

**PUBLISHED DECISIONS OF ATTORNEYS PRACTICING WITH
PREAUS, RODDY & ASSOCIATES, L.L.C.
(Cases appearing only on Westlaw or Lexis not included)**

A. First Party Benefits Decisions

Pulaski v. Standard Ins. Co., 247 Fed. Appx. 526 (5th Cir. 2007); Appellate court affirmed summary judgment in favor of insurer in suit for ERISA benefits where lawyer disputed amount of benefits paid to him.

New York Life Ins. Co. v. Deshotel, 142 F.3d 873 (5th Cir. 1998); One year time limitation in 28 U.S.C. § 1446(b) applicable to diversity actions which “become removable;” not to actions which were removable when the action commenced.

Wynn v. Washington National Ins. Co., 122 F.3d 266 (5th Cir. 1997); Court of appeal affirmed decision of trial court that policy endorsement limiting coverage of insured’s spinal disorder was not subject to statutory restriction limiting losses due to pre-existing conditions.

New York Life Ins. Co. v. Brown, 84 F.3d 137 (5th Cir. 1996); Court held that failure to provide notice to adverse claimant in interpleader of motion for summary judgment denied claimant due process of law; therefore, judgment vacated and case remanded to district court for further proceedings.

Vasseur v. Halliburton Co., 950 F.2d 1002 (5th Cir. 1992); Court held that decision by ERISA plan administrator to apply plan in effect on date charges were incurred was not arbitrary and capricious; case remanded subrogation issue to district court for further proceedings; decision of district court that claimant was entitled to lifetime benefits under the Plan vacated.

Pierre v. Connecticut Gen. Life Ins. Co., 932 F.2d 1552; (5th Cir. 1991); Abuse of discretion standard applicable to factual determinations made relative to claim denials under ERISA plans; insurer’s denial of accidental death benefits was not abuse of discretion where insured was shot during argument.

Brock v. Primedica, Inc., 904 F.2d 295, (5th Cir. 1990); ERISA preempted state law claims for mental anguish, emotional distress and financial hardship in suit for benefits under group medical plan; plan participant covered under plan sponsored by her employer and plan sponsored by husband’s employer was not entitled to elect COBRA coverage when her employment terminated.

Nicolson v. Life Ins. Co. of Southwest, 783 F.2d 1316 (5th Cir. 1986); Louisiana statutory provisions requiring thirty day grace period when coverage under life insurance policy would otherwise lapse for nonpayment of premiums not applicable where insured affirmatively canceled policy.

Dipascal v. New York Life Ins. Co., 749 F.2d 255; (5th Cir. 1985); Insurer’s interpretation of Louisiana statute requiring offer of optional coverage for mental and nervous illness to group policyholder based upon just and reasonable grounds; group major medical policy reformed to remove life time maximum for insured’s mental illness where Court found that insured had a “vested right” to benefits which could not be reduced once the covered illness began.

O’Toole v. New York Life Ins. Co., 671 F.2d 913 (5th Cir. 1992); Death of insured following self-administered injection of cocaine was “accidental” under Louisiana law where policy did not exclude benefits if insured died from the self-administration of drugs.

Posey v. the Standard Ins. Co., 584 F. Supp. 2d 903 (W.D.La. 2008); Court denied plaintiff’s motion to remand in suit for employee welfare benefits removed to federal court by insurer.

Metropolitan Life Ins. Co. v. Hawkins, 970 F. Supp. 550 (E.D. La. 1997); Judgment entered in FEGLI interpleader action, rejecting MetLife's request that the Court apply the Uniform Simultaneous Death Act and applying Louisiana law to award death benefits to surviving children.

New York Life Ins. Co. v. Deshotel, 946 F. Supp. 454 (E.D. La. 1996); Alleged beneficiaries' negligence actions were compulsory counterclaims in interpleader action and barred by *res judicata* in subsequent federal court action; injunction was warranted against prosecution of negligence actions in federal court, Anti-Injunction Act precluded injunction against state court negligence action.

Barnewold v. Life Ins. Co. Of North America, 633 F. Supp. 432 (E.D. La. 1986); Summary judgment granted in favor of defendant, dismissing Plaintiff's Complaint in action for accidental death benefits; court held that heart attack killing insured which was not direct and independent cause of death was not accident which would entitle beneficiary to receive accidental death benefits.

Fuselier v. Sciambra, 662 So.2d 41 (La. App. 5 Cir. 1995); Court of appeal affirmed decision of trial court that one year prescriptive period and three year preemptive period of La. R.S. 9:5606 applicable to insurance agents and brokers was applicable to insurer where Plaintiff's claims against the insurer arose out of acts of the agent.

Wasserman v. Life Gen. Sec. Ins. Co., 656 So.2d 762 (La. App. 5 Cir. 1995); Court of appeal reversed decision of trial court granting motion for summary judgment in favor of insurer on claim against agent to recover losses incurred as a result of agent's failure to obtain evidence of insurability from participants in group insurance plan.

Locklear v. Visko's, Inc., 545 So.2d 695 (5th Cir. 1989); Following decision of Louisiana Supreme Court holding that state statutes found in the Insurance Code were laws regulating insurance and saved from ERISA preemption, court of appeal reversed and remanded for further proceedings action in which it had previously affirmed ruling of trial court granting insurer's motion for summary judgment based upon ERISA preemption.

Reagan Equip. Co. v. Pan American Life Ins. Co., 514 So.2d 253 (La. App. 5th Cir. 1987); Judgment in favor of group's former medical insurer in action brought by employer for reimbursement of medical benefits paid by employer on behalf of employee's wife.

Coliseum House, Inc. v. Brock, 442 So.2d 778 (La. App. 5 Cir. 1983); *rehearing denied* (1984); Court of appeal affirmed judgment in favor of insured and against insurer, holding that statute requiring offer of coverage for mental and nervous disorders was applicable to policy renewals after effective date of statute and that insured was excused from failing to comply with terms of policy due to insurer's unequivocal denial of claims and its failure to comply with statute requiring offer of benefits to group policyholder.

Thompson v. Brown & Root, Inc., 422 So.2d 1276 (La. App. 5 Cir.); *rehearing denied* (1982); Court of appeal affirmed decision of trial court, granting insurer's motion for summary judgment in action for death benefits where decedent failed to apply for conversion to individual policy after termination of employment.

Stuyvesant Life Ins. Co. v. Loyacano, 408 So.2d 1157 (La. App. 4 Cir. 1981); Court of appeal affirmed decision of trial court, granting insurer's motion for summary judgment holding that insurer was entitled, under group disability policy, to offset Social Security benefits from total benefits payable.

Mckenzie v. New York Life Ins. Co., 377 So.2d 879 (La. App. 4 Cir. 1979); Court of appeal affirmed decision of trial court granting summary judgment in favor of insurer, holding that plaintiff was not entitled to double indemnity benefits under life insurance policy which expressly excluded double indemnity benefits when death resulted from travel in an aircraft where person was a pilot of the aircraft.

Pick v. Metropolitan Life Ins. Co., 372 So.2d 773 (La. App. 4 Cir. 1979); Court of appeal affirmed decision of trial court granting summary judgment in favor of insurer, dismissing plaintiff's suit in action for accidental death benefits where death of insured resulted from an aneurysm and plaintiff failed to carry her burden of proving that death resulted from an accident.

Scanlan v. Mutual Ben. Life Ins. Co., 371 So.2d 356 (La. App. 4 Cir. 1979); Court of appeal affirmed decision of trial court awarding penalties against insurer who had denied claim for disability benefits, finding that insurer's failure to pay benefits was unreasonable, notwithstanding fact that the insured had failed to produce medical evidence to support his claim that his disability commenced subsequent to the effective date of the policy and that he had failed to submit evidence that a disability did exist.

Parfait v. Minnesota Mut. Life Ins. Co., 311 So.2d 558 (La. App. 4 Cir.); rehearing denied; writ refused (1975); Judgment of trial court in favor of insured affirmed on appeal in action for death benefits where insured made material misrepresentations in application for coverage and knew that the answers were false.

B. Directors and Officers Liability Decisions

Resolution Trust Corporation v. Ayo and Resolution Trust Corporation v. Miramon, 31 F.3d 285 (5th Cir. 1994); Decisions extended earlier holdings of the Fifth Circuit in *FDIC v. Mijalis*, 15 F.3d 1314 (5th Cir. 1994) and *McCullough v. Fidelity & Deposit Co.*, 2 F.3d 110 (5th Cir. 1993), held that reporting requirements of policies defined coverage and were to be strictly construed; test was whether insured objectively complied with the notice provisions of the policies, not the subjective inferences which might be drawn by the insurer; because the claims were not covered, the insurer had no obligation to advance or pay the defense costs of the officers and directors.

Unimobil 84, Inc. v. Spurney, 797 F.2d 214 (5th Cir. 1986); Creditor of corporation sought to avoid general rule that corporate officers and directors are not personally liable for corporate debts, arguing conversion, intentional misrepresentation, breach of fiduciary duty and negligence; dismissal by District Court affirmed by Fifth Circuit.

FDIC v. Caplan, 838 F. Supp. 1125 (W.D. La. 1993); Directors of financial institution gave generic notice of loss and court held "notice" not sufficient under the policy.

9 To 5 Fashions, Inc. v. Spurney, 538 So.2d 228 (La. 1989) reversing 520 So.2d 1275 (La. App. 5th Cir. 1988); Judgment rendered against a director and officer of the Louisiana World Exposition, affirmed by the Court of Appeals and reversed by Louisiana Supreme Court which held that previous expressions barring absolutely any action based on tortious interference with contract were annulled, officers immune from liability for interference with uniform supply contract.

Dutton & Vaughan v. Spurney, 496 So.2d 1126 (La. App. 4th Cir. 1986), writ denied 501 So.2d 208 (1987); Allegations that Louisiana World Exposition wrongfully diverted funds earmarked by city was sufficient to state claim for fraud.

Dutton & Vaughan, Inc. v. Spurney, 600 So.2d 693 (La. App. 4th Cir. 1992) writ denied 60 So.2d 663 (1992); Summary Judgment dismissing plaintiff's fraud claim under Directors' and Officers' liability policy affirmed as contractor failed to show intent to defraud or gain unjust advantage over contractor.

Fine Iron Works v. Louisiana World Exposition, Inc., 472 So.2d 201 (La. App. 4th Cir. 1985); Creditor suit against the directors and officer of the Louisiana World Exposition, Inc. Court held contract between sponsor of construction and nonprofit corporation did not create "trust" with specific construction contractor.

C. Fidelity Decisions

Bulk Pack, Inc. v. Fidelity & Deposit Co. of Md., 163 Fed. Appx. 298 (5th Cir. 2006); Insured's loss sustained from employee's embezzlement of funds was not covered under insurer's commercial crime insurance policy.

One American Corp. v. Fidelity & Deposit Co. of Md., No. 91-CA-1043 658 So. 2d 23 (La. App. 5th Cir. 6/28/95); Stock certificates were intended to deceive and were counterfeit under policy's definition.

First National Bank of Louisville v. Lustig, 975 F.2d 1165 (5th Cir. 1992); Insurance provided to savings and loan under blanket bond provided indemnity insurance, not liability insurance, and lender had no right of action under direct action statute.

Palmer v. Lanco Const., Inc., No. 95-CA-0987, 665 So.2d 1217 (La. App. 4 Cir. 11/30/95); Court held one does not evade obligation of compromise by breaching it.

Louisiana and Southern Life Insurance Co. v. Ttees under N. O. Steamship Association, International Longshoreman's Association (AF of L-CIO) Welfare Plan, et al, 384 So.2d 594 (La. App. 4 Cir. 1980); Bonding company was not liable to insurer which issued health and accident insurance policy to plan on commercial blanket bond on third party beneficiary theory; insurer had no cause of action against bonding company for unjust enrichment.

City of Natchitoches v. Employers Reinsurance Corp., 2002-0147 819 So. 2d 413 (La. App. 3rd Cir. 6/5/02); Chief Financial Officer failed to establish defamation against insurance company.

D. Bankruptcy Decisions

Fidelity & Deposit Co. of Md. v. Bizette, 415 F. Supp. 2d 673 (M.D. La. 2006); Although husband not aware of wife's embezzlement or that funds were placed in joint account, obligation to repay funds was a community obligation.

In the Matter of Crystal Oil Company, 854 F.2d 79 (5th Cir. 1988); Plan of reorganization crammed down over objection of creditor.

In the Matter of T-H New Orleans Ltd. Partnership, 10 F.3d 1099 (5th Cir. 1993); Right of the secured creditor to post-petition hotel receipts.

In the Matter of Royale Airlines, Inc., 98 F.3d 852 (La. App. 5th Cir. 1996); Adversary proceeding in which court held creditor could not be precluded from bringing action against former trustee under defense of in pari delicto and creditor implicitly consented to former trustee's action or inaction.

In re Consolidated Companies, Inc., 185 B.R., 223 (E.D. La. 1995); La. Statute mandating that fire policy provide coverage based on replacement value affected only fire coverage under commercial property policy and did not mandate coverage for loss or damages by non-fire peril; in case of partial loss from theft or vandalism, property valued on actual cash value.

In re Whitaker Constr. Co., Inc., 439 F.3d 212 (5th Cir. 2006); Involuntary bankruptcy petition did not prevent running of one year period of peremption on subcontractor's claims against surety under LPWA.

In re M.A. Baheth Constr. Co., 118 F.2d 1082 (5th Cir. 1997); Failure to comply with rule requiring company to serve appellees with statement of issues and designation of record warranted dismissal of action.

E. Class Actions

Berthelot v. Travelers Ins. Co., 973 F. Supp. 596 (E.D. La. 1997); Summary judgment granted in favor of insurer in putative class action brought to require plan administrators to inform plan participants and beneficiaries of health benefits mandated by Louisiana law.

Major Banks v. New York Life Ins. Co., No. 98-C-0551 (La. 12/7/98) 722 So.2d 990; Supreme Court held that class action was appropriate in vanishing premium "opt out" litigation on rehearing 737 So. 2d 1275 (La. 1999); Court held that class action involved too many insurers at issues for common issues to predominate, would not be superior and, therefore, was improper.

Speaks v. New York Life Ins. Co., No. 96-CA-2483 (La. App. 4th Cir. 4/20/97) reh. den. 693 So.2d 340; Judgment of district court, allowing dismissal of purported class action without prejudice, was not abuse of discretion, did not unduly prejudice insurer and was not forum shopping; life insurer would not be compelled to carry burden of policyholders' costs in the action; failure of trial court to mandate notice of dismissal to class members did not constitute reversible error.

F. Copyright/Trademark

Assunto v. Shoup, 132 F. Supp. 2d 445 (E.D. La. 2000); Suit by musician's executor for royalties and state law damages, case remanded because court lacked copyright jurisdiction over state law claims.

G. Other Cases of Note

Engineering Dynamics, Inc. v. Structural Software, Inc., 46 F.3d 408 (5th Cir. 1995); Input format of structural engineering computer program was based on minimum level of originality and was entitled to copyright protection of programs where creator exercised any judgment in formulating input cards.

Shaw Constructors, Inc. v. ICF Kaiser Engineers, Inc., 395 F.3d 533 (5th Cir. 2004); Court of appeal reversed judgment of magistrate judge in favor of owner of industrial plant, recognizing claim of subcontractor on the issue of liability only for the recognition of the validity of subcontractor's claim and priority under the LPWA against PCS and the property upon which Shaw's work was performed.

Lauren Plaza Associates, Ltd., et al v. Gordon H. Kolb Developments, Inc., et al, 853 F. Supp. 941 (E.D. La. 1994); Peremptive period applicable to construction of shopping center began to run upon installment of refrigeration equipment in tenant's store.

Arthur Dooley & Son of Louisiana, Inc. v. Maurice Johnson, 422 So.2d 1270 (La. App. 5th Cir. 1982); Bank was not negligent in allowing employee-subcontractor to endorse checks in name of business only; standards of care imposed on bank by statute; any duty to require endorsement was not designed to ferret out theft by various employees.

Warren M. Francis v. Stephen L. Read, 504 So.2d 610 (La. App. 4th Cir. 1987); Under Louisiana Trust Code, creditor of beneficiary under two trusts entitled to portions of net income from each trust and limited amounts of inter vivos gifts to trust.

First National Bank of Commerce v. Hibernia National Bank in New Orleans, 427 So.2d 569 (La. App. 4th Cir. 1983); Bank which issued certificate of deposit and obtained note and pledge lost right to proceeds of certificate of deposit when it no longer had certificate in its possession and had issued acknowledgment of pledge and assignment to third party.

Frederick B. Ingram, Jr. v. Sandra D. Freeman, 503 So.2d 640 (La. App. 4th Cir. 1987); No cause of action in redhibition where buses passing house caused vibrations.

Jefferson Parish Clerk of Court Health Ins. Trust Fund v. Fidelity & Deposit Co. of Maryland, 673 So.2d 1238 (La. App. 5th Cir. 1996); Court of appeal affirmed decision of trial court that scheme of ERISA plan trustee to keep premiums for use for non-insurance expenses was dishonest act, triggering dishonesty coverage under commercial crime policy.

Ring Construction LLC v. Chateau des Lions, LLC, No. 05-568, 918 So. 2d 1172 (La. App. 3 Cir. 12/30/05); Contractor's assignment of interest in arbitration award not a sale and apartment complex could not escape its liability by paying assignee consideration for the alleged sale of a litigious right.

Compensation Specialties, L.L.C. v. New England Mutual Life Ins. Co., 2009 WL 367497 (La. App. 1st Cir. 2009); Following remand by the Louisiana Supreme Court, Court of Appeal held that plaintiff's suit was abandoned by operation of law after three years of inactivity. (Case not yet published)