



TAYLOR
WELLONS
POLITZ & DUHE

September 2021



HURRICANE IDA RECOVERY STATUS OF COURTS

Governor John Bel Edwards' proclamation suspending legal deadlines in all courts, administrative agencies, and boards expired on September 24, 2021; however, the following courts continued to be impacted by Hurricane Ida:

17th JDC, Lafourche Parish reopened on September 27 with limited public access and all jury trials for September have been cancelled <https://www.17thjdc.online/>. Additionally, the Court issued the following orders in all Hurricane Ida Property Damages Suits:

- Case Management Order
<https://static1.squarespace.com/static/5e873d5c1604e071ba51d9c3/t/6151f54d8e6b8d0a91d105f4/1632761168303/Hurricane+Ida+Case+Management+Order+-+CC.pdf>
- Standing Order Regarding Initial Discovery Protocols in Certain Property Damage Suits Arising from Hurricane Ida
<https://static1.squarespace.com/static/5e873d5c1604e071ba51d9c3/t/6151f595c59ffa6574e875a9/1632761238840/Standing+Order+Hurricane+Ida+Claims+-+CC.pdf>
- Interim Protective Order
<https://static1.squarespace.com/static/5e873d5c1604e071ba51d9c3/t/6151f5fd9d39bc4c39fc9ad2/1632761341685/Hurricane+Ida+Claims+Interim+Protective+Order+CC.pdf>

LOUISIANA GENERAL LIABILITY NEWSLETTER

RECENT CASES AND NEWS

29th JDC, St. Charles Parish is accepting specific emergency and exigent filings (succession proceedings, domestic abuse assistance, protection from domestic abuse, child in need of case, delinquency, voluntary transfers of custody, temporary child custody and injunctive relief, and judicial commitments) between 10:00 a.m. and 2:00 p.m. until October 1, 2021
https://static1.squarespace.com/static/6053a7b2e60ce122000865bc/t/6149f1a8bf7f925fc82d7aa7/1632235945774/%7EEmergencyClosure.Amended.Ida_2021-09-21.pdf

32nd JDC, Terrebonne Parish Court resumed on September 27, but the Clerk's Office is open with limited services accepting documents for filing in the foyer until September 30, 2021.
<https://www.houmatimes.com/news/terrebonne-parish-clerk-of-courts-office-to-open-for-emergency-filings-only/amp/>

40th JDC, St John the Baptist has opened a temporary location at 1811 West Airline Highway, LaPlace, Louisiana on September 27, 2021. Court operations will resume in Edgard on October 4, 2021. All civil and criminal jury trials have been suspended until January 3, 2022.
<https://static1.squarespace.com/static/6053a6bf4bbb0c7f7ba5a262/t/614a2e7af3111e520d54681e/1632251515496/Order.jpg>

United States District Court, Eastern District of Louisiana has suspended all civil and criminal jury trials until November 1, 2021.
<https://www.laed.uscourts.gov/>

Attorney Spotlight



Scott Rainwater, Partner

Scott Rainwater is a partner in our Baton Rouge office. Scott has three basic passions in life. First, Scott loves spending time with his children. Second, when time permits, Scott enjoys playing golf. And third, Scott devotes his professional life to defending businesses and insurers against the personal injury machine in the State of Louisiana. Scott has established a successful record in defending these matters at trial. Scott's practice takes him from the northern most part of the state to the bayou down south.

In addition to favorable trial verdicts, Scott and his team have been recognized in exposing bad faith practices of medical professionals entrenched in litigation in Louisiana. Scott has the privilege of representing small business owners to fortune 500 companies in his practice. He is also proud to represent national and global insurance carriers.

If you have any questions related to Louisiana law or need assistance with a claim in Louisiana, please give Scott a call.



FEDERAL COURT DISMISSES DIRECT NEGLIGENCE CLAIM AGAINST EMPLOYER

Plaintiff was in an accident with the defendant, who was acting within the course and scope of his employment at the time of the accident. In addition to a direct negligence claim, the plaintiff alleged claims for negligent entrustment, failure to properly hire, train, and supervise, and other acts of negligence against his employer. The employer moved for summary judgment arguing that it could not be held liable for both its own direct negligence and vicariously liable for its employee's negligence. The judge Middle District of Louisiana granted summary judgment quoting an early decision from 2020 explaining:

Dismissing direct negligence claims against an employer, who remains vicariously liable under a theory of respondeat superior, does not subvert the [p]laintiff's right to be fully compensated for any injury suffered by the [d]efendant's negligence. This is because [p]laintiff's direct negligence claim is essentially subsumed in the direct negligence claim against the employee.

The court's ruling leaves a split among the Louisiana federal district courts with both the Eastern and Middle District courts making *Erie* guesses consistent with Louisiana appellate court rulings in the First, Third, and Fifth Circuits holding that a plaintiff cannot maintain a direct negligence claim (i.e., negligent hiring, training, supervision) against an employer and maintain a vicarious liability claim against the employer after the employer has admitted that the employee was in the course and scope of employment. *Elee v. White*, 2019-1633 (La. App. 1 Cir. 7/24/20), 2020 WL 4251974 at *4, writ denied, 20-01048 (La. 11/10/20), 303 So. 3d 1038, *Landry v. Nat'l Union Fire Ins. Co. of Pittsburgh*, 19-337 (La. App. 5 Cir. 12/30/19), 289 So. 3d 177, 185-86, writ denied, 20-188 (La. 5/1/20), 295 So.3d 945; *Perro v. Alvarado*, 2020-339 (La. App. 3 Cir. 9/30/20), 2020 WL 5815947 at *8. The Western District has reached the opposite conclusion on three occasions finding that a plaintiff may maintain both claims. *Fox v. Nu Line Transport LLC*, No. 18-00502, 2020 WL 4432869 (W.D. La. 7/31/2020); *Roe v. Safety Nat'l Casualty Corp.*, No. 2:18-CV-01353, 2020 WL 3477071 (W.D. La. June 25, 2020); *Gordon v. Great W. Casualty Co.*, No. 2:18-CV-00967, 2020 WL 3472634 at *4-5 (W.D. La. June 25, 2020).

The United States Fifth Circuit Court of Appeal is currently considering an appeal from the Western District of Louisiana in *Fox v. Nu Line Transport LLC*, No. 20-30716, 2020 WL 4432869 (W.D. La. 7/31/2020) and a decision is expected shortly.

Frantom v. USA, W.D. La. Docket No. 20-cv-00385 (September 22, 2021)



ON-CALL EMPLOYEE NOT ACTING IN COURSE AND SCOPE OF EMPLOYMENT

A passenger in a company vehicle sustained serious injuries and died as a result of a one-car accident. The employee driver testified that she picked up a company vehicle in the morning expecting to have to report to work at 4:00 p.m. to transfer a customer. The employee returned home with the company car, went to a parade, and then used the car to drive her nephew home. On the way to the nephew's home, the car left the roadway, flipped over, and the passenger was killed.

The plaintiffs sued the employer alleging that the employee, who was on-call at the time of the accident, was acting in the course and scope of her employment. The employee testified that she intended to report to work to transfer a client after she dropped off her nephew and return home for an errand. The employer testified that company policy prohibited the use of company vehicles for personal errands and that she was unaware the company car had been retrieved earlier in the day.

The Court held that the employee was not acting in the course and scope of her employment at the time of the accident as she was not on her way to or from the office or engaged in company business at the time of the accident. Because the employee was engaged in purely personal activities while she was supposed to be on-call, the court held that the employer could not be held vicariously liable.

Sandlin v. Urbina, M.D. La. Docket No. 19-00556



TAYLOR
WELLONS
POLITZ & DUHE



The success we have seen is because of the way we built our practice. It's about more than routine strategies. It's about creative resolutions to difficult legal questions. It's about how we treat our clients and each other and how we work together to build the best possible defense for every single case. It's

PRACTICE, "
MADE PERFECT

BATON ROUGE

NEW ORLEANS

MISSISSIPPI

WWW.TWPDLAW.COM

866-514-9888 TF