Paternity

Davidson v. Hardy, 25-0950 (La. 03/06/26), 429 So.3d 235.

Terrance Hardy petitioned to establish paternity and custody of a child born 100 days after Sarah Davidson's marriage to another man ended. Ms. Davidson filed an exception of peremption, arguing that Mr. Hardy's claim was barred under Louisiana Civil Code article 198 because it was filed more than one year after the child's birth. Mr. Hardy amended his petition to challenge the constitutionality of article 198. The trial court denied the exception and found the code article unconstitutional as applied. Ms. Davidson sought supervisory review, which the 3rd Circuit denied, but the Louisiana Supreme Court granted.

The court affirmed, holding that article 198 was unconstitutional as applied because it deprived Mr. Hardy of his vested fundamental right to parent. The court noted Mr. Hardy had grasped the opportunity to parent, and there was no intact family and no relationship between the child and the presumed father. Based on these facts, the state's interest in protecting the child from the upheaval of litigation did not justify extinguishing Mr. Hardy's parental rights.

Chief Justice Weimer dissented, stating that article 198 grants Mr. Hardy a statutory right to establish paternity, not a fundamental right to parent; therefore, the right was appropriately limited by a peremptive period that he did not exercise in time. Even under the majority view, Mr. Hardy had no vested fundamental right, having only "grasped the opportunity to parent" during the first fourteen months of the six-year-old child's life, after which his involvement waned following Ms. Davidson's petition for protection from abuse.

Justice Penzato also dissented, stating that the majority failed to apply the proper standard of scrutiny before declaring article 198 unconstitutional as applied. Justice McCallum dissented without reasons.

Custody

Cefalu v. Cefalu, No. 25-1265, 2026 WL 818006 (La. App. 1 Cir. 03/23/26).

Adam Cefalu appealed a judgment awarding sole custody to Monique Cefalu and granting him supervised visitation. Proceeding pro se, Mr. Cefalu filed a one-page brief that restated his assigned errors without argument or citation of authority.

The 1st Circuit reviewed Mr. Cefalu's brief in the interest of justice and affirmed, finding no abuse of discretion in awarding sole custody and no manifest error in finding that the Post-Separation Family Violence Relief Act was triggered. The court highlighted the trial court's findings that Ms. Cefalu was more credible and that there was evidence of both physical and non-physical domestic abuse.

Hawkins v. Viramontes, No. 25-0978, 2026 WL 818029 (La. App. 1 Cir. 03/23/26) (unpublished).

Terrence Hawkins died, leaving four children. Terrika Hawkins, a paternal aunt, was awarded sole custody of one child; custody of the remaining three was awarded to their mother, Lizet Viramontes. Viramontes' motion for new trial was denied, and she appealed.

The 1st Circuit affirmed, finding no abuse of discretion in awarding sole custody nor manifest error in finding that the PSFVRA was not triggered, emphasizing the credibility assessments made after conflicting *Watermeier* testimony. The court also found no abuse of discretion in denying the motion for new trial, noting that the medical records that Ms. Hawkins sought to compel were not newly discovered and would not have altered the result.

Angelica v. Angelica, No. 25-0453, 2026 WL 890599 (La. App. 5 Cir. 04/01/26).

David Angelica appealed a judgment modifying custody from shared to joint and designating Allison Angelica as the domiciliary parent.

The 5th Circuit vacated and rendered, reinstating the prior judgment awarding shared custody. In doing so, the court held that the trial court committed legal error in applying the *Evans* standard, instead of the *Bergeron* standard, to the prior judgment, which was a considered decree because it followed trial on the merits. The court also held that the trial court abused its discretion in taking judicial notice of post-trial ex parte communications from the children's therapists.

On de novo review, the court found that the record did not support a finding that the previous shared custody was so deleterious as to justify modification, because the allegations of medical neglect and unsafe conditions were disputed and not shown to have caused actual injury. Nor did the record support a finding that the advantages of modification outweighed the harm of disruption; instead, it suggested opposing factors, such as the emotional impact on the children related to decreased access to their father. Thus, Ms. Angelica failed to meet her burden under *Bergeron*.

Child Support

Spears v. Spears, No. 25-0467, 2026 WL 517696 (La. App. 3 Cir. 02/25/26).

Joshua Spears appealed a judgment increasing his child support obligation from $525.00 to $2,092.73 per month in favor of Kasie Spears.

The 3rd Circuit affirmed, finding no legal error in requiring Mr. Spears to bear the burden of proving his income. The record supported the trial court's finding that he concealed his income by thwarting the discovery process and that he underreported it by acknowledging only two of four food truck businesses.

The court also found no abuse of discretion in (1) increasing child support based on its calculation of Mr. Spears' income, (2) its decision not to credit an alleged pre-existing child support obligation and (3) its calculation of the health insurance premium. His 2023 tax return showed a gross monthly income of $21,365 from four Schedule Cs. He provided no objective evidence to support his business expenses, his pre-existing child support obligation or his claim that Ms. Spears's health insurance premium covered multiple dependents.

Community Property – Partition

Tucker v. Tucker, No. 25-0142, 2026 WL 436873 (La. App. 1 Cir. 02/12/26).

Jaclyn Tucker appealed the Family Court's judgment partitioning the community property between her and Richard Tucker, a financial advisor. She challenged the classification of certain components of his employee-benefit plan, including transition awards and guarantee payments; allocation of debt; denial of reimbursement claims; and the failure to set deadlines for distribution.

The 1st Circuit affirmed in part and reversed in part. The court found that the trial court did not manifestly err in clas-

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sifying the transition awards as partly community and partly separate based on when the labor earning them occurred, nor did it err in classifying the guarantee payments as post-community salary and the promissory note as community debt. Further, the trial court did not abuse its discretion by not setting a specific time for asset distribution and equalization payment, as La. R.S. 9:2801 did not require it. However, the court held that the trial court committed legal error in relying on parol evidence to alter the clear terms of a stipulated judgment regarding expenses, and thus in partially denying Ms. Tucker's reimbursement claims. The court remanded the case to redetermine Ms. Tucker's reimbursement claims and to adjust the equalization payment Mr. Tucker owed her.

Reis v. Reis, No. 25-0539 (La. 03/06/26), 429 So.3d 270.

Michael Reis appealed a judgment classifying a business he formed after termination of the community as community property. The 4th Circuit affirmed, holding that the business was a "substitute corporation."

The Louisiana Supreme Court granted certiorari and reversed, holding that the business was separate property based on the time of its acquisition. In doing so, the court rejected the lower courts' "substitute corporation" theory as an "extra-legal fiction" that "substituted judge-made remedies in place of the express provisions of La. C.C. arts. 2338 and 2341."

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The Payroll Audit Independent Determination (PAID) program, led by the Wage and Hour Division of the U.S. Department of Labor, offers a great opportunity for attorneys to help their clients improve compliance with the Fair Labor Standards Act (FLSA) and the Family and Medical Leave Act (FMLA). This program is designed to foster proactive compliance with federal labor laws by encouraging eligible employers to conduct self-audits and correct errors without costly litigation or penalties.

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3) The division reviews the employer's submission and provides guidance on the next steps.

4) The employer pays backwages and/or FMLA remedies within 15 days of receiving the division's summary of unpaid wages and provides proof to the agency.

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The PAID program is a win for employees, employers and legal professionals alike. It underscores the importance of compliance and provides a structured pathway for rectifying potential pay and leave violations. Encourage your clients to explore the PAID program, and contact the Wage and Hour Division with any questions at 1-866-487-9243.

– Troy Mouton
on behalf of the Labor and Employment Law Section
District Director,
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Mineral Law

Pugh Clause Not Triggered by Commissioner's Compulsory Units

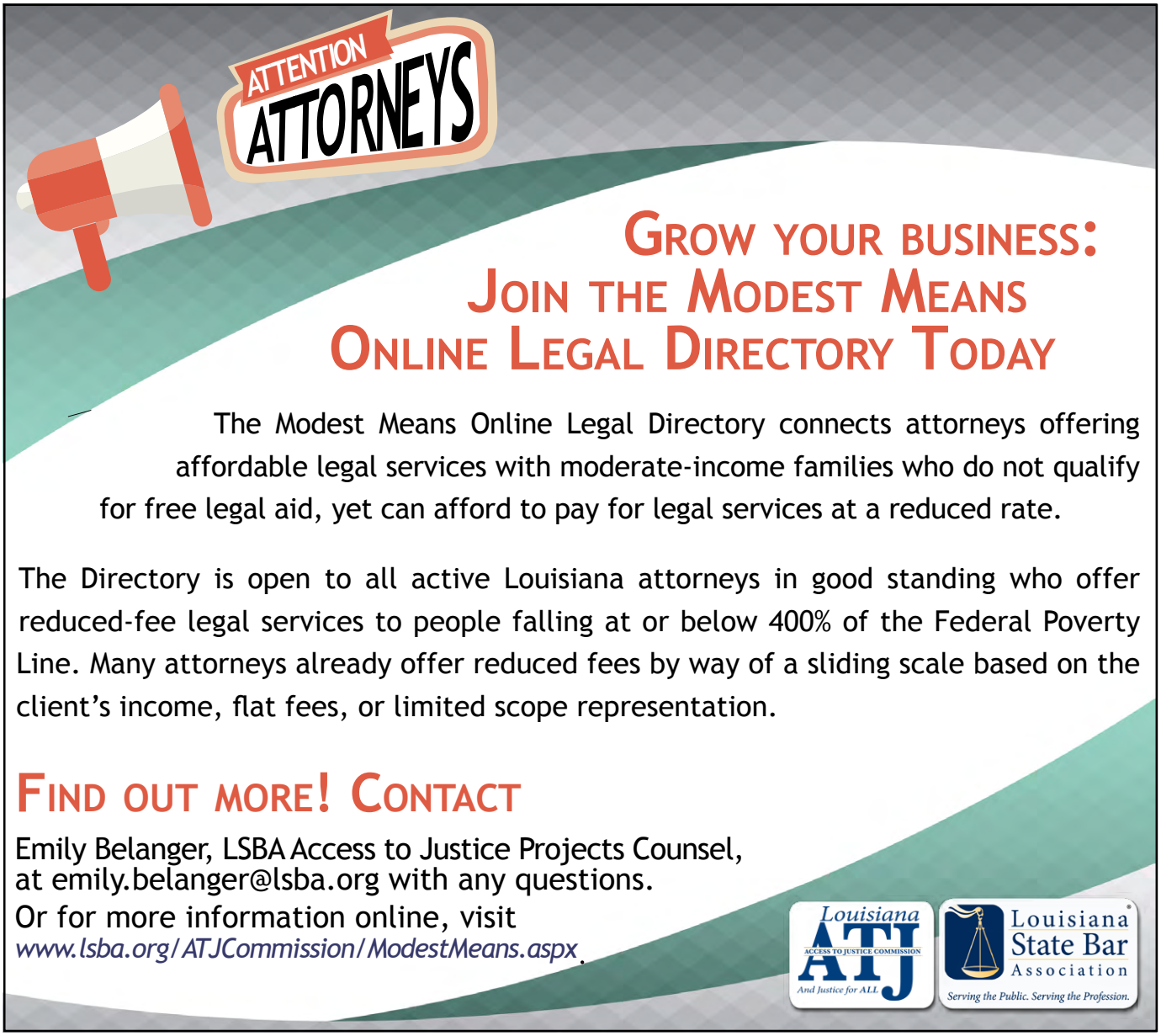
Triple C Minerals, LLC v. XTO Energy, Inc., No. 24-04 (W.D. La. Nov. 21, 2025), 2025 WL 3252708, *appeal docketed,* No. 25-30741 (5th Cir. Dec. 17, 2025).

This dispute centers on whether part of a mineral lease in Bienville Parish, Louisiana, terminated after certain periods of nonproduction.

In 2005, XTO's predecessor, Acadian Land Services, entered into a mineral lease known as the "Collins lease," covering over 1,100 acres across several sections, including Section 18. The lease had a three-year primary term and an option for a two-year extension, but then could be maintained beyond that term through production or certain operations. Under this form language, production or operations on any part of the leased property—or lands pooled with it—would maintain the entire lease. However, the lease's exhibit, with superseding negotiated provisions, provided a Pugh clause that stated as follows:

Two (2) years following the expiration of the primary term of this lease or the expiration of any extension or renewal of the primary term, whichever occurs last, in the event a portion or portions of the leased premises is pooled with other land so as to form a pooled unit or units. Operations on such unit or units will not maintain this lease in force as to the land not included in such unit or units. This lease may be maintained in force as to any land covered hereby and not included in such unit or units in any manner provided for herein.

In 2009, the Louisiana Office of Conservation created five compulsory



Haynesville Shale production units that together covered all the Collins lease acreage. Each unit had designated wells, and XTO operated the unit wells and paid royalties accordingly. Two wells were drilled in the unit covering Section 18 (HA RA SUU), but those wells did not produce during two extended periods between January 2022 and February 2023. During those same periods, there was production from wells in other units that also fell under the Collins lease.

Triple C, owning interests linked to Section 18, filed suit in state court contending that the lease had terminated as to Section 18 because there had been more than 90 days without production or qualifying operations there, invoking the Pugh clause. Triple C argued that the Pugh clause effectively divided the lease on a unit-by-unit basis, so production in other sections could not preserve the lease as to Section 18. XTO removed the case to federal court and responded that the Pugh clause did not apply to compulsory units, but only contractual units, and that production anywhere under the lease could maintain the entire lease.

The court treated the issue as purely legal because the facts were undisputed. It first held that Exhibit A's terms, including the Pugh clause, supersede inconsistent provisions in the printed form lease, so the Pugh clause is controlling where it conflicts with Paragraph 6. The crucial question then became whether this Pugh clause applied to compulsory units created by the Commissioner of Conservation.

Relying on Louisiana mineral law, particularly La. R.S. 31:114 and cases such as *Hunter v. Shell Oil Co.*, 211 La. 893, 902 (1947), and *Bennett v. Sinclair Oil & Gas Co.* 275 F. Supp. 886 (W.D. La. 1967), *aff'd*, 405 F.2d 1005 (5th Cir. 1968), the court emphasized that mineral leases are presumed indivisible. Pugh clauses are exceptions to this rule and must be strictly construed. The *Bennett* decision held that a Pugh clause referencing pooled units applies only to voluntary pooling authorized by the lease, not to compulsory units created by regulatory order, due to that relevant clause beginning "if … lessee in its opinion deems it advisable and expedient," suggesting that the pooling referenced therein was in the lessee's discretion, not of a compulsory nature.

As the relevant Pugh clause in this case referred generally to "pooled unit or units," but did not clearly state that it applied to compulsory units, the court concluded that compulsory units did not fit the definition. Given Louisiana's presumption of indivisibility and the requirement to strictly construe Pugh clauses, the court held that the clause did not extend to compulsory units.

Because the Pugh clause was never triggered by the formation of the compulsory units, the lease remained indivisible. Thus, production from wells in other sections covered by the Collins lease was sufficient to maintain the lease, including Section 18, despite the periods of nonproduction there.

Accordingly, the court granted XTO's motion for summary judgment, denied Triple C's partial motion, and dismissed all of Triple C's claims. An appeal was filed with the United States Court of Appeals for the 5th Circuit and remains pending.

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Fee Sharing

Spears v. Hall; 25-0195 (La. 3/6/26), 429 So.3d 291.

Attorneys Hall and Spears verbally agreed to share a contingency-fee agreement in anticipation of representing the Port of Orleans. The Port declined the contingency fee offer in lieu of an hourly contract. Spears rejected the Port's hourly fee proposal, but Hall accepted and proceeded to represent the Port, with no participation by Spears. Months later, the Port agreed to a contingency-fee contract with Hall, but not Spears.

A year later, the Port case was settled out of court, and the Port paid Hall a contingency fee.

Spears sued Hall to enforce their original contingency fee-sharing contract, contending that this created a joint-venture agreement to represent the Port, which Hall had breached. Hall countered that when Spears refused to participate in the hourly contract fee, as he clearly had done, any such joint venture between them was extinguished.

The lower courts agreed with Spears, ruling that the joint venture established between Spears and Hall was still in existence when Hall entered the contingency contract with the Port.

The Louisiana Supreme Court reversed, finding that the lower court misinterpreted Rule of Professional Conduct 15(e). The Port's contractual agreement was with Hall only, and there was no agreement between Spears and Hall in anticipation of a material change in the original contract. Thus, no joint venture existed. The court emphasized throughout the opinion that Spears did no work on the case. Thus, independent of the validity of Spears' claim concerning the fee agreements, RPC 1.5(e) prevented his participation in the fee. Rule 1.5(e) "unquestionably [has] the force and effect of substantive law" in this matter. "Here, by contrast, the contingency fee agreement between Mr. Hall and Mr. Spears was never effectuated. … The lower courts thus erred in characterizing this matter solely as a breach of contract dispute and declining to consider the relevance of the RPC." *Id.* At 306-07.

Are Understaffing And Underfunding Nursing Homes Medical Malpractice?

Broden v. Priority Mgmt. Grp., L.L.C.; 25-1651 (2/12/26); 427 So. 3d 726.

Russell Alexander died while a patient in a nursing home operated by Priority Management Group (PMG). His children sued PMG, contending it intentionally underfunded the facility,

resulting in chronic understaffing and inadequate care. Plaintiffs characterized their claims as administrative negligence, arguing that PMG's conduct did not involve the provision of medical care and therefore fell outside the scope of the Louisiana Medical Malpractice Act (LMMA). PMG, however, moved for summary judgment, asserting that it was a qualified health-care provider under the LMMA and that the claims fell squarely within the statutory definition of "malpractice."

The Louisiana Supreme Court granted the writ application and found that PMG satisfied its burden of establishing its status as a qualified health-care provider, as the LMMA expressly includes healthcare management companies within its definition of covered providers.

Next the court considered whether the allegations constituted medical-malpractice or general negligence. Looking to the statutory definitions of "malpractice" and "health care" set forth in the LMMA, the court found that "malpractice" includes any unintentional tort based on health care or professional services rendered, or that should have been rendered, by a health-care provider to a patient. "Health care" is defined broadly to encompass any act or treatment performed, or that should have been performed, during a patient's care, treatment or confinement. Applying these definitions, the court concluded that plaintiffs' claims arose directly from the provision—or alleged lack—of health care to the resident.

The court rejected the trial court's reasoning, which had imposed an unwarranted requirement that a defendant must have provided "hands-on" or "core" medical treatment for conduct to constitute medical malpractice. The Louisiana Supreme Court emphasized that no such limitation appears in the statutory text. Instead, the act encompasses a wide range of conduct related to patient care, including acts performed in managerial or supervisory capacities that affect the delivery of care.

The court also applied the six-factor test articulated in *Coleman v. Deno*, 01-1517 (La. 1/25/02), 813 So. 2d 303, to determine whether the claims sounded in malpractice. The court found that the allegations satisfied all six *Coleman* factors. First, the alleged wrongdoing—understaffing and inadequate resource allocation—was directly related to the level and quality of medical care provided. Second, resolution of the claims would require expert medical testimony to establish the applicable standard of care and whether it was breached, particularly regarding appropriate staffing levels for a patient's medical needs.

The remaining factors likewise supported classification as malpractice. The alleged omissions necessarily involved assessment of the patient's condition and care plan; occurred within the context of a healthcare provider-patient relationship; and would not have resulted in injury absent the patient's admission to the facility.

Having determined that plaintiffs' claims fell squarely within the scope of the LMMA, PMG was entitled to the procedural protections afforded by the LMMA, including the requirement that such claims proceed through the medical-review-panel process.

The trial court's denial of summary judgment and the Louisiana Fifth Circuit's writ denial (*Broden v. Priority Mgmt. Grp., L.L.C.*, No. 25-0528, 2025 WL 3771282 (La. App. 5 Cir. 12/20/25) (unpublished)), were reversed, and judgment was rendered in favor of PMG, holding that the claims were governed by the LMMA as a matter of law.

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SECURE 2.0 Act EACA and Roth Catch-up

The SECURE 2.0 Act was enacted into law on Dec. 29, 2022. Two of the provisions of the SECURE 2.0 Act have substantial effect on the operation of 401(k) plans. New plans are required to have automatic enrollment, which is a deemed salary deferral by the employee. The deferral rate could be reduced or increased by the employee's election. The Roth catch-up rule applies to all plans and requires participants who make catch-up contributions and who have wages over a certain level to make the Roth election with respect to such catch-up contributions.

An eligible automatic-contribution arrangement (EACA) is an arrangement under a 401(k) or 403(b) plan that provides that the employer will make a salary-reduction contribution on the employee's behalf to the plan unless the employee elects otherwise. The elective deferral is excluded from the employee's income, although it is subject to FICA and other payroll taxes. The EACA requirement does not apply to plans with elective deferral features prior to the date of enactment, to an employer with 10 or fewer employees, to an employer that has been in existence for fewer than three years or to church or governmental plans.

To be an EACA, the amount that is automatically contributed to the plan on behalf of an employee, absent the employee's election to change the automatic amount, must be at least 3% of the employee's compensation. For each year after the first year, the automatic contribution amount is increased by at least 1% of compensation until the automatic contribution amount reaches 10% of compensation. The employer must give notice to the employees in advance. Employees have the right to make withdrawals of contribution amounts for 90 days after the EACA is first effective.

The SECURE 2.0 Act requires that catch-up contributions for employees with wages in excess of the wage threshold ($150,000 in 2025) in the preceding year be required to make the Roth election with respect to any catch-up contributions. A catch-up contribution is made by a participant who has attained age 50 or greater during the plan year, and it may be made in addition to the maximum amount of elective deferrals for the plan year. As originally enacted, the Roth catch-up rule was effective for taxable years beginning after Dec. 31, 2023. However, because of questions regarding the implementation of the rule, the IRS issued detailed regulations and deferred the application of the rule to plan years beginning after Dec. 31, 2025.

Roth accounts are taxable at the time that the amount is contributed to the plan. Once the amount is held in a Roth account in the plan, it accumulates earnings tax free in the same manner as nonRoth accounts. The advantage of the Roth account is that if a qualified distribution of the account is made, the participant is not taxed at the time of distribution. A qualified distribution is one that is made after the participant attains age 59 ½, dies or becomes disabled and at least five years have passed since the account was established.

The regulations clarified that the wage threshold applies only to employee wages. Thus, a participant in the plan who is a sole proprietor or a partner in a partnership and who receives self-employment income in excess of the wage threshold is not by reason of that self-employment income subject to the Roth catch-up rule. Furthermore, commonly controlled and affiliated employers are not aggregated to reach the wage threshold.

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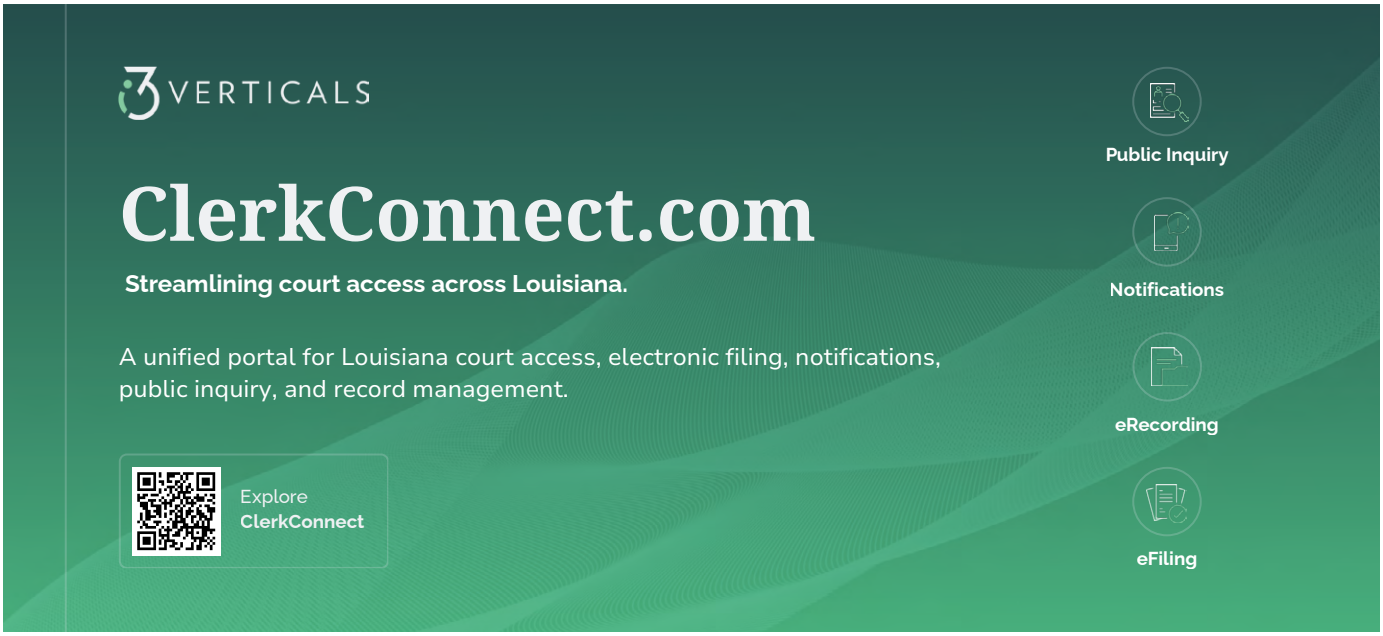

Complimentary Rooms Held to Not be Subject to Local Sales and Occupancy Taxes

Bossier Casino Venture, LLC d/b/a Margaritaville Resort Casino v. Collector for the City of Bossier/Parish of Bossier; Bossier City-Parish Sales & Use Tax Div., BTA Docket No. L01710 (2/5/26).

Bossier Casino Venture, LLC d/b/a Margaritaville Resort Casino and PNK (Bossier City), LLC d/b/a Boomtown Casino & Hotel (Boomtown) (collectively, the Casinos) filed an appeal with the Louisiana Board of Tax Appeals from the Collector for the City of Bossier/Parish of Bossier: Bossier City – Parish Sales and Use Tax Division's Notice of Assessment and Notice of Right to Appeal, which assessed the Casinos with additional sales and occupancy taxes, interest and penalties.

The issue was whether local sales and occupancy taxes are due on the Casinos' complimentary hotel rooms furnished to selected customers and guests.

The applicability of the local sales tax was based on whether the furnishing of complimentary rooms results in a transaction that is "for a consideration or the amount paid or charged" as defined in La. R.S. 47:301(14)(a) and Bossier City Ordinance No. 55, Section 2.1. The applicability of the local occupancy tax turned on whether the furnishing of complimentary rooms (a comp) constitutes the occupancy of a room "for a rent or fee charged."

The Casinos did not receive from a customer "an amount paid or charged" for any comp. Therefore, the question to be resolved was whether the customer received a comp "for a consideration" as set forth in La. R.S. 47:301(14)(a).

Neither the sales-tax statutes nor the local ordinances define "consideration" as used in the context of La. R.S. 47:301(14)(a). The Board looked to Black's Law Dictionary's definition of "consideration" as an act, a forbearance or a return promise bargained for and received by a promisor from a promise. The Board found the question was whether the Casinos bargained for and received something from the customer in return for a comp.

The Board held the testimony and other evidence at trial established that a customer was under no obligation to gamble during the period of a comp stay. There was no evidence that a customer had to enroll in a loyalty program, agree to physically occupy a comp room for any period during the comp stay or agree to anything in exchange for a comp.

The Collector argued that a comp was not purely gratuitous on the part of the Casinos, and that the Casinos had developed a sophisticated and proprietary program to identify those potential customers who had a high likelihood of gambling during a comp stay. It therefore urged the Board to use a broader definition of the term "consideration" when considering the application of La. R.S. 47:301(14)(a) to the furnishing of a comp.

The Board held the definition of "consideration" requires the customer be obligated to act, or promise to act, in exchange for a comp. The Board held the mere hope or expectation that a customer will gamble during the comp stay does not rise to the level of a "consideration" by the customer. The mere agreement of a customer to accept the comp was held to not rise to the level of a customer giving consideration as required by statute. The Board agreed that the comps are more properly described as a promotional or marketing expense as opposed to the furnishing of a room for consideration.

The Board held the Casinos are not liable for the local sales or occupancy taxes and vacated the assessments.

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