

**SPECIAL
EDITION**

From The Bench

legal news of interest

BRINEY & FORET

Attorneys at Law

413 Travis Street
Post Office Drawer 51367
Lafayette, Louisiana 70505
337-237-4070
FAX 337-233-8719
Website: www.brineyforet.com

SUPREME COURT HOLDS A TORTFEASOR IS NO LONGER LIABLE FOR SUBSEQUENT MEDICAL MALPRACTICE BY PLAINTIFF'S TREATING PHYSICIAN

by Gary J. Delahoussaye

On October 15, 2002, the Supreme Court of Louisiana released an opinion in *Dumas v. State of Louisiana*.¹ This opinion has potentially broad implications and represents a positive change in the law for defendants in personal injury cases. The Court revisited the jurisprudential rule that the original tortfeasor is liable for subsequent medical malpractice by the victim's treating physician. In *Dumas*, the Court concluded the original tortfeasor is no longer responsible for any such negligent treatment but is only responsible for damages attributable to his fault.

The original rule originated in the 1985 Louisiana Supreme Court decision *Weber v. Charity Hospital of Louisiana*² and was followed in 1993 by *Lambert v. United States Fidelity and Guaranty Company*.³ At that time, the Court determined, as a matter of policy, the negligence of the original tortfeasor was the legal cause of any subsequent injury resulting from substandard medical treatment. Under these cases, the initial tortfeasor was liable for 100% of the damages when a plaintiff's injuries were worsened by subsequent medical treatment.

In *Dumas*, the plaintiff was involved in a bicycle accident on April 22, 1996, in Chemin-A-Haut State Park near Bastrop, Louisiana. George Dumas sustained a laceration to his right forehead and scalp and was transported to Morehouse General Hospital where he received medical treatment for his injuries. Several hours after arriving at the hospital and receiving treatment, Dumas died.

Dumas' wife and three children filed a wrongful death and survival action against the State claiming a defective condition of the state park caused Dumas' accident and injuries. The State filed an *Answer* denying liability and alleging fault on the part of Dumas. Subsequently, the State filed an *Amended Answer* alleging, as an affirmative defense, that the death of Dumas resulted solely from the medical negligence of physicians and staff at Morehouse General Hospital, particularly in the administration and maintenance of anesthesia services following a routine surgical procedure to repair his laceration.

The plaintiffs filed a *Motion to Strike* the State's *Amended Answer*. The plaintiffs argued the *Amended Answer* included affirmative defenses which violated the law as set out in *Weber* and *Lambert*. The trial court granted the *Motion to Strike*, relying on the analysis and rationale of *Weber* and *Lambert*. Particularly, the trial court found those cases were still viable after the 1996 amendments to *Louisiana Civil Code Articles 2323* and *2324*.

Q. Is an original tortfeasor responsible for damages caused by medical malpractice of plaintiff's treating physician?

a. No.



The Second Circuit Court of Appeal affirmed the trial court's ruling granting plaintiffs' *Motion to Strike*. The plaintiffs applied for writs to the Louisiana Supreme Court.⁴ The Supreme Court reversed the ruling of the trial court and appellate court. The Supreme Court concluded the amendments to *Articles 2323* and *2324* represented a shift in tort policy. Under the revisions to these articles, a defendant may allege and present evidence of negligent medical treatment leading to a worsening of the plaintiff's condition. The fault of the negligent medical provider may be quantified, thereby reducing the initial defendant's responsibility for the plaintiff's damages.

The Supreme Court relied on the language of *Article 2323* which provides "in any action for damages..., the degree or percentage of fault of all persons causing or contributing to the injury, death or loss shall be determined, regardless of whether the person is a party to the action or a non-party...." The court concluded the article requires the fault of every person responsible for a plaintiff's injuries be compared, whether or not they are parties, regardless of the legal theory of liability asserted against each person.

The court also closely examined the language of *Article 2324*, as amended, which provides a non-intentional tortfeasor "shall not be liable for more than his degree of fault and shall not be solidarily liable with any other person for damages attributable to the fault of that other person."

The court observed the policies upon which *Weber* and *Lambert* were based have been changed by the legislature. The court recognized it was not in a position to allow "its own policy determination to override the policy determination made by the legislature..." and concluded the State was, therefore, entitled to present evidence of the negligent medical treatment.

¹02-0563 (La. 10/15/02); 828 So.2d 530

²475 So.2d 1047 (La.1985).

³629 So.2d 328 (La. 1993).

⁴In the January 2002 issue of "From the Bench," Kevin S. Frederick reported on the Second Circuit opinion in *Dumas v. State*, 35,492 (La. App. 2 Cir. 12/19/01); 804 So.2d 813.

⁵No. 02-0012 (La. 10/15/02); 2002 WL 31302977



Supreme Court Reviews Award of Punitive Damages in Drunk Driving Case

In *Mosing v. Domas*,⁵ the Louisiana Supreme Court affirmed an award of \$500,000 in punitive damages, which was ten times the amount of the total compensatory damages. The defendant had engaged in approximately eight episodes of drunk driving over an eight year period. His conduct was found to be grossly reckless and bordered on being intentional. The determination of whether a punitive damage award is excessive under Louisiana law should center on three issues: (1) the reprehensibility of the defendant's conduct, (2) the ratio between the punitive damage award and the harm which the defendant's conduct caused or could have caused and (3) the size of any civil or criminal penalties that could be imposed for comparable misconduct.



Briney & Foret

Patrick J. Briney	Shannon J. Gremillion
Charles J. Foret	Gary J. Delahoussaye
Katherine M. Loos	Richard R. Montgomery
Michael P. Corry	Matthew D. McConnell
Kevin S. Frederick	Crystal D. Burkhalter
Deanne B. McCauley	

Christopher L. Zaunbrecher*
* of counsel



For additional information on the contents of this newsletter or if you would like to be on our mailing list for other topics, please contact Emily DeSalvo at 337-237-4070 or desalvo@brineyforet.com.

This publication is prepared as a source of information for our clients and other interested parties and its contents should not be construed as legal advice.



BRINEY & FORET
Attorneys at Law

413 Travis Street
Post Office Drawer 51367
Lafayette, Louisiana 70505