Louisiana Law Review

Volume 31 | Number 2
The Work of the Louisiana Appellate Courts for the 1969-1970 Term: A Symposium
February 1971

Huson and the Fifth Circuit - A Return to Snipes?

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null.[57] In the usual case, as in *Gredler*, the will held absolutely null contained only one disposition; therefore, no great damage was done. But if a will provided for multiple dispositions, only one of which was tainted by a prohibited substitution, the jurisprudence stating that the entire will is null might lead the court to an improper result. To avoid this error, the courts should, upon finding a prohibited substitution in a testament, hold only the tainted disposition an absolute nullity, leaving the remainder of the will valid.[58]

In conclusion, it seems that the result in *Crichton v. Succession of Gredler* is correct, but the approach of the court to the problem as well as its reasons for the result cannot be sanctioned under the new Trust Code. It is hoped that the Louisiana courts will take more notice of our new Trust Code in the future, and reach decisions in accord with its affirmative, liberal attitude toward the trust.

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HUSON AND THE FIFTH CIRCUIT—A RETURN TO SNIPES?

In December, 1965, plaintiff suffered injuries while working on a fixed drilling platform on the outer continental shelf[1] off Louisiana's Gulf Coast. In January, 1968, he filed suit against the owner and operator of the fixed rig in federal district court under Louisiana's general personal injury tort recovery statute.[2]

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57. LA CIV. CODE art. 1520 provides in pertinent part: ". . . Every *disposition* not in trust by which the donee, the heir, or legatee is charged to preserve for and to return a thing to a third person *is null*, even with regard to the donee, the instituted heir, or the legatee." (Emphasis supplied.)

58. An example of this approach is shown in Succession of Smart, 214 La. 63, 67-68, 36 So.2d 639, 640-41 (1948): "The fact that there are bequests of particular legacies in the will that contain prohibited provisions or substitutions such would destroy only those legacies and would not effect [*sic*] the will as a whole. It is well settled that the invalidity of a portion of a will does not destroy the will in its entirety. Succession of Lissa, 195 La. 438, 196 So. 924, and the authorities cited therein to that effect."

*The student Board of Editors wishes it noted that it requested the author to write this Note, despite his having a personal interest as an alternate beneficiary under the trust, since the importance and complexity of the subject matter required maximum access to research data. We believed that he could and would write a scholarly analysis of this important case as unaffected as humanly possible by that personal interest.

1. 2 U.S. CODE CONG. & AD. NEWS 2178 (1953). The continental shelf is an extension of the coastal land which slopes down gradually to 600 feet below sea level. In the Gulf of Mexico, the shelf extends to a maximum of 200 miles out and the average distance is 93 miles.

2. LA. CIV. CODE art. 2315.

The district court held that plaintiff's action was barred by Louisiana's one-year prescriptive period,[3] in accordance with the United States Supreme Court's interpretation of the Outer Continental Shelf Lands Act[4] (hereinafter, "Lands Act") in *Rodrigue v. Aetna Casualty & Surety Co.*[5] The United States Court of Appeals for the Fifth Circuit reversed reasoning that as prescription is not substantive, but merely procedural in nature, the timeliness of the action is governed by the federal maritime doctrine of laches.[6] *Huson v. Chevron Oil Co.*, 430 F.2d 27 (5th Cir. 1970), *rehearing denied, cert. applied for* Sept. 14, 1970.

This decision affects the legal remedies of all offshore workers on fixed platforms on the outer shelf. The outer continental shelf is an area of vital and growing importance, primarily because of society's ever increasing demand for oil and other mineral resources.[7] Since the first drilling of a successful offshore oil well in 1947,[8] more than 9000 wells of various types have been attempted,[9] involving thousands of workers. Because of the growing need for these resources, even more men will be working on the shelf in the future.[10]

Workers on fixed rigs are not "seamen" in the traditional sense[11] and have been found by courts not to be entitled to

3. LA. CIV. CODE art. 3536.

4. 43 U.S.C. §§ 1331-43 (1953). The Lands Act covers only those areas lying outside the state territorial boundary which is defined as three geographical miles out. 43 U.S.C. § 1312 (1953). However, both Texas' and Florida's boundaries extend three marine leagues (or nine geographical miles). *See* United States v. Florida 363 U.S. 121, 129 (1959); United States v. Louisiana, 363 U.S. 1, 64 (1959).

5. 395 U.S. 352 (1969).

6. G. GILMORE & C. BLACK, THE LAW OF ADMIRALTY §§ 9-80 (1957). Laches is basically an equitable doctrine in admiralty which acts as a statute of limitations. However, it is not a fixed period of time, but flexible and more or less at the court's discretion. The admiralty court will not dismiss an action due to the mere passage of time, but they will consider both the extent of the delay and the degree of prejudice to the defendant resulting from the delay.

7. NATIONAL PETROLEUM COUNCIL, PETROLEUM RESOURCES UNDER THE OCEAN FLOOR 6-7 (1969).

8. AMERICAN PETROLEUM INSTITUTE, HISTORY OF PETROLEUM ENGINEERING 13 (1961).

9. NATIONAL PETROLEUM COUNCIL, PETROLEUM RESOURCES UNDER THE OCEAN FLOOR 17 (1969).

10. For discussion regarding potential users of this area, *see* Comment, 31 LA. L. REV. 108 (1970).

11. *Cf.* treatment given workers on submersible or mobile drilling rigs. In Comment, 27 LA. L. REV. 757, 775 (1967) the writer states:

"It seems settled that a worker injured aboard a submersible drilling barge or mobile platform while a member of the rig's crew will be able to recover under the Jones Act and maritime law as a seaman." *See also* Offshore Co. v. Robison, 266 F.2d 769 (5th Cir. 1959).

many of the legal benefits available to seamen.[12] The first legislation to cover maritime workers, not classified as seamen, was the Death on the High Seas Act[13] (hereinafter, "Seas Act"), under which recoveries were limited to pecuniary loss for wrongful death occurring on the high seas.[14] In 1953, Congress, in the Lands Act, first enacted legislation specifically designed to govern workers on fixed platforms on the outer continental shelf. Although the primary purpose of the act was to establish the right of the federal government to develop natural resources on the "shelf,"[15] the act also sought to establish a body of civil and criminal laws to govern the subsoil, seabed, and the fixed platforms thereon.[16]

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12. A worker classified as a seaman can proceed under the Jones Act, 46 U.S.C. § 688 (1920) and the general maritime law which allows much broader possibilities for recovery than his land-based counterpart. The seaman can even recover benefits without proving his employer's negligence under the doctrine of unseaworthiness of the vessel. *See* Note, 30 LA. L. REV. 519, 520 (1970) for a more comprehensive discussion of the disparities in remedies available to seaman and non-seaman.

13. 46 U.S.C. §§ 761-68 (1920).

14. Note, 30 LA. L. REV. 519, 521 (1970). *See* 46 U.S.C. § 762 (1920).

15. 2 U.S. CODE CONG. & AD. NEWS 2177 (1953).

16. 43 U.S.C. §§ 1332-33 (a) (1953).

§ 1332: "(a) It is declared to be the policy of the United States that the subsoil and seabed of the outer Continental Shelf appertain to the United States and are subject to its jurisdiction, control, and power of disposition as provided in this subchapter.

(b) This subchapter shall be construed in such manner that the character as high seas of the waters above the outer Continental Shelf and the right to navigation and fishing therein shall not be affected."

§ 1333: "(a) (1) The Constitution and laws and civil and political jurisdiction of the United States are extended to the subsoil and seabed of the outer Continental Shelf and to all artificial islands and fixed structures which may be erected thereon for the purposes of exploring for, developing, removing, and transporting resources therefrom, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State: *Provided, however*, That mineral leases on the outer Continental Shelf shall be maintained or issued only under the provisions of this subchapter.

(2) To the extent that they are applicable and not inconsistent with this subchapter or with other Federal laws and regulations of the Secretary now in effect or hereafter adopted, the civil and criminal laws of each adjacent State as of August 7, 1953 are declared to be the law of the United States for that portion of the subsoil and seabed of the outer Continental Shelf, and artificial islands and fixed structures erected thereon, which would be within the area of the State if its boundaries were extended seaward to the outer margin of the outer Continental Shelf, and the President shall determine and publish in the Federal Register such projected lines extending seaward and defining each such area. All of such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. State taxation laws shall not apply to the outer Continental Shelf.

(3) The provisions of this section for adoption of State law as the law of the United States shall never be interpreted as a basis for claiming any interest in or jurisdiction on behalf of any State for any purpose

The Lands Act provision adopting state law in civil actions[17] did not receive careful judicial interpretation until 1961 in *Pure Oil Co. v. Snipes*,[18] an action involving the claim of an offshore worker for personal injuries suffered in the scope of his employment on the rig. The Fifth Circuit rejected the defendant's argument that the Lands Act should be interpreted literally[19] and held that it was the "intention of Congress that (a) this occurrence be governed by Federal, not State, law, and (b) that the Federal law thereby promulgated would be the pervasive maritime law of the United States."[20]

Judge Brown, speaking for a unanimous court, reasoned that it was completely untenable that Congress intended for this important area to be left to the "shifting policies of adjacent states."[21] In its interpretation of the Lands Act, the court found two specific indications that Congress intended for the federal maritime law to apply. First, Congress had given to the Coast Guard the duty to promulgate and enforce the laws and safety regulations on these artificial islands.[22] Secondly, the Federal Longshoremen's and Harbor Workers' Compensation Act[23] was expressly adopted as the basis of compensation claims.[24] Once maneuvering themselves under the general maritime law, the court had little difficulty in disregarding the adjacent state statute of limitations and holding that the action was timely commenced under the doctrine of laches.[25] The court in *Snipes* did not question Congressional power to enact whatever legislation Congress deemed desirable for the "shelf" area. But it was their opinion that Congress intended that these fixed rigs be governed by the pervasive maritime law.[26] The Fifth Circuit continued to uphold the *Snipes* reasoning in subsequent cases,[27] finally culminating in *Loffland Brothers Co. v. Roberts*, where

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over the seabed and subsoil of the outer Continental Shelf, or the property and natural resources thereof or the revenues therefrom."

17. *Id.* § 1333(a)(2).

18. 293 F.2d 60 (5th Cir. 1961).

19. *See* 43 U.S.C. § 1333 (a)(2) (1953) at note 16 *supra*.

20. Pure Oil Co. v. Snipes, 293 F.2d 60, 64 (5th Cir. 1961).

21. *Id.* at 69.

22. *Id.* at 66. *See* 43 U.S.C. § 1333(e) (1953).

23. 33 U.S.C. §§ 901-50 (1927).

24. Pure Oil Co. v. Snipes, 293 F.2d 60, 67 (5th Cir. 1961); *see* 43 U.S.C. § 1333(c) (1953).

25. Pure Oil Co. v. Snipes, 293 F.2d 60, 70 (5th Cir. 1961).

26. *Id.* at 64.

27. *E.g.*, Ocean Drilling & Explor. Co. v. Berry Bros. Oilfield Serv., 377 F.2d 511 (5th Cir. 1967); Movible Offshore v. Ousley, 346 F.2d 870 (5th Cir. 1965).

they concluded "that Congress deemed the hazards presented by the offshore drilling platforms to be maritime in nature, and governed by Federal maritime law."[28] Also, under the *Snipes* reasoning, the Seas Act had been held to provide the exclusive remedy for any wrongful death to non-seamen occurring outside state territorial boundaries.[29]

However, the Fifth Circuit's judicial reasoning in *Snipes* and its progeny was completely undermined in 1969 by the Supreme Court in *Rodrigue*, an action for wrongful death occurring on the outer continental shelf. In reversing the Fifth Circuit, the Supreme Court held that the Seas Act was inapplicable, and petitioner's remedy was governed by the adjacent state law.[30]

The *Rodrigue* Court was very conscious of the intent of Congress in enacting the Lands Act.[31] Justice White, speaking for a unanimous court, concluded that it was Congress' intent that "these artificial islands, though surrounded by the high seas, *were not in themselves to be considered within maritime jurisdiction.*"[32] (Emphasis added.)

Of particular importance to an understanding of subsequent discussion is the Supreme Court's underlying reason for holding as they did in *Rodrigue*. It can be argued that since the Supreme Court recognized that in this case Louisiana law would afford a more liberal award,[33] the motive behind the decision was to

28. 386 F.2d 540, 545 (5th Cir. 1967), *cert. denied*, 389 U.S. 1040 (1968).

29. Dore v. Link Belt Co., 391 F.2d 671, 675 (5th Cir. 1968). *See also* Higa v. Transocean Airlines, 230 F.2d 780 (9th Cir. 1955).

For more recent developments in wrongful death actions *see* Moragne v. States Marine Lines, Inc., 398 U.S. 375 (1970), discussed in Note, 31 LA. L. REV. 165 (1970), where the Court allowed an action for recovery in state territorial waters under general maritime law.

30. Rodrigue v. Aetna Cas. & Sur. Co., 395 U.S. 352 (1969). The court also noted that "the Lands Act makes it clear that federal law, supplemented by state law of the adjacent state, is to be applied to these artificial islands as though they were federal enclaves in an upland State. This approach was deliberately taken in lieu of treating the structures as vessels, to which admiralty law supplemented by the law of the jurisdiction of the vessel's owner would apply. . . . [*T*]*he Lands Act deliberately eschewed the application of admiralty principles to these novel structures* [fixed rigs]." (Emphasis added.) *Id.* at 355.

31. *Id.* at 363.

"Careful scrutiny of the hearings which were the basis for eliminating from the Lands Act the treatment of artificial islands as vessels convinces us that the motivation for this change together with the adoption of state law as surrogate federal law, was the view that maritime law was inapposite to these fixed structures."

32. *Id.* at 365-66.

33. *Id.* at 361.

extend broader possibilities of recovery to offshore workers.[34] However, from the general thrust of the case and the strong language used, it is evident that the Court's underlying reason for this decision was simply a recognition of and agreement with the intent of Congress in passing the Lands Act. It was the Court's interpretation that Congress felt that the interests of these workers would best be served by adopting adjacent state law as the controlling federal law since the workers were "closely tied to the adjacent states."[35] In fact, as one writer stated, the focal thought underlying *Rodrigue* was the removal of tort actions arising on fixed platforms from admiralty jurisdiction.[36]

The Fifth Circuit in *Huson* while agreeing that petitioner's substantative right via the *Rodrigue* decision and the Lands Act is governed by Louisiana law, held that since prescription is procedural, the timeliness of his action is governed by the federal maritime doctrine of laches.[37] Chief Judge Brown, who had written the *Snipes* decision, was again the organ of the court. He was quick to point out the distinction between a procedural restraint such as peremption which bars the right sought to be enforced and one that is purely procedural, such as Louisiana's prescriptive period for personal injuries.[38] The court based its decision on uncontradicted authority that "[i]n keeping with accepted conflicts principles 'purely procedural provisions may be overlooked,'"[39] thereby allowing petitioner an action even though it would be barred by Louisiana's one-year prescriptive period. The Fifth Circuit's dissatisfaction with the impact of

34. As observed by LeBlanc & McNamara, *Reflections on Rodrigue*, 36 INS. COUNSEL J. 626, 628 (1969), the increased recovery made possible by *Rodrigue* can be dramatic. For example, in *Fontenot v. Nicklos Drilling Co.*, Civil No. 12-064 (W.D. La., 1970), the court awarded $100,960.84 for pecuniary loss. In light of *Rodrigue*, an additional $103,788.65 was granted for loss of support, loss of love, and grief and anguish, thereby more than doubling the recovery.

35. Rodrigue v. Aetna Cas. & Sur. Co., 395 U.S. 352, 363 (1969).

36. Swaim, *Yes, Virginia, There is an Admiralty: The Rodrigue Case*, 16 LOYOLA L. REV. 43, 78 (1970). While personally disagreeing with the desirability of the decision, Professor Swaim stated "the very basis for the decision in *Rodrigue* was that maritime law is inapplicable to such structures and thus admiralty is completely excluded."

37. Huson v. Chevron Oil Co., 430 F.2d 27 (5th Cir. 1970).

38. *Id.* at 31.

The court seems to recognize that in wrongful death actions, LA. CIV. CODE art. 2315, "prescribes both the right and time," and in these cases laches would not apply.

39. *Id. See* Levinson v. Deupree, 345 U.S. 648 (1953); Kenney v. Trinidad Corp., 349 F.2d 832 (5th Cir. 1965), *cert. denied*, 382 U.S. 1030 (1966).

Rodrigue in limiting the recovery of injured workers is implicit in *Huson*. The court pointed out the "sometimes prohibitive principles of contributory negligence," and short prescriptive periods which in many cases would bar the worker's action.[40] They reasoned that since the *Rodrigue*-declared statutory purpose of the Lands Act was to improve the lot of the adjacent shore-based worker, any decision limiting their recovery "should certainly be avoided," if at all possible.[41] Another factor in the court's decision was their concern for uniformity[42] and "eliminating disparities having nothing to do with substantive obligations but arising from the sheer accident of geographical locations in, on, over or around the high seas."[43]

This decision seems desirable in light of the modern humanitarian trend of facilitating recovery.[44] Further, it adds a degree of uniformity by eliminating some of the disparities of remedies which would occur if each adjacent state's prescriptive periods were followed in personal injury cases.[45] However, disparities will still exist. One example is that in wrongful death actions, the plaintiff will still be barred by Louisiana's one-year peremption.[46] Also in questions of contributory negligence and assumption of risk, the plaintiff's right to recover will vary from state to state.

The propriety of the court's reasoning in *Huson* is questionable. The decision was based on a distinction drawn between procedural and substantive law. This distinction has no basis in *Rodrigue* and apparently was merely a clever judicial maneuver by the Fifth Circuit in attempting to reconcile their prior position in *Snipes*, that Congress intended for maritime law to apply, with the *Rodrigue* decision. Their technique is unsound for

40. Huson v. Chevron Oil Co., 430 F.2d 27, 28 (1970). Chief Judge Brown stated that although the Supreme Court determined that it was the conviction of Congress that the interests of these offshore workers "would be served best by adopting the law of the adjacent state as controlling federal law, the ink was scarcely dry when it became evident that the result might be quite something else."

41. *Id.* at 28.

42. *Id.* at 32. *See* Moragne v. States Marine Lines, 90 S.Ct. 1772, 1788 (1970).

43. Huson v. Chevron Oil Co., 430 F.2d 27, 32 (1970).

44. G. GILMORE & C. BLACK, THE LAW OF ADMIRALTY §§ 6-60 (1957).

45. Huson v. Chevron Oil Co., 430 F.2d 32 (5th Cir. 1970). An example of these disparities is demonstrated by the various statutes of limitation. In Louisiana the plaintiff would have only one year in which to institute suit (LA. CIV. CODE art. 3536), while a worker based off the Mississippi Coast would have six years (MISS. CODE ANN. § 722 (1942)).

46. LA. CIV. CODE art. 2315.

several reasons. First, one of the court's major premises was that in adjudicating the claims of fixed platform workers they were still an *admiralty* court. If this were true, then Judge Brown's argument would be correct, since admiralty courts are not bound by a state's procedural statutes of limitation, but by the equitable doctrine of laches.[47]

However, since the effect of *Rodrigue* was to remove fixed rigs on the outer continental shelf from admiralty jursidiction,[48] this was not an admiralty court sitting to enforce general maritime law, but a federal court sitting to enforce a federal statute. It is clear that when Congress specifically enacts a statute of limitations to govern a particular cause of action, it must be followed, making the common law doctrine of laches inappropriate.[49] Under the Lands Act, once the hurdle "applicable and not inconsistent" is cleared, the adjacent state's law becomes federal law, which logically includes its prescriptive period as well.

Secondly, even if the Lands Act did not specifically adopt the adjacent state's prescriptive periods, they should still be controlling unless their application would be contrary to an overriding federal interest.[50] The Fifth Circuit relied on the "overriding federal interest" of uniformity in disregarding the Louisiana one-year prescriptive period.[51] However, the court overlooked the fact that Congress and the Supreme Court had both asserted that the adjacent states have a vital interest in these offshore workers because of their close ties with these workers.[52]

A third argument used by the *Huson* court was that in light of the Lands Act, there was "federal 'law' or procedural practice

47. Czaplicki v. Hoegh Silvercloud, 351 U.S. 525, 533 (1956); Levinson v. Deupree, 345 U.S. 648, 652 (1953); Kenney v. Trinidad Corp., 349 F.2d 832, 837 (5th Cir. 1965), *cert. denied*, 382 U.S. 1030 (1966).

48. Rodrigue v. Aetna Cas. & Sur. Co., 395 U.S. 352, 360 (1969).

"The accidents in question here involved no collision with a vessel, and the structures were not navigational aids. They were islands, albeit artificial ones . . . and the accidents had no more connection with the ordinary stuff of admiralty than do accidents on piers. Indeed, the Court has specifically held that drilling platforms are not within admiralty jurisdiction." *See* notes 30, 31 *supra*.

49. Holmberg v. Armbrecht, 327 U.S. 392, 395 (1946); Burnett v. New York Cent. R.R., 332 F.2d 529 (6th Cir. 1964).

50. United Auto Workers v. Hoosier Cardinal Corp., 383 U.S. 696, 701-04 (1966). *See also* Wallis v. Pan American Petroleum Corp., 384 U.S. 63, 68 (1966); Charney v. Thomas, 372 F.2d 97, 99 (6th Cir. 1967).

51. Huson v. Chevron Oil Co., 430 F.2d 27, 32 (5th Cir. 1970).

52. Rodrigue v. Aetna Cas. & Sur. Co., 395 U.S. 352, 363 (1969).

which adequately" covered the situation, and therefore the state prescriptive period was not applicable.[53] It is submitted that this argument is untenable. When Congress spoke of gaps in federal "laws" it meant federal substantive law, not procedural practice, as was clearly shown by the Supreme Court in *Rodrigue*, where it noted the report of the Senate Committee on Interior and Insular Affairs.[54] Under the *Huson* approach, there would never be a need for using adjacent state law to determine petitioner's right of action for personal injuries suffered since "general maritime law" provides such actions, and there is federal law or practice which "covers the situation."

In the writer's opinion, the most logical treatment of the *Rodrigue* holding is found in *Guillory v. Humble Oil & Refining Co.* where the district court reasoned that:

> "[T]he Lands Act, when it made state law applicable in the absence of conflicting applicable federal law, did not differentiate between procedural and substantive law. There is here no applicable federal law pertaining to the time within which such a suit for personal injuries or death shall be filed. The doctrine of laches is peculiar to maritime law, and *Rodrigue* teaches that maritime law cannot be applied to this case [personal injury] . . . . Thus, since plaintiff derives his right or cause of action by virtue of state law, made applicable by the Lands Act, he must also accept the prescriptive period specifically provided by the same state law which created his right or cause of action."[55]

But whether the Supreme Court will follow its literal holding in *Rodrigue* or will expand that decision to reconcile it with *Huson* is really immaterial because lack of uniformity and inequities will still exist leaving many areas of confusion as to what rights and remedies are available.

The Supreme Court has long recognized the desirability of uniformity in admiralty,[56] but obviously has been unable to

53. Huson v. Chevron Oil Co., 430 F.2d 27, 31 (5th Cir. 1970).

54. S. REP. No. 411, 83d Cong., 1st Sess. 23 (1953). In introducing the proposed legislation, the Committee on Interior and Insular Affairs explained: "Paragraph (2) [43 U.S.C. § 1333(a) (1953)] adopts State law as Federal law, to be used when Federal *statutes* or *regulations* of the Secretary of the Interior are inapplicable." (Emphasis added.)

55. Guillory v. Humble Oil & Refining Co., 310 F. Supp. 230, 232 (E.D. La. 1970).

56. Moragne v. States Marine Lines, Inc., 398 U.S. 375 (1970); The Lottawanna, 88 U.S. 558, 575 (1875).

achieve it judicially. It would seem that the best way to achieve the dual goals of equity and uniformity would be for Congress to pass pervasive legislation equalizing the legal rights and remedies for all offshore workers on fixed or submersible rigs, both within and without state territorial waters. It is hoped that the *Rodrigue* and *Huson* decisions will point out the desirability, if not the necessity, of definitively establishing a general body of law covering these workers and others injured or killed while on the continental shelf.

Alvin Michael Dufilho

RELATION OF PERSONAL INJURY AWARDS TO THE COMMUNITY: A NEED FOR REVISION

In Louisiana, the relation of personal injury awards to the community of acquets and gains is regulated by articles 2334 and 2402 of the Civil Code. Several recent decisions in this area show a profound need for legislative revision.

In *Chambers v. Chambers*[1] judgment in district court was rendered decreeing that a sum of money obtained after a judgment of divorce, but in settlement for personal injuries sustained by the husband during the existence of his marriage, was community property and that the plaintiff wife was entitled to one half of this judgment. The husband appealed from this judgment. In overturning the decision below, the First Circuit Court of Appeal conceded that "[Civil Code] Article 2334 is the source article on the subject with respect to the husband's rights and this article is clear, unambiguous, and represents the solemn expression of the Legislative will."[2] That article declares: "Actions for damages resulting from offenses and quasi-offenses suffered by the husband, living separate and apart from his wife by reason of fault on her part, sufficient for separation or divorce shall be his separate property." Furthermore, "[c]ommon property is that which is acquired by husband and wife during marriage, in any manner different from that above stated."[3] Nevertheless, the court stated that "our appreciation of [Civil Code] Article 2334, in light of the particular facts of this case,

1. 238 So.2d 30 (La. App. 1st Cir. 1970).
2. *Id.* at 34.
3. LA. CIV. CODE art. 2334.