

GENERAL LIABILITY

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TWPD

TAYLOR WELONS POLITZ DUHE

New Orleans, LA
Baton Rouge, LA
Jackson, MS



Sam Rosamond, Partner

Sam Rosamond is a partner in the New Orleans office, having joined TWPD in 2012. He graduated *cum laude* from Tulane Law School in 1985. His practice is primarily focused on insurance coverage litigation. He has also had years of experience in toxic tort and hazardous waste litigation. Sam has argued cases in the United States Fifth Circuit and the appellate courts of Louisiana.

Sam prides himself in being responsive to the clients' needs. He understands the expense incurred in litigation and seeks ways to resolve cases as quickly as possible.

In his free time, Sam likes to hike, read, and spend time with his wife, Laura, and his daughters, Michelle and Kristen.

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RELEASE OF "ANY AND ALL OTHER PERSONAL INJURY CLAIMS" ENFORCED AS WRITTEN

TWPD Partner Sam Rosamond successfully argued to the Louisiana Supreme Court that a release of "any and all other personal injury claims" barred a subsequent claim for mesothelioma, which was diagnosed more than 30 years later.

The plaintiff filed suit against Avondale Shipyards and its insurers in 1982 for contraction of non-malignant occupational disease. A settlement was reached in 1985 in which the plaintiff agreed to release any and all claims that he had arising, or which may arise in the future, out of occupational lung diseases and his work at Avondale.

The plaintiff again filed suit against Avondale and its insurer in 2016 after he contracted mesothelioma. The defendants sought dismissal arguing that the claims were barred by the prior release. The plaintiff argued that the release must expressly identify a disease or injury for it to "unequivocally reflect" an intent to release a claim for future disease or injury. Because wrongful death claims and mesothelioma were not specifically mentioned in the release, the plaintiff argued that the case should not be dismissed. The Court rejected that argument and refused to limit the scope of the release of "any and all other personal injury claims" explaining that the law does not require a release to list all diseases or injuries being released. *Joseph v. Huntington Ingalls Inc.*, No. 2018-CC-2061 (La. 1/29/2020); 2020 WL 499939



SUIT DISMISSED WHERE PLAINTIFF COULD NOT SHOW WHAT CAUSED HIM TO SLIP AND FALL

The plaintiff filed a petition for damages alleging that while he was in a store's bathroom, he encountered a wet area causing him to slip and fall. The plaintiff claimed that the wet area was caused by a mop bucket that had been left to drain. The defendant sought dismissal of the suit because the plaintiff could not prove that his fall resulted from an unreasonably slippery condition.

The plaintiff testified that he slipped in "[w]hatever liquid was on the floor" and that there was "[n]o telling what it was." After falling, the plaintiff noticed a wet mop bucket, but he did not know how the liquid got on the floor or how long the liquid was there. He also did not know whether the employees knew about the liquid on the floor.

The court found that the plaintiff's inability to identify the substance that he slipped in and failure to present evidence that the defendant's employees were aware of the liquid on the floor or how long it had been present was fatal to the plaintiff's case and dismissed. *Campbell v. Dolgencorp, LLC*, 2019-CA-0036 (La. App. 1 Cir. 1/9/20)

EMPLOYER DOES NOT OWE DUTY TO THIRD PARTIES TO SUPERVISE EMPLOYEES WHOSE CONDUCT BREACHES COMPANY POLICY

While at work, a Wal-Mart employee consumed alcohol and prescription drugs that were provided to her by her supervisor in violation of Wal-Mart's policies. Approximately 20 minutes after she left work, she caused a head on collision with the plaintiff's vehicle.

The plaintiff sued the employee and Wal-Mart alleging Wal-Mart was liable for failure to properly supervise its employees. The court held the employees' conduct was motivated by personal considerations entirely extraneous to Wal-Mart's interests and in violation of Wal-Mart's policies. The court further found that there was no evidence that the employee was acting in the course and scope of her employment at the time of the accident. Finally, the court held that Wal-Mart did not owe a duty to third persons who were not patrons or on Wal-Mart's premises to supervise its employees to prevent inappropriate conduct. *Sibley v. Granger*, 2019-CA-0411 (La. App. 1 Cir. 1/7/20)

PROPOSED LEGISLATION

Louisiana House Bill No. 9, the Omnibus Premium Reduction Act of 2020, was filed on January 22, 2020. The bill aims to reduce the cost of car insurance by regulating motor vehicle accidents and insurance suits. Proposed changes include:

1. Extending the prescription period for tort actions from 1 year to 2 years.
2. Lowering the threshold for a jury trial from \$50,000 to \$5,000.
3. Limiting the plaintiff's recovery of medical expenses to the amount actually paid and not the amount billed when a plaintiff's medical expenses are paid by a health insurance company or Medicare.
4. Repealing the direct action statute which currently provides that insurers issuing policies in this state consent to being sued in a direct action if the accident or injury occurred within Louisiana.

The Legislative Session is set to begin in March of 2020. A similar bill failed to make it out of committee last year. We will continue to monitor this bill and keep you abreast of any new developments.



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