J. Dukes (Petitioner). Petitioner was Taxpayer's sole officer. During 2017 and 2018, Taxpayer employed at least 20 and 50 employees respectively. For those years, Taxpayer engaged a tax-return preparer to assist in the preparation and filing of its tax returns, including Forms 940, 941, W-3, W-2, L-1 and L-3 (payroll-tax returns).

Petitioner provided the information to prepare the payroll-tax returns. Taxpayer prepared the payroll summaries, which provided detailed information regarding each employee's wages and payroll deductions and the amount Taxpayer withheld from each employee.

Taxpayer failed to remit or account for any of the Louisiana income tax withheld from its employees' wages for the periods ending 6/30/2017, 9/30/2017, 12/31/2017, 3/3/1/2018, 6/30/2018 and 9/30/2018.

The Louisiana Department of Revenue sought an alternative means of collecting the unpaid and unremitted Louisiana income tax withheld from the employee's wages, along with penalties, interest and fees due by Taxpayer pursuant to the personal liability provisions of La. R.S. 47:1561.1. The Department determined that Petitioner was a responsible officer of the Taxpayer. The Department issued a Notice of Assessment to Petitioner to collect the unremitted income tax Taxpayer withheld. Petitioner appealed the Assessment to the Louisiana Board of Tax Appeals (BTA).

Employers in Louisiana are required to withhold income taxes from their employees' wages. La. R.S. 47:114. Louisiana provides several enforcement mechanisms for the collection of taxes. Louisiana provides special authority to collect taxes that are withheld but not remitted. La. R.S. 47:1561.1 authorizes the Department to enforce collection through the use of personal liability on the responsible officers, directors, managers and members.

The testimony and documentary evidence presented to the BTA established the following: Petitioner was Taxpayer's "officer" and was the only officer; Petitioner prepared the payroll summaries, which were Taxpayer's financial records reflecting the withholding of and the amount of Louisiana income tax withheld from the employee's wages by Taxpayer; the payroll summaries were provided by Petitioner to the tax-return preparer to complete the payroll tax returns; the tax-return preparer prepared the Forms 941, 940, W-3 W-2, L-1 and L-3 for the years 2017 and 2018; Taxpayer provided a copy of the tax returns to Petitioner; the payroll-tax returns were filed with the Internal Revenue Service and the Department; and the amount of Louisiana income tax withheld from the employee's wages was not in dispute. It was also undisputed that Taxpayer made no payment to the Department of Louisiana of income taxes withheld.

The BTA-held Petitioner was Taxpayer's officer who had direct control or supervision of the Louisiana income taxes withheld from the Taxpayer's employees' wages, and that Petitioner was charged with the responsibility of filing such returns and remitting such taxes withheld. The BTA found Petitioner willfully failed to remit or account for these withheld taxes to the Department. Use of the alternative collection method authorized by La. R.S. 47:1561.1 of personal liability was held to be appropriate against Petitioner.

– **Antonio Charles Ferachi**
Immediate Past Chair,
LSBA Taxation Section
Deputy Assistant Secretary,
Office of Legal Affairs
Louisiana Department of Revenue
617 North Third Street
Baton Rouge, LA 70802

5th Circuit Addresses Limited Partner Exception to Self-Employment Tax and Louisiana Supreme Court Rules on Collection of *Ad Valorem* Taxes

In *Sirius Solutions, L.L.L.P. v. Commissioner of Internal Revenue*, 165 F.4th 374 (2026), the 5th Circuit held that a "limited partner" for purposes of the self-employment tax exception under IRC Section 1402(a)(13) means a partner in a limited partnership with limited liability under state law, rather than only a "passive investor."

Sirius Solutions, a Delaware limited liability limited partnership, excluded the distributive shares of its limited partners' partnership income from its calculation of net earnings from self-employment for the 2014–2016 tax years based on the Internal Revenue Code § 1402(a)(13) exception. On audit, the Internal Revenue Service determined that Sirius' limited partners did not qualify for the exception because it applied only to passive investors. Sirius contested that determination before the Tax Court, which relied on its prior decision in *Soroban Capital Partners LP v. Commissioner*, 161 T.C. 310 (2023), to hold in favor of the IRS.

On appeal to the 5th Circuit, Sirius argued that "limited partner, as such" simply means a limited partner under state law with limited liability. The IRS countered that federal law (not state law) controls the interpretation, that the term refers only to passive investors and that federal tax law should be interpreted uniformly on a nationwide basis.

The majority conducted a textual analysis, reviewed 1977-era dictionary definitions and concluded that the "touchstone" of the term "limited partner" was limited liability. Moreover, the phrase "as such" did not alter that inference but was merely intended to clarify how individuals serving as both limited and general partners are taxed. The court also noted that Congress could have used the term "passive investor" had it intended that meaning, as it had done in other Code provisions.

In addition, the court pointed to supportive "contemporaneous, long-standing, and consistent" interpretations by the IRS and the Social Security Administration (which administers an identical exception for Social Security benefits). Addressing the IRS's uniformity argument, the court explained that because limited partnerships are creatures of state law, the determination of whether a person is a "limited partner" requires reference to state law. The court restricted its holding to limited partnerships, expressly excluding limited liability partnerships and limited liability companies from its analysis.

With regard to ad valorem taxes, the Louisiana Supreme Court in *Esplanade Mall Realty Holdings, LLC v. Lopinto*, 25-0708 (La. 3/6/26), 429 So.3d 278, held that La. R.S. 47:2131's three-year prescriptive period for tax sales does not prevent the inclusion of older property tax assessments in the price of a tax sale conducted to collect newer delinquent taxes.

Jefferson Parish attempted to collect 1992 ad valorem taxes during an automatic bankruptcy stay due to which the original tax sale was nullified, and the sheriff took no further collection action. In 2020, the sheriff conducted a new tax sale for unpaid 2019 taxes and included the 1992 taxes, interest and costs in the sale price.

The taxpayer argued the three-year prescriptive period barred collection of the 1992 taxes through the 2020 tax sale. The sheriff contended that La. R.S. 47:2154(C) required all "statutory impositions" to be included in the tax sale price.

The court held against the taxpayer, finding that the three-year prescriptive period in La. R.S. 47:2131 prohibited a stand-alone tax sale for old taxes, but did not operate to exclude old charges from the price of a timely tax sale for newer taxes. The matter was remanded for calculation of the redemption price. The court also noted that legislative amendments effective Jan. 1, 2026, preclude this outcome for future periods.

–**Jaye A. Calhoun**
Member, LSBA Taxation Section
Kean Miller, LLP
909 Poydras St., Ste. 3600,
New Orleans, LA 70112
and
–**Divya A. Jeswant**
Member, LSBA Taxation Section
Kean Miller, LLP
909 Poydras St., Ste. 3600
New Orleans, LA 70112