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Milling Benson Woodward L.L.P. is successful in having lower court decision overturned at the Court of Appeal.

Milling Benson Woodward L.L.P., as general counsel for LIGA, was successful in the Second Circuit Court of Appeal in establishing that claims under an auto liability policy and an uninsured / underinsured motorist policy "arise from the same facts, injury or loss" for purposes of establishing the statutory credit pursuant to La. R.S. 22:2062. The Second Circuit Court of Appeal also correctly recognized that 2017 amendments to the LIGA law made substantive changes and could not be applied retroactively. The full opinion from the Court of Appeal can be found here: http://www.la2nd.org/archives/docs/ad26d5.pdf.

Milling Benson Woodward L.L.P. provides advisory opinion regarding merger of 911 and 311 services in New Orleans.

Milling Benson Woodward L.L.P. was retained by the Orleans Parish Communications District pursuant to a request by newly elected New Orleans Mayor LaToya Cantrell to provide an advisory opinion regarding the merger of the City's 911 (emergency response) and 311 (non-emergency response) services. The merger, if approved by the City Council, is expected to save the city between $800,000 and $900,000 per year according to the Chief Administrative Officer. To learn more about the potential consolidation, please see the following report. http://www.fox8live.com/2018/11/15/plan-merge-no-system-with-wins-key-approval/

Milling Benson Woodward L.L.P. presents Labor and Employment law updates seminar.

Ben Chapman presented a Continuing Legal Education seminar on Recent Developments in Labor and Employment Law at the annual Louisiana Hospital Association conference in Baton Rouge, Louisiana. The presentation covered a wide variety of labor and employment issues including: EEOC and OSHA enforcement priorities, recent administrative interpretations and jurisprudence differentiating independent contractors from employees, and expected future trends in labor and employment law which may affect future business decisions. Milling Benson Woodward L.L.P. provides a wide variety of labor and employment law services including drafting and revising employee handbooks, advising clients on proper hiring and firing procedures, defending clients from EEOC complaints, etc.

An unsworn medical report is admissible to defeat a Motion for Summary Judgment in a medical malpractice claim if not properly objected to, in writing.

In *Mariakis v. North Oaks Health System*, 2018 CA 0165 (La. App. 1st Cir. 9/21/18), the defendant medical provider moved for a summary judgment based on plaintiff's lack of expert testimony. Plaintiff opposed the Motion for Summary Judgment with an expert affidavit. The hearing was continued and Plaintiff filed a supplemental Opposition wherein they attached an expert report to supplement the original affidavit. The First Circuit held that the affidavit, without the report, was conclusory in nature and would not have defeated the medical provider's Motion for Summary Judgment. The Court also recognized that the expert medical report was not admissible evidence to defeat a Motion for Summary Judgment pursuant to LSA-C.C.P. Art. 966. Nevertheless, the defendant medical provider did not object to the medical report, in writing, prior to the Motion for Summary Judgment hearing as required under LSA-C.C.P. Art. 966. Accordingly, the medical report was admitted into evidence and found sufficient to create a genuine issue of material fact.

A court may take judicial notice of a Certificate of Enrollment for the purposes of deciding whether a claim against a qualified health-care provider is premature.

In *Brimmer v. Eagle Family Dental Inc.*, 2017-CA-0951 (La. App. 4th Cir. 8/8/18), a health care provider filed an Exception of Prematurity arguing that the Plaintiff's claims had to be submitted to a medical review panel prior to filing a lawsuit. The health care provider attached documentation to their Exception of Prematurity showing that the payments were made to the PCF prior to the alleged incident; however, the health care provider did not attach a copy of their Certificate of Enrollment from the PCF. The Fourth Circuit took judicial notice of the Certificate of Enrollment, since it was publicly available on a government website, and granted the Exception of Prematurity. The Fourth Circuit rejected Plaintiff's argument that the pertinent time for deciding PCF qualification was the date that the lawsuit was filed. The Court also noted that a provider becomes PCF qualified after their application has been approved, they have demonstrated financial responsibility to the satisfaction of the PCF, and they have made their applicable PCF surcharge payments.

Third Circuit rules that when a Motion for Summary Judgment hearing is continued, all filing deadlines associated with the Motion for Summary Judgment are reset.

In *Dufour v. Schumacher Group of Louisiana*, 18-CA-0020, (La. App. 3rd Cir. 8/1/18), the defendant health care provider filed a Motion for Summary Judgment arguing that the Plaintiff did not have expert testimony as required to carry their burden of proof at trial. Plaintiffs timely filed an Opposition which included affidavits from their expert, and the Motion for Summary Judgment hearing was continued. Prior to the rescheduled hearing, Plaintiffs attempted to file a supplemental affidavit. The trial court struck the supplemental affidavit as untimely and granted Defendants' Motion for Summary Judgment. On appeal, the Third Circuit held that when a district court grants a continuance of a Motion for Summary Judgment hearing, the filing deadlines found in LSA-C.C.P. Art. 966 are reset. As such, Plaintiffs' supplemental affidavit should have been considered and Defendant's Motion for Summary Judgment should have been denied. In its ruling, the Third Circuit recognized that the trial court did not specify when granting the continuance that no further affidavits could be submitted prior to the rescheduled hearing. Thus it is possible that the Third Circuit's opinion would have been different if the trial court order granting the continuance contained language acknowledging that no further filings would be accepted.

First Circuit holds that 19th JDC Judge abused his discretion by raising jury's general damage award from $25,000 to $725,000.

In *Spann v. Gerry Lane Chevrolet, 2016-CA-0793* (La. App. 1st Cir. 9/21/18), Plaintiff lost control of her vehicle, entered oncoming traffic, and struck several vehicles. She alleged that the power steering in her vehicle went out without warning, which led to the accident. A judge in the 19th Judicial District Court in East Baton Rouge originally granted a Motion for Summary Judgment filed by Defendant, Gerry Lane Chevrolet. Plaintiff moved for a New Trial after they discovered "new evidence" which consisted only of a supplemental affidavit from an expert. A second trial judge heard the Motion for New Trial and granted same. After the jury awarded a total of $25,000 in general damages, the trial judge granted a JNOV and increased the general damages to $725,000. The First Circuit upheld the trial court's decision to grant a JNOV, but reduced the new general damages award from $725,000 to $100,000, after determining that was the highest reasonable amount that could have been awarded.

An Appellate Court's authority to convert an appeal to a writ application is not unlimited.

An Appellate Court has the authority and discretion to convert an appeal to an application for supervisory writs; however, their discretion is not unlimited. The Court can only use their discretion when: 1) the motion for appeal has been filed within the thirty-day time period allowed for the filing of an application for supervisory writs, and 2) when the ruling under review is arguably incorrect and the circumstances indicate that an immediate decision of the issue sought to be appealed is necessary to ensure fundamental fairness and judicial efficiency, such as where the reversal of the ruling would terminate the litigation. *Embrace Home Loans, Inc., v. Linia Thomas Burl*, 2016-8726, (La. App. 4th Cir., 9/19/18).

Res Judicata is not applicable unless there is an identity of parties in the first lawsuit and the second lawsuit.

In *Wicker v. Louisiana Farm Bureau Casualty Inc. Co.,* 2018-CA-0225, (La. App. 1st Cir. 9/21/18), two (2) lawsuits were filed that stemmed from the same accident. The first lawsuit was filed in City Court by State Farm against Craddock and her insurer, Farm Bureau. Farm Bureau filed an Answer and a reconventional demand against State Farm's insured, Wicker. The second lawsuit was filed in the 19th Judicial District Court by Wicker against Farm Bureau and Craddock. The City Court case went to trial first and a judgment was rendered in favor of State Farm. In the second lawsuit, Farm Bureau and Craddock filed an Exception of Res Judicata, and the trial court granted the exception. The First Circuit reversed finding that there was no "identity of parties" as required for an exception of res judicata. Although LSA-C.C.P. Art. 1061(B) typically requires a party in an action to assert all causes of action arising from the "same transaction or occurrence" in a reconventional demand, that article was not applicable in this particular case since Wicker was not named as a defendant in the first lawsuit, but instead was brought into that claim through a reconventional demand.

Third Circuit allows deposition testimony of decedent even though defendant was not present at the deposition for cross examination.

In *Holloway Drilling Equipment, Inc., et al v. Billy Guidroz, Jr.*, et al, 18-CA-209, (La. App. 3rd Cir. 8/22/18), Defendants filed a Motion in *Limine* to exclude deposition testimony of a deceased deponent The deposition was taken prior to these particular Defendant's involvement. Defendants argued that pursuant to LSA-C.C.P. Art. 1450 the deposition was inadmissible because they were not "a party present or represented at the taking of the deposition" and that they did not have "reasonable notice thereof". The Court however found that a party "with similar interests" was present at the deposition of the decedent and was allowed to cross-examine the deponent. Accordingly, the trial court denied the Motion in Limine and the Third Circuit denied writs