

The Supreme Court of the State of Louisiana



FILED

6/2/25

THE BOARD of DISCIPLINARY APPEALS
Appointed by the Supreme Court of Texas

IN RE: KENNETH M. PLAISANCE

No. 2023-B-01460

RE: Disciplinary Counsel - Applicant Other; Findings and Recommendations
(Normal Charges);

February 06, 2024

Suspension imposed. See per curiam.

JBM

JLW

SJC

JTG

WJC

Hughes, J., dissents and would impose a lesser sanction.

Griffin, J., dissents and would reject the proposed discipline as too harsh.



Supreme Court of Louisiana
February 6, 2024

Katie Marianovic
Chief Deputy Clerk of Court
for the Court

SUPREME COURT OF LOUISIANA
A TRUE COPY OF DOCUMENTS AS
SAME APPEARS IN OUR RECORDS

[Signature]
Edwin C. Gonzales, Jr.
Deputy Clerk of Court

EXHIBIT

1

SUPREME COURT OF LOUISIANA

NO. 2023-B-1460

February 6, 2024

IN RE: KENNETH M. PLAISANCE

ATTORNEY DISCIPLINARY PROCEEDING

 PER CURIAM

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel (“ODC”) against respondent, Kenneth M. Plaisance, an attorney licensed to practice law in Louisiana.¹

UNDERLYING FACTS

By way of background, on June 14, 2017, Larry Taylor was the driver of a vehicle that rear-ended an eighteen-wheeler making an illegal U-turn in New Orleans. Lawan Roussel, the minor child of Mr. Taylor and Melvia Hodges, was a front seat passenger in Mr. Taylor’s vehicle at the time of the accident. Both Mr. Taylor and Lawan were injured. The police ticketed Mr. Taylor for following too closely, but the circumstances of the accident raised issues of comparative negligence. Progressive Insurance Company insured both Mr. Taylor’s vehicle and the eighteen-wheeler.

On June 15, 2017, respondent agreed to represent both Mr. Taylor and Lawan on a contingency fee basis. However, he failed to disclose the existence of the concurrent conflict of interest by representing them both when Mr. Taylor may have some fault in causing the accident.² On July 27, 2017, respondent granted Mr.

¹ Respondent is also licensed to practice law in Texas.

² Respondent had Mr. Taylor and Ms. Hodges sign a waiver of the conflict of interest but explained to them that the conflict of interest stemmed from Progressive insuring both Mr. Taylor’s vehicle

Taylor and Progressive a full release of all claims on behalf of Lawan in exchange for the \$15,000 policy limit of Mr. Taylor's auto insurance policy.

On October 18, 2017, respondent filed a personal injury lawsuit in Orleans Parish Civil District Court against Progressive as the insurer of the eighteen-wheeler. Mr. Taylor and Lawan were co-plaintiffs in the lawsuit, and respondent failed to include any claims by Lawan alleging comparative negligence by Mr. Taylor. Progressive later removed the case to federal court in New Orleans, and the case was dismissed without prejudice at respondent's request.

In the latter part of 2017, respondent decided to try to enlist the help of a law firm that handles eighteen-wheeler cases. To this end, respondent asked the Leger & Shaw law firm in New Orleans to enroll as co-counsel on all claims. On December 16, 2017, the Leger firm advised respondent of the conflict of interest concerns with his dual representation of Mr. Taylor and Lawan, and it declined respondent's request to act as co-counsel.

Respondent then asked the Texas law firm of Derryberry, Zipps, and Wade, PLC, to enroll as co-counsel on behalf of Mr. Taylor and Lawan. After agreeing to represent Lawan, the Derryberry firm advised respondent of his concurrent conflict of interest in the dual representation and asked that he withdraw from Mr. Taylor's defense. Ultimately, respondent failed to withdraw from representing Mr. Taylor.

The Derryberry firm associated the New Orleans law firm of Gainsburgh, Benjamin, David, Meunier, and Warshauer, LLC as local counsel and met with Ms. Hodges on Lawan's behalf to advise her of respondent's conflict of interest. Thereafter, Ms. Hodges terminated respondent's representation of Lawan and executed a contingency fee agreement with the Derryberry firm and the Gainsburgh firm.

and the eighteen-wheeler. He never explained the conflict of interest due to Mr. Taylor's possible comparative negligence.

On June 14, 2018, the Gainsburgh firm filed a lawsuit on behalf of Ms. Hodges and Lawan in the United States District Court for the Eastern District of Louisiana. With respondent's assistance, Mr. Taylor filed his own lawsuit in the United States District Court for the Eastern District of Louisiana. Soon thereafter, respondent enrolled as Mr. Taylor's counsel. Those two federal cases were then consolidated. On October 16, 2018, respondent filed a motion to intervene in the consolidated cases, requesting attorney's fees for his past representation of Lawan. The filing of the motion to intervene was ultimately rejected due to a deficiency respondent failed to correct.

In May 2019, the parties settled the claim following a mediation. Thereafter, Lawan's attorneys petitioned the Orleans Parish Civil District Court for authority to enter into the settlement on Lawan's behalf, which petition was ultimately granted.

On August 15, 2019, respondent emailed the Derryberry firm to warn it not to disburse the settlement funds until his fee claim was resolved. Because of uncertainty regarding the validity of respondent's fee claim, on September 4, 2019, Lawan's attorneys filed into the record of the consolidated federal cases a pleading entitled "Motion to Determine Conflict-Free Status and Entitlement to Attorneys' Fees." Respondent did not oppose the motion or appear at the related hearing. On October 7, 2019, the presiding judge confirmed that respondent had a conflict of interest and, thus, was ineligible to receive a fee from his conflicted representation of Lawan. Specifically, the judge ruled that, because respondent received a fee from Mr. Taylor's portion of the settlement, he could not share in the fees from Lawan's portion of the settlement. Respondent appealed the ruling to the United States Fifth Circuit Court of Appeals, which appeal was dismissed due to lack of jurisdiction in the latter part of March 2020.

DISCIPLINARY PROCEEDINGS

In December 2021, the ODC filed formal charges against respondent, alleging that his conduct violated the following provisions of the Rules of Professional Conduct: Rules 1.4 (failure to communicate with a client), 1.7(a) (conflict of interest: concurrent clients), 3.3 (candor toward the tribunal),³ 8.4(d) (engaging in conduct prejudicial to the administration of justice). Respondent answered the formal charges, essentially denying that he engaged in any misconduct. Accordingly, the matter proceeded to a formal hearing on the merits.

Formal Hearing

On April 11, 2022, one month prior to the scheduled hearing, respondent filed a motion to continue the hearing, arguing that discovery was incomplete and that he was still attempting to retain an attorney to represent him. The ODC opposed the motion, and the hearing committee chair denied the motion on April 18, 2022. On April 25, 2022, respondent filed a motion for summary judgment, which the ODC opposed based upon Supreme Court Rule XIX, § 15(B), which prohibits such motions “prior to the completion of the evidentiary record.” The committee chair denied the motion on April 27, 2022.

On May 9, 2022, attorney Luke Fontana purportedly enrolled as respondent’s counsel and filed a motion to continue, which again argued that discovery was incomplete. That same day, the committee chair denied the motion. On May 11, 2022, the day of the hearing, another motion to continue was fax-filed on respondent’s behalf, purportedly by Mr. Fontana. Attached to the motion was a doctor’s note indicating that respondent was unable to attend the hearing “due to

³ The Rule 3.3 allegation may have been a typographical error in the formal charges as the formal charges define Rule 3.3 as “seeking to collect attorneys’ fees in pursuit of a conflicted representation,” and the ODC’s pre-hearing memorandum references Rule 3.1 (meritorious claims and contentions) instead of Rule 3.3.

health concerns.” Neither respondent nor Mr. Fontana appeared at the hearing. After attempts to reach Mr. Fontana failed, the committee chair denied the motion.

The hearing on the merits proceeded with only Deputy Disciplinary Counsel Robert Kennedy in attendance to represent the ODC. The ODC introduced documentary evidence and called attorney Michael Ecuyer of the Gainsburgh firm to testify before the committee.

Following the hearing, both respondent and the ODC provided conflicting information regarding whether Mr. Fontana had actually been retained to represent respondent. According to the ODC’s investigator, Mr. Fontana denied representing respondent. According to respondent, he paid Mr. Fontana’s paralegal to retain Mr. Fontana. Under these circumstances, the committee reopened the hearing to receive evidence and testimony regarding this conflicting information.

The second hearing took place on September 23, 2022. The ODC was represented by Deputy Disciplinary Counsel Christopher Kiesel. Respondent failed to appear, and no one appeared on his behalf. The ODC introduced documentary evidence and called Mr. Fontana to testify before the committee.

RESPONDENT’S OCTOBER 5, 2020 SWORN STATEMENT TESTIMONY

Respondent testified that he had not yet attempted to obtain counsel to represent him even though he requested a continuance to do so. Regarding the conflict of interest, respondent testified that he was aware of it because he had Mr. Taylor and Ms. Hodges sign waivers. He indicated that his research regarding whether the conflict of interest was unwaivable was indeterminate. He also testified that he did not obtain an ethics opinion regarding the conflict of interest from the Louisiana State Bar Association as suggested by the Leger firm. Nevertheless, at the suggestion of two other attorneys, he had the case that was removed to federal court dismissed because of a possible conflict of interest. Respondent believes that

the Derryberry and Gainsburgh firms kept bring up the conflict of interest issue so they could cut him out of a share of the attorney's fees.

MICHAEL ECUYER'S TESTIMONY

Mr. Ecuyer, an attorney at the Gainsburgh firm, testified that he filed a disciplinary complaint against respondent regarding his conflicted representation of Mr. Taylor and Lawan. He indicated that he and other attorneys repeatedly told respondent that he could not represent both Mr. Taylor and Lawan. Respondent stated that he had Mr. Taylor and Ms. Hodges sign waivers of the conflict of interest, and Mr. Ecuyer told him the conflict of interest was not waivable. In Mr. Ecuyer's opinion, respondent was unable to understand the difference between a waivable and an unwaivable conflict.

After the settlement, respondent insisted he was due a fee for his representation of Lawan. Therefore, Mr. Ecuyer and Lawan's other attorneys filed a motion asking the federal court to determine if respondent was conflict-free and, thus, entitled to a fee for his representation of Lawan. Until the fee dispute was resolved, the settlement funds were held in trust, which delayed the disbursement of Lawan's portion of the settlement for eight or nine months.

LUKE FONTANA'S TESTIMONY

Mr. Fontana testified that he has never spoken with respondent and was not retained to represent him. He also testified that he had never seen and did not sign the motions for continuance purportedly filed by him in this matter. He had no knowledge of whether his paralegal had ever spoken to respondent and never spoke to his paralegal about respondent. Mr. Fontana further testified that he had no knowledge of the \$1,000 payment respondent purportedly made to his paralegal,

never authorized his paralegal to collect \$1,000 from respondent, and never received the \$1,000 from either respondent or his paralegal.

Mr. Fontana also testified that, at one point, he discovered that his driver's license was missing and that his name had been falsely used in a manner indicating he had appeared before a notary public. Additionally, he discovered unauthorized intrusions into his computer and bedroom, which he concluded were likely perpetrated by his paralegal.⁴ Finally, Mr. Fontana indicated that, at some point, he never heard from the paralegal again.

Hearing Committee Report

After considering the testimony and evidence presented at the two hearings, the hearing committee made factual findings consistent with the factual allegations set forth in the formal charges and in the underlying facts section above. Additionally, the committee found the following:

- Respondent disregarded the requirement of a conflict-free representation of Mr. Taylor and Lawan, jeopardizing their constitutional Sixth Amendment rights;
- Respondent jeopardized their recovery of damages for their injuries;
- Respondent caused additional work by and placed additional burdens upon legal counsel in at least two law firms who were required to prevent his violation of the Rules of Professional Conduct;
- Respondent unnecessarily increased the workload of both the United States District Court for the Eastern District of Louisiana and the United States Fifth Circuit Court of Appeals;

⁴ In a sealed portion of the transcript, the ODC reported that Mr. Fontana's paralegal had an extensive criminal history in several states.

- Respondent contributed to the erosion of trust in the integrity of the bar and the judicial system;
- Respondent delayed, for approximately eight or nine months, the payment of damages in the form of settlement funds to three plaintiffs and their families due to his persistent litigation;
- Respondent caused added expenses, including costs and attorney's fees, for all parties due to his motion to intervene in the federal court settlement and his frivolous appeal to the United States Fifth Circuit Court of Appeals;
- Because of the increased attorney's fees, respondent reduced the parties' recoveries;
- Even if respondent believed he was represented at the May 11, 2022 disciplinary hearing, he has since learned he was not; yet he still has not provided any mitigating evidence or an explanation for his absence at the September 23, 2022 hearing;
- The medical note provided to the committee was presented by fraudulent means either by respondent or by Mr. Fontana's paralegal; respondent has provided no subsequent information regarding his absence, the fraudulent filing, or his position as to the formal charges; and
- Despite the September 23, 2022 hearing, the committee is unable to reach a conclusion as to whether respondent's absence at the May 11, 2022 hearing was due to his own attempted fraud or because he was a victim of Mr. Fontana's paralegal.

Based upon these facts, the committee determined respondent violated the Rules of Professional Conduct as charged. The committee then determined respondent knowingly and intentionally violated duties owed to his clients, the legal system, and the legal profession, which caused actual harm.

The committee found the following aggravating factors are present: a dishonest or selfish motive, a pattern of misconduct, bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary agency, and refusal to acknowledge the wrongful nature of the conduct. In mitigation, the committee found the absence of a prior disciplinary record and only moderate harm caused by his misconduct.

After further considering the court's prior case law addressing similar misconduct, the committee recommended respondent be suspended from the practice of law for two years and one day, with one year deferred.

Respondent filed an objection to the hearing committee's report

Disciplinary Board Recommendation

After review, the disciplinary board determined that the hearing committee's factual findings were not manifestly erroneous and adopted same. Additionally, the board found the following:

- During the ODC's investigation, respondent was scheduled to provide his sworn statement on September 10, 2020. Respondent requested the sworn statement be postponed so he could obtain counsel. During his rescheduled sworn statement on October 5, 2020, which was almost one year after he received notice of the disciplinary complaint, respondent admitted that he had made no effort to retain an attorney to represent him;
- Also during his sworn statement, respondent admitted that he knew Mr. Taylor may have some fault in the accident; however, respondent never disclosed to his clients that an unwaivable conflict of interest would exist in representing both Mr. Taylor and Lawan;

- When asked during his sworn statement why he had the civil lawsuit that was removed to federal court dismissed, respondent indicated that it was because there may have been conflicts of interest;
- On May 10, 2022, one day before the formal hearing in this matter, the board contacted respondent, but he refused to speak with the board, claiming advice of counsel even though he had not spoken to his purported counsel (Mr. Fontana) at the time of or even after this false representation; and
- On August 26, 2022, the ODC served respondent with a subpoena duces tecum for the production of documents related to Mr. Fontana's alleged representation. Respondent did not produce any documents by or after the September 15, 2022 deadline, nor did he provide an explanation for his failure to comply with the subpoena duces tecum or for his absence from the September 23, 2022 hearing.

Based upon these facts, the board determined respondent violated Rules 1.4, 1.7(a), and 8.4(d) of the Rules of Professional Conduct as alleged in the formal charges and as found by the committee. The board, however, determined that the committee erred in finding a violation of Rule 3.3, finding that the citing of this alleged rule violation in the formal charges appeared to be a typographical error. Instead, the board determined that the ODC intended to cite Rule 3.1 (meritorious claims and contentions) because he sought to intervene in the federal litigation so he could improperly receive attorney's fees for his conflicted representation of Lawan.

The board then determined respondent knowingly and intentionally violated duties owed to his clients, the legal system, and the legal profession, which caused actual harm. Based upon the ABA's *Standards for Imposing Lawyer Sanctions*, the board determined the baseline sanction is suspension.

The board found the following aggravating factors are present: a prior disciplinary record (a 2002 diversion for settling a case without the client's consent),

a dishonest or selfish motive, a pattern of misconduct, multiple offense, obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary agency, refusal to acknowledge the wrongful nature of the conduct, and substantial experience in the practice of law (admitted 1989). The board found no mitigating factors present.

After further considering the court's prior case law addressing similar misconduct, the board recommended respondent be suspended from the practice of law for two years and one day, with one year deferred.

Neither respondent nor the ODC filed an objection to the board's report and recommendation.

DISCUSSION

Bar disciplinary matters fall within the original jurisdiction of this court. La. Const. art. V, § 5(B). Consequently, we act as triers of fact and conduct an independent review of the record to determine whether the alleged misconduct has been proven by clear and convincing evidence. *In re: Banks*, 09-1212 (La. 10/2/09), 18 So. 3d 57.

The record of this matter supports a finding that respondent failed to adequately communicate with his clients, engaged in a conflict of interest, attempted to collect an impermissible fee, and engaged in conduct prejudicial to the administration of justice. Based upon these facts, respondent violated Rules 1.4, 1.7(a), 3.1, and 8.4(d) of the Rules of Professional Conduct.

Having found evidence of professional misconduct, we now turn to a determination of the appropriate sanction for respondent's actions. In determining a sanction, we are mindful that disciplinary proceedings are designed to maintain high standards of conduct, protect the public, preserve the integrity of the profession, and deter future misconduct. *Louisiana State Bar Ass'n v. Reis*, 513 So. 2d 1173

(La. 1987). The discipline to be imposed depends upon the facts of each case and the seriousness of the offenses involved considered in light of any aggravating and mitigating circumstances. *Louisiana State Bar Ass'n v. Whittington*, 459 So. 2d 520 (La. 1984).

Respondent caused actual harm by knowingly and intentionally violating duties owed to his clients, the legal system, and the legal profession. We agree with the disciplinary board that the baseline sanction is suspension. We also agree with the board's assessment of aggravating and mitigating factors.

Turning to the issue of an appropriate sanction, we find guidance from *In re: Bellaire*, 22-1084 (La. 9/27/22), 347 So. 3d 143, and *In re: Lapeyrouse*, 22-0571 (La. 10/21/22), 352 So. 3d 59. In *Bellaire*, an attorney represented the buyer and the seller with respect to a property transfer without obtaining a waiver of the conflict of interest, which resulted in actual harm to the buyer when the sale fell through. The attorney then failed to cooperate with the ODC's investigation of the matter. For this negligent and knowing misconduct, we suspended the attorney from the practice of law for six months, with all but ninety days deferred. In *Lapeyrouse*, an attorney engaged in a conflict of interest by providing legal advice to both his client and his client's estranged wife in connection with their divorce and by disclosing confidential information to his client's estranged wife. The attorney then filed a defamation lawsuit against his client and another witness based upon the information they provided to the ODC regarding his conflict of interest. For this knowing misconduct, we suspended the attorney from the practice of law for one year, with six months deferred.

Arguably, respondent's misconduct is more egregious than the misconduct found in *Bellaire* and *Lapeyrouse*. Respondent never adequately explained the conflict of interest to the clients and inappropriately obtained a waiver of an unwaivable conflict. He also attempted to obtain a fee he was barred from receiving

because of the conflict and filed frivolous pleadings, all of which delayed the parties receipt of their settlement funds for months. Respondent's delaying tactics spilled over into the disciplinary proceedings, and he failed to appear at both disciplinary hearings without explanation.

Under these circumstances, a sanction requiring a formal application for reinstatement is warranted. Accordingly, we will adopt the board's recommendation and suspend respondent from the practice of law for two years and one day, with one year deferred.

DECREE

Upon review of the findings and recommendation of the hearing committee and the disciplinary board, and considering the record, it is ordered that Kenneth M. Plaisance, Louisiana Bar Roll number 19738, be and he hereby is suspended from the practice of law for a period of two years and one day, with one year deferred. All costs and expenses in the matter are assessed against respondent in accordance with Supreme Court Rule XIX, § 10.1, with legal interest to commence thirty days from the date of finality of this court's judgment until paid.

SUPREME COURT OF THE STATE OF LOUISIANA

FINDINGS AND RECOMMENDATIONS

OF THE

LOUISIANA ATTORNEY DISCIPLINARY BOARD

DUPLICATE

23 B

1460

IN RE: **KENNETH M. PLAISANCE**

(FORMAL CHARGES)

DELIVERED BY HAND

NOV 03 2023

STATE OF LOUISIANA
CLERK OF COURT

2023 NOV -6 PM 1:21

Flora D. K. Williams
CLERK OF COURT

B.V.

CERTIFICATION

I certify that the record contained herein is the original and complete record of the Louisiana Attorney Disciplinary Board vs. **KENNETH M. PLAISANCE**; DOCKET NO.: **21-DB-066**. This 3rd day of November, 2023.

Mildred B. Williams

MILDRED B. WILLIAMS

Docket Clerk

Louisiana Attorney Disciplinary Board

INPUT BY: _____

LOUISIANA ATTORNEY DISCIPLINARY BOARD

FILED DISCIPLINARY BOARD	IN RE: KENNETH M. PLAISANCE (Bar Roll No. 18738)
Date: 12-13-21	21 DR 066
Clerk: [Signature]	DOCKET NO.:

FORMAL CHARGES

NOW comes the OFFICE OF DISCIPLINARY COUNSEL, pursuant to La. Supreme Court Rule XIX and alleges that you have engaged in the following misconduct in violation of the Rules of Professional Conduct, to-wit:

Respondent, Kenneth M. Plaisance, is a Louisiana-licensed attorney admitted in 1989. He is also licensed in the state of Texas.

On June 15, 2017, Respondent consulted with and agreed to jointly represent two personal injury claimants, Larry Taylor ("Taylor"), an adult, and Lawan Roussel ("Lawan"), the minor child of Melvia Hodges, who had been injured in a motor vehicle accident in New Orleans. At the time of the accident, Taylor was driving a vehicle when he rear-ended an eighteen-wheeler making an illegal U-turn, which raised issues of comparative negligence. Lawan was a passenger in the front seat of the vehicle. Taylor was ticketed by police for the offense of following too closely and was later found to have the controlled substance THC in his system, indicating recent ingestion of marijuana.

At the time he was retained, Respondent failed to disclose the existence of a concurrent conflict of interest inherent in his joint representation of both clients. On July 27, 2017, on behalf of Lawan, Respondent granted a full release of all claims against Taylor to Progressive Insurance Company (Taylor's auto insurer), in exchange for payment of the \$15,000 policy limits. Thereafter, on October 18, 2017, he filed a personal injury action in state court in Orleans Parish against Progressive (who was also the defendant's insurer) on behalf of both Taylor and Lawan as co-plaintiffs, alleging the truck driver's negligence. The defendant insurer later removed the matter to federal court in New Orleans.¹ The respondent's lawsuit failed to include any claims by Lawan alleging the comparative negligence of Taylor.

¹ This suit was later dismissed without prejudice and re-filed under a different case number: No. 18-cv-05889.

In the latter part of 2017, the respondent approached the Covington firm of Leger and Shaw about enrolling as co-counsel on all claims. On December 26, 2017, an attorney with the firm expressly advised Respondent of conflict concerns with his joint representation of Taylor and Lawan and declined to participate in the case. Respondent then asked a Texas law firm, Derryberry, Zipps, and Wade, PLC, ("DZW"), to enroll as co-counsel on behalf of Lawan and Taylor. After agreeing to represent Lawan, lawyers at DZW independently advised Respondent of his concurrent conflict of interest in the dual representation and asked that he withdraw from Taylor's defense. Respondent initially agreed to do so, then retrenched by enrolling on Taylor's behalf. When DZW learned of this, the Texas firm enlisted the New Orleans law firm of Gainsburgh, Benjamin, David, Meunier, and Washauer as local counsel and met with the client to apprise her of the conflict issues. Ms. Hodges, on behalf of her son, thereafter discharged Respondent and executed a separate contingency fee agreement exclusively with DPW and GB.

A mediation was held between the parties in May 2018, with the respondent attempting to participate as counsel, but no settlement was reached at that time. On June 14, 2018, GB filed a federal complaint on behalf of Ms. Hodges and Lawan in the Eastern District of Louisiana. On October 16, 2018, Respondent filed a Motion to Intervene in federal court asking to re-open the earlier action that he had filed and seeking attorneys' fees for representing Lawan on the subject claims.² In May 2019, the parties reached an amicable settlement following a second mediation. Attorneys for Lawan thereafter petitioned the Orleans Parish Civil District Court for authority to enter into a settlement of the minor's claims, which was later granted.

On August 15, 2019, Respondent forwarded a peremptory e-mail to the DZW firm warning the client's lawyers not to disburse any settlement funds pending resolution of his fee claim. Because of uncertainty regarding the validity of such claims, attorneys for Lawan sought guidance from the federal court to determine whether the respondent could ethically share in attorneys' fees derived from settlement. On September 4, 2019, DZW and GB filed a pleading styled "Motion to Determine Conflict-Free Status and Entitlement to Attorneys' Fees." Respondent was served with a copy of the pleading but did not file a response. Thereafter, the federal judge assigned to the case, Jane Milazzo Triche, issued a ruling on October 7, 2019, confirming the existence of

² After receiving the Motion to Intervene, the clerk of the Eastern District served a "Notice of Deficiency" upon Respondent instructing him to correct the filing, and further advised him that failure to do so within 7 days would result in his filing would be rejected. The respondent thereafter failed to correct the deficiency and the clerk later withdrew the filing.

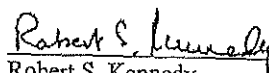
Respondent's conflict of interest and declared him ineligible to receive a fee because of his conflicted representation of Lawan.

Despite his failure to appear and oppose the motion, the Respondent nonetheless appealed Judge Triche Milazzo's ruling to the U.S. Fifth Circuit Court of Appeals. That court later dismissed the appeal as being untimely filed.

By his acts and omissions, respondent Kenneth Plaisance has knowingly and intentionally violated Rules of Professional Conduct 1.4 (failure to communicate the existence of an unwaivable conflict of interest in his representation); 1.7(a) (concurrent conflict of interest); 3.3 (seeking to collect attorneys' fees in pursuit of a conflicted representation); 8.4(d) (conduct prejudicial to the administration of justice).

WHEREFORE, Disciplinary Counsel states that, pursuant to Rule XIX, § 11B(3), a hearing committee chair approved the filing of formal charges on December 17, 2020, that the above alleged conduct, or any part thereof, if proven, merits the imposition of sanctions in accordance with La. S. Ct. Rule XIX.

Respectfully submitted,


Robert S. Kennedy
BAR ROLL NO. 07463
DEPUTY DISCIPLINARY COUNSEL
4000 S. Sherwood Forest Blvd., Ste.607
Baton Rouge, LA 70816
Phone: (225) 293-3900

Please serve the respondent at the following address:

Primary Registration address:

KENNETH M. PLAISANCE
2202 TOURO ST.
NEW ORLEANS, LA 70119

LOUISIANA ATTORNEY DISCIPLINARY BOARD

FILED DISCIPLINARY BOARD
Date: 1-4-2022
Clerk: m/w

IN RE: KENNETH M PLAISANCE
BAR ROLL NO.: 19738

DOCKET NO. 2021 DB 066

**ANSWER TO THE OFFICE OF DISCIPLINARY COUNSEL'S FORMAL
CHARGE OF MISCONDUCT IN VIOLATION OF THE RULES OF
PROFESSIONAL CONDUCT.**

NOW INTO TO COURT, comes RESPONDENT-- KENNETH MICHAEL PLAISANCE who now answers to the OFFICE OF DISCIPLINARY COUNSEL FORMAL CHARGE filed in the above captioned matter. Respondent states there were and are exigent and extenuating circumstances that called for zealous representation which respondent answered the call. But for the actions of respondent, Lawan Rousell would not have gotten any of the proceeds and no other attorney would have taken his case if the only evidence was an inaccurate police report (which was inadmissible) which inaccurately reported that Lawan's biological father (Larry Taylor Jr.) rear-ended the Eighteen Wheeler. The evidence at the beginning of the case indicated that Mr. Taylor was presumed 100% at fault for the accident.

Nevertheless, for good cause shown, Respondent represents the following, to-wit:

Pg 1

7

1.

That the allegations contained in paragraph (1) of the OFFICE OF DISCIPLINARY COUNSEL formal charge are true. Except Respondent object that the State of Louisiana has no jurisdiction over Respondent's license to practice law in Texas. Respondent practices in Texas and many times Respondent was not at 2202 Touro Street because he was in Texas.

2.

That the allegation contained in paragraph (2) respondent disagrees with the statment "On June 15, 2017, consulted with and agreed to jointly represent two person injury claimants . . ." Respondent states that the case or claim was in the beginning stage and because of the inaccurate police report which would have made Mr. Taylor 100% at fault. Respondent disagreed with the statement that "at the time Lawan Rousell was the minor child of Melvia Hodges is/was incorrect. Melvia Hodges aka Melvia Taylor allowed Reverent Rousell to become Lawan Rousell's custodial parent and allowed a name change due to alleged abuse charges. Respondent disagrees with the statement in paragraph 2 " at the time of the accident, Taylor was driving a vehicle when he rear ended an eighteen-wheeler because the police report was inaccurate and a more thorough investigation had to be done. Respondent states that there was an eye witness that the police officer

Pg 2

8

failed to put on the police report. The eye witness stated that driver of Eighteen Wheeler was 100% at fault for the accident. Respondent disagrees with the statement that "THC in his system" Respondent states that THC had nothing to do with Taylor's ability to operate a vehicle.

3.

That the allegation contained in paragraph (3) are inaccurate and information sufficient to justify a belief therein. Respondent disagrees with the statement " At the time he was retained, Respondent failed to disclose the existence of a concurrent conflict of interest. Again, due to the inaccurate police report Mr. Taylor would have been declared 100% at fault for the accident and thus, Lawan's claims or case was moot or of no moment. Nevertheless, on or about October 18, 2017, respondent met with Attorney Ferdinand Valteau and his wife so that Attorney Valteau could either represent Lawan or Larry. Attorney Ferdinand Valteau agreed and gave respondent a check for the filing fees. Then on or about October 18, 2017, respondent filed the original petition in state court. This action cured any conflict of interest issues and an un-waivable conflict of interest issues. The rest of the statements in Paragraph 3 are inaccurate and or of no moment.

Pg 3

9

4.

The allegation contained in paragraph (IV) of the OFFICE OF DISCIPLINARY COUNSEL'S FORMAL CHARGE are denied for lack of information sufficient to justify belief therein. Respondent states that the allegation contained in paragraph (4) are inaccurate and is information insufficient to justify a belief therein. Respondent was attempting to give Lawan and Larry the best legal representation. Respondent does not litigate in federal court anymore, and Respondent was one of the last attorney that are allowed to file by manual paper filing (not electronically). Respondent did not have any experience in litigating 18 wheeler cases in federal court. Federal rules mandates that you must have a lead litigating attorney on cases in federal court. The statement "the respondent approached the Covington Firm of Leger and Shaw about enrolling as co-counsel on all claims is misplaced and incorrect. Respondent approach several law firms to become lead litigating attorney for 18 wheeler cases. Respondent researched each firm that had litigated 18 wheeler cases. Again, respondent had Attorney Valteau to represent Larry and Respondent represented the interest of Lawan Rousell. Each firm respondent approached had experience in litigating 18 wheeler cases. The allegation from the Texas Law Firm Derryberry, Zipps and Wade are misplaced. DZW would make these statement

Pg 4

10

only after they settled and respondent requested attorney fees. Derryberry, Zipps and Wades did not have a license to practice in Louisiana, and were practicing without a license in Louisiana. Derryberry Zipps and Wades could not legally advise respondent on Louisiana Law. Respondent informed them that Respondent had another attorney representing either plaintiffs. Respondent informed them that Respondent needed a firm who had experience in litigating 18 wheeler cases. Derryberry, Zipps, and Wades said they had experience in representing 18 wheeler cases, and litigated cases in Shreveport Louisiana, and that they can motion the court for a motion pro hac vice. The allegations that "Gainsburgh, Benjamin, David, Meunier, and Washauer met with the client to apprise her of the conflict issues are skewed and misplaced. Again, it was understood that Ms. Hodges was not the custodian parent. It was understood that Ms. Hodges gave her rights up and gave her parental right to Reverent Rousell, and change Lawan's last name to Rousell. Secondly, Respondent, out of the abundance of caution, had Ms. Hodges signed a waiver of conflict and had Attorney Valteau to represent Larry. So, any conflict of interest issues or concurrent conflict of interest, or un-waivable consent issues were addressed and cured.

The allegation contained in paragraph (V) of the OFFICE OF DISCIPLINARY COUNSEL'S FORMAL CHARGE are incorrect and misplaced and are denied for lack of information sufficient to justify belief therein, except that there was a mediation in May of 2018; except that on June 14, 2018, Attorney Michael Ecuyer of Gainsburgh, Benjamin, David, Meunier, and Washauer filed suit in federal court on behalf of Lawan Rousell; and that the respondent asked for the original action to be reopen and that he be allowed to intervene to collect his attorneys fees; and except that in May 2019, the parties reached an amicable settlement. Respondent objects to any implication that he failed on filing any pleading in federal court. Respondent does not practice in federal court any more and was one of the only few attorneys left who was allowed to file pleading manually paper filing (non electronically). The federal court does not mail out notice anymore. Respondent did not get the electronic notices from the court. Respondent disagrees with the statement that "Attorneys for Lawan thereafter petitioned the Orleans Parish Civil District Court for authority to enter into a settlement of the minor's claim, which was later granted is misplaced, the attorneys mentioned above Gainsburgh, Benjamin, David, Meunier, and Washauer did not secure this judgment in State court. Ms. Hodges was told to get another

attorney to get and an order to establish custodial parent status.

6.

The allegations contained in paragraph (VI) of the OFFICE OF DISCIPLINARY COUNSEL'S FORMAL CHARGE are denied for lack of information sufficient to justify belief therein. The fact in this paragraph are denied except that Respondent does not practice in federal court and did not get electronic notice. Respondent filed pleading manual via paper pleading not electronic pleadings. Respondent stated that the court was unaware of Attorney Ferdinand Valteau as being the other counsel representing either Lawan or Larry.

7.

The allegations contained in paragraph 7 of the OFFICE OF DISCIPLINARY COUNSEL'S FORMAL CHARGE are denied for lack of information sufficient to justify belief therein except that Respondent filed an appeal but it was ruled untimely.

8.

The allegations contained in paragraph 8 of the OFFICE OF DISCIPLINARY COUNSEL'S FORMAL CHARGE are denied for lack of information sufficient to justify belief therein. Respondent states that each case is different and not a cookie cutter- cut and dry case as the Discipline Counsel

Pg 7

13

believes. Respondent did not knowingly and intentionally violate Rules 1.4 (failure to communicate the existence of an un-waivable conflict of interest in his representation) because Lawan and Larry met with Respondent and Attorney Ferdinard Valteau and established representation of both plaintiffs separately to cure any un-waivable conflict of interest or concurrent conflict of interest. With respect to seeking to collect attorney's fees in pursuit of a conflicted representation, Respondent states that since he had cured and/or corrected the conflict of interest issues, Respondent should have been allowed to collect his attorney fees. It was only after Respondent requested his attorneys fees Gainsburgh, Benjamin, David, Meunier, and Washauer filed a complaint with the Disciplinary Counsel. If Respondent did not request his attorneys fees, Gainsburgh, Benjamin, David, Meunier, and Washauer would not have complaint. Respondent denies any conduct prejudicial to the administration of justice.

CONCLUSION

Non-waiveable consent frustrate the client's exercise of autonomy and clients choice. The drafters of waivers of conflict of interest have relied upon pure autonomy notions in giving clients an absolute right to waive conflict of interest regardless of the consequences to themselves. Moreover, clients may wish to retain a conflicted lawyer because they know and trust the attorney. *Karen*

Pg 8

14

Corvy "The Right To Counsel Of One's Choice, 58 Notre Dame L Rev 793 (801-02 (1983).

Here, Lawan, Larry and Melvia trusted Respondent's advise and representation(s). From the time of Respondent's representation, until litigation, There were no issues of liability after the eye witness stated that the tortfeasor was 100% at fault of the accident. Respondent had both biological parent sign a waiver of a conflict of interest. In addition, out of the abundance of caution, Ferdinand Valteau to represent Larry in the matter and Attorney Valteau paid for the filing fees in state court. Lawan and Larry met with Respondent and Attorney Ferdinand Valteau and agreed that Respondent will represent Lawan and Attorney Valteau will represent Larry. Because of the assistance of another attorney, there were no conflict of interest.

According to *FDIC v. U. S. Fire Ins. Co.*, 50 F 3d 1304 , 1313(5th Cir 1995), the U. S. Fifth Circuit held that the "depriving a party of the right to be represented by the attorney of his choice is a penalty that must not be imposed without careful consideration."

Here, in this particular instance, Respondent met all of the requirements of

Pg 9

15

Paragraph (b), there was no directly adverse representation, nor did Lawan assert a claim against another client representation by the lawyer in the same litigation, Lawan did not want to sue his father and emphatically argued against such an action, and each client gave an informed consent in writing. Thus, Respondent can and could represent Larry and his minor son-- Lawan. Moreover, to correct or cure any conflict of interest issues, Ferdinand Valteau and Respondent were separate attorneys and or law firm representing either LARRY OR LAWAN.

Respondent offer, file and introduce Exhibit 1 into the record.(text message to High Profile litigating attorney Robert Jenkins discussing the possibility of being lead litigating attorney in federal court.) Exhibit 1 purports and indicates Rule 1.7 of the Louisiana Rules of Professional Conflict provides

Conflict of Interest

(a) Except s provided in paragraph (b) a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict adverse to another client; or

- (1) the representation of one client will be directly adverse to another client; or
- (2) There is a significant risk that the representation of one or more client's will be materially limited by the lawyers' responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph :

- (1) the lawyer reasonably believe's that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law;
- (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before the tribunal; and
- (4) each affected client gives informed consent, confirmed in writings.

Paragraph (b) requires the lawyer to obtain the informed consent of the client confirming in writing.

Pg 10

16

that Ferdinand Valteau (Ferd) and Respondent's firm were represent the plaintiff
seperately.

**NON-WAIVEABLE CONFLICT OF INTEREST ARE WAIVABLE IN THE
COURSE OF THE LITIGATION.**

In *Zelda Enter. LLLP v. Guorismo*, 2017 U.S Court of Appeal 11th Circuit
Lexis 447 (Oct 4, 2019), the court of appeals reminds us that even a non-waivable
conflict of interest are waivable in the course of the litigation. The court noted the
Rules of Professional Conduct which prohibits waivers of certain conflicts of
interest among lawyers and their clients does not control the decision of whether a
client subsequently waives the ability of the attorney. In sum the court seems to
have caught on the the fact that attorneys/ litigants are trying to use tenuous
connection with counsel to achieve litigation advantage by seeking
disqualification of a party's lawyer of choice.

The courts are increasingly attuned to hyper-technical lawyering seeking to
avoid the consequence of a parties earlier actions. Legal rights are great, but
almost all of them can be waived.

WHEREFORE, RESPONDENT prays that: this Answer be deemed good and
sufficient and, after all proceedings be had the Disciplinary Counsel dismiss the
formal charge and the Louisiana Supreme Court rules in Respondent's favor

Pg 11

17

Certificate of Service

I HEREBY CERTIFY that a copy
of the above and foregoing
pleading has been mail postage
prepaid, emailed, faxed or hand delivered
to opposing counsel of record
on the 4th of January, 2022

Kenneth M. Plaisance

Respectfully submitted by,



Respondent
Kenneth M. Plaisance
1148 Silber Road Ste 1123
Houston, Texas 77055
504-905 1888
kplaws88@gmail.com

Pg 12

18

LOUISIANA ATTORNEY DISCIPLINARY BOARD

**IN RE: KENNETH M. PLAISANCE
BAR ROLL NO.: 19738**

DOCKET NO. 2021 DB 066

**STATE OF LOUISIANA
PARISH OF ORLEANS**

Before me, the undersigned, notary public, personally came and appeared:

KENNETH MICHAEL PLAISANCE

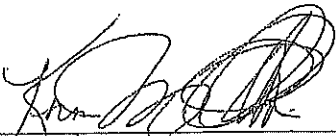
who after being duly sworn, did depose and say that:

1. Affiant states that he is the respondent in the above numbered and entitled case.
2. Affiant states that affiant offers, introduce and files affiant's telephone text document records into the record as Exhibit 1englobal .
3. Affiant states that Exhibit 1 is two copies of a text conversation from affiant's cell phone with Attorney Robert Jenkins dated December 14, 2017.
4. Affiant states that the text document indicate that the text message was on communicated on December 14, 2017,
5. Affiant states that the text document stated that LARRY TAYLOR JR., et al versus TRAVIS JAMES, CDMT TRUCKING et al 2017-9436, Lawan

Rousell's case) was in the beginning stages and that Mr. Jenkins' will be considered lead litigating attorney when the time arises.

6. Affiant states that Exhibit 1 shows and demonstrate that Ferdinand Valteau and Respondent were representing the plaintiffs Larry Taylor Jr. And Lawan Rousell respectively.
7. Affiant states that the phone text document is evidence that there were no concurrent conflict of interests, or an un-waivable conflict of interest in the case or claims because it was agreed at that time that Ferdinand Valteau would represent Larry Taylor Jr., and respondent would represent Lawan Rousell.
8. Affiant states that Ferdinand Valteau gave respondent a check to pay the filing fee.

This affidavit is true and correct to the best of affiant's knowledge, memory, and belief.


AFFIANT

SWORN TO AND SUBSCRIBED BEFORE ME

THIS 4 DAY OF January, 2022


NOTARY PUBLIC



ASHLEIGH JOHNSON
Notary Public
Notary ID No. 172751
Jefferson Parish, Louisiana

20



Atty Robert Jenkins

+15048121999

Invite someone

2:46 PM

THE CASE PLEASE DON'T
IMPLY THAT FERD OR ME
RETAINED YOU. We will
keep you in mind to litigate

I never said that:

2:54 PM

I never inferred anything to
ferd. You asked me that
was it. I was only telling
ferd. What a good case
for you both. You jumped
to a conclusion about me
saying o was retained. I AM
NOT ININ WORKING WITH
YOU IF THIS IS HOW YOU
RESPOND. THANKS

3:07 PM

Saturday, January 1, 2022

Happy New Year Rob
want to talk to you about
your case and if you have



Exh
1

21



Atty Robert Jen... ▾



Thursday, December 14, 2017

2:46 PM

Dont do anything regarding the case i told you i had WE ARE IN THE BEGINNING OF THE CASE PLEASE DONT IMPLY THAT FERD OR ME RETAINED YOU We will keep you in mind to litigate

I never said that.

2:54 PM

I never inferred anything to ferd. You asked me that was it. I was only telling ferd. What a good case for you both. You jumped to a conclusion about me saying o was retained. I AM NOT ININ WORKING WITH YOU IF THIS IS HOW YOU RESPOND. THANKS

3:07 PM

Saturday, January 1, 2022

Happy New Year Roby,
want to talk to you about
your case and if you have



Enter me...



22

ORIGINAL

Louisiana Attorney Disciplinary Board	
FILED by: <i>Diana P. Bingham</i>	
Docket#	Filed-On
21-DB-066	12/9/2022

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: KENNETH M. PLAISANCE

DOCKET NO. 21-DB-066

REPORT OF HEARING COMMITTEE # 9

INTRODUCTION

This attorney disciplinary matter arises out of formal charges filed by the Office of Disciplinary Counsel ("ODC") against Kenneth M. Plaisance ("Respondent"), Louisiana Bar Roll Number 19738.¹ ODC alleges that Respondent violated the following Rules of Professional Conduct: 1.4; 1.7(a); 3.3; and 8.4(d).²

PROCEDURAL HISTORY

The formal charges were filed on December 13, 2021. Respondent filed an answer to the charges on January 4, 2022. A scheduling conference was held on February 2, 2022, at which time the parties selected May 11-12, 2022, as hearing dates. On April 11, 2022, Respondent filed a motion to continue the hearing, stating that he was still attempting to retain an attorney and that discovery was incomplete. The motion was denied by order signed April 18, 2022. On April 25, 2022, Respondent filed a motion for summary judgment, which was denied by order signed April 27, 2022. On May 9, 2022, via a filing, attorney Luke Fontana enrolled as counsel for Respondent and filed a motion to continue, again stating that discovery was incomplete. The motion was denied by order signed the same day. On May 11, 2022, another motion to continue was filed by

¹ Respondent was admitted to the practice of law in Louisiana on October 6, 1989. Respondent is currently eligible to practice law.

² See the attached Appendix for the text of these Rules.

Like Fontana, attaching a doctor's note that indicated, in pertinent part, that Respondent was "unable to attend scheduled meeting due to health concerns." Mr. Plaisance and Mr. Fontana did not appear for the hearing on May 11, 2022 and attempts to contact Mr. Fontana were unsuccessful. The motion was denied, and the hearing proceeded. Deputy Disciplinary Counsel Robert S. Kennedy appeared on behalf of ODC.

After the May 11th hearing, ODC and Respondent filed briefs with the Board which contained conflicting evidence as to whether Mr. Fontana was actually retained to represent Respondent. By order signed August 10, 2022, the Committee Chair reopened the proceeding for the limited purpose of determining whether Mr. Fontana represented Respondent. A hearing was scheduled for September 23, 2022 and was held on that date. Deputy Disciplinary Counsel Christopher Kiesel appeared on behalf of ODC. Respondent failed to appear, and no one appeared on his behalf.

SUMMARY OF RECOMMENDATIONS

For the following reasons, the Committee finds that the ODC has, through the presentation of clear and convincing evidence, established that all of ODC's charged violations of the Rules are proven. Specifically, as alleged, the evidence offered by the ODC establishes that through his acts and omissions, respondent Kenneth Plaisance has knowingly and intentionally violated:

- Rule of Professional Conduct 1.4 (failure to communicate the existence of an unwaivable conflict of interest in his representation);
- Rule of Professional Conduct 1.7(a) (concurrent conflict of interest);
- Rule of professional Conduct 3.3 (seeking to collect attorneys' fees in pursuit of a conflicted representation); and
- Rule of professional Conduct 8.4(d) (conduct prejudicial to the administration of justice).

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- Rule of professional Conduct 3.3 (seeking to collect attorneys' fees in pursuit of a conflicted representation); and
- Rule of professional Conduct 8.4(d) (conduct prejudicial to the administration of justice).

Considering the proof of ODC's charges—as well as consideration of the aggravating and mitigating factors set forth hereinbelow, along with an analysis of baseline sanction considerations and caselaw—the Committee recommends that the Respondent Kenneth M. Plaisance be suspended from the practice of law for two (2) years and one (1) day, with one year deferred; and further that in accordance with Louisiana Supreme Court Rule XIX 24, Respondent be required to present evidence before a Hearing Committee demonstrating his fitness to resume the practice of law in Louisiana as a condition of reinstatement; and also recommends that the Respondent be assessed with the costs and expenses of the proceeding pursuant to Rule XIX, §10.1.

FORMAL CHARGES

The formal charges read, in pertinent part:

On June 15, 2017, Respondent consulted with and agreed to jointly represent two personal injury claimants, Larry Taylor ("Taylor"), an adult, and Lawan Roussel ("Lawan"), the minor child of Melvin Hodges, who had been injured in a motor vehicle accident in New Orleans. At the time of the accident, Taylor was driving a vehicle when he rear-ended an eighteen-wheeler making an illegal U-turn, which raised issues of comparative negligence. Lawan was a passenger in the front seat of the vehicle. Taylor was ticketed by police for the offense of following too closely and was later found to have the controlled substance THC in his system, indicating recent ingestion of marijuana.

At the time he was retained, Respondent failed to disclose the existence of a concurrent conflict of interest inherent in his joint representation of both clients. On July 27, 2017, on behalf of Lawan, Respondent granted a full release of all claims against Taylor to Progressive Insurance Company (Taylor's auto insurer), in exchange for payment of the \$15,000 policy limits. Thereafter, on October 18, 2017, he filed a personal injury action in state court in Orleans Parish against Progressive (who was also the defendant's insurer) on behalf of both Taylor and Lawan as co-plaintiffs, alleging the truck driver's negligence. The defendant insurer later removed the matter to federal court in New Orleans. [ENI. This suit was later dismissed without prejudice and re-filed under a different case number: No. 18-cv-05889.] The respondent's lawsuit failed to include any claims by Lawan alleging the comparative negligence of Taylor.

In the latter part of 2017, the respondent approached the Covington firm of Leger and Shaw about enrolling as co-counsel on all claims. On December 26, 2017, an attorney with the firm expressly advised Respondent of conflict concerns.

with his joint representation of Taylor and Lawan and declined to participate in the case. Respondent then asked a Texas law firm, Deeryberry, Zipps, and Wade, P.C. ("DZW"), to enroll as co-counsel on behalf of Lawan and Taylor. After agreeing to represent Lawan, lawyers at DZW independently advised Respondent of his concurrent conflict of interest in the dual representation and asked that he withdraw from Taylor's defense. Respondent initially agreed to do so, then retrenched by enrolling on Taylor's behalf. When DZW learned of this, the Texas firm enlisted the New Orleans law firm of Gainsburgh, Benjamin, David, Meunier, and Washauer as local counsel and met with the client to apprise her of the conflict issues. Ms. Hodges, on behalf of her son, thereafter discharged Respondent and executed a separate contingency fee agreement exclusively with DPW and GB.

A mediation was held between the parties in May 2018, with the respondent attempting to participate as counsel, but no settlement was reached at that time. On June 14, 2018, GB filed a federal complaint on behalf of Ms. Hodges and Lawan in the Eastern District of Louisiana. On October 16, 2018, Respondent filed a Motion to Intervene in federal court asking to re-open the earlier action that he had filed and seeking attorneys' fees for representing Lawan on the subject claims. [FN2] After receiving the Motion to Intervene, the clerk of the Eastern District served a "Notice of Deficiency" upon Respondent instructing him to correct the filing, and further advised him that failure to do so within 7 days would result in his filing would be rejected. The respondent thereafter failed to correct the deficiency and the clerk later withdrew the filing. In May 2019, the parties reached an amicable settlement following a second mediation. Attorneys for Lawan thereafter petitioned the Orleans Parish Civil District Court for authority to enter into a settlement of the minor's claims, which was later granted.

On August 15, 2019, Respondent forwarded a peremptory e-mail to the DZW firm warning the client's lawyers not to disburse any settlement funds pending resolution of his fee claim. Because of uncertainty regarding the validity of such claims, attorneys for Lawan sought guidance from the federal court to determine whether the respondent could ethically share in attorneys' fees derived from settlement. On September 4, 2019, DZW and GB filed a pleading styled "Motion to Determine Conflict-Free Status and Entitlement to Attorneys' Fees." Respondent was served with a copy of the pleading but did not file a response. Thereafter, the federal judge assigned to the case, Jane Milazzo-Triche, issued a ruling on October 7, 2019, confirming the existence of Respondent's conflict of interest and declared him ineligible to receive a fee because of his conflicted representation of Lawan.

Despite his failure to appear and oppose the motion, the Respondent nonetheless appealed Judge Triche Milazzo's ruling to the U.S. Fifth Circuit Court of Appeals. That court later dismissed the appeal as being untimely filed.

By his acts and omissions, respondent Kenneth Plaisance has knowingly and intentionally violated Rules of Professional Conduct 1.4 (failure to communicate the existence of an unwaivable conflict of interest in his representation); 1.7(a) (concurrent conflict of interest); 3.3 (seeking to collect attorneys' fees in pursuit of a conflicted representation); 8.4(d) (conduct prejudicial to the administration of justice).

EVIDENCE

The evidence presented by ODC and admitted—and which was carefully considered by the hearing Committee in arriving at this finding, consisted of:

ODC Exhibits 1 through 22 as contained in the record of the proceedings and offered/introduced at the first hearing on May 11, 2022; and an additional nine ODC exhibits bearing on the issue of the legitimacy, *vel non*, of Respondent's asserted reasons in support of his motions to continue the May 11, 2022 hearing—consisting of ODC Exhibits 23 through 31.

Respondent Plaisance did not appear, nor did Counsel or any representative on his behalf, at the May 11, 2022 hearing on the merits, at which time the following evidence was adduced, as charged.

On June 15, 2017, Respondent consulted with and agreed to jointly represent two personal injury claimants, Larry Taylor ("Taylor"), an adult, and Lawan Roussel ("Lawan"), the minor child of Melvia Hodges, who had been injured in a motor vehicle accident in New Orleans. At the time of the accident, Taylor was driving a vehicle when he rear-ended an eighteen-wheeler making an illegal U-turn, which raised issues of comparative negligence. Minor child Lawan was a passenger in the front seat of the vehicle and was also injured. Taylor was ticketed by police for the offense of following too closely and was later found to have the controlled substance THC in his system, indicating recent ingestion of marijuana.

At the time he was retained, Respondent *failed to disclose* the existence of a concurrent conflict of interest inherent in his joint representation of both clients Taylor and the minor child (Lawan). On July 27, 2017, on behalf of Lawan, Respondent granted a full release of all claims against Taylor to Progressive Insurance Company (Taylor's auto insurer), in exchange for payment of the \$15,000 policy limits. Thereafter, on October 18, 2017, he filed a personal injury action in state court in Orleans Parish against Progressive (which was also the defendant's insurer) *on behalf of both Taylor and Lawan* as co-plaintiffs, alleging the truck driver's negligence. The defendant insurer later removed the matter to federal court in New Orleans. (This suit was later dismissed without prejudice and re-filed under a different case number: No. 18-cv-05889.) The Respondent's lawsuit *failed to include any claims by Lawan* alleging the comparative negligence of Taylor.

In the latter part of 2017, the Respondent approached the Covington firm of Leger and Shaw about enrolling as co-counsel on all claims. On December 26, 2017, an attorney with that firm expressly advised Respondent of conflict concerns with his (Respondent's) joint representation of both Taylor and Lawan and declined to participate in the case.

Disregarding that admonition, Respondent then asked a Texas law firm, Derryberry, Zippis, and Wade, P.L.C., ("DZW"), to enroll as co-counsel on behalf of both Lawan and Taylor. After agreeing to represent Lawan, lawyers at DZW independently advised Respondent of his concurrent conflict of interest in the dual representation and asked that he withdraw from Taylor's defense.

Respondent initially agreed to do so, but thereafter reversed his position by enrolling on Taylor's behalf.

When DZW learned of this, the Texas firm enlisted the New Orleans law firm of Gainsburgh, Benjamin, David, Meunier, and Washauer (Gainsburgh) as local counsel and met with the client (Ms. Hodges, Lawan's mother) to apprise her of the conflict issues. Ms. Hodges, on behalf of her son, thereafter discharged Respondent and executed a separate contingency fee agreement exclusively with DPW and GB.

A mediation was held between the parties in May 2018, with the respondent attempting to participate as counsel, but no settlement was reached at that time. On June 14, 2018, Gainsburgh filed a federal complaint on behalf of Ms. Hodges and Lawan in the Eastern District of Louisiana. On October 16, 2018, Respondent filed a Motion to Intervene in federal court asking to re-open the earlier action that he had filed and seeking attorneys' fees for representing Lawan on the subject claims. (After receiving the Motion to Intervene, the clerk of the Eastern District served a "Notice of Deficiency" upon Respondent instructing him to correct the filing, and further advised him that failure to do so within 7 days would result in his filing would be rejected.) The Respondent thereafter failed to correct the deficiency and the clerk later withdrew the filing.

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On August 13, 2019, Respondent forwarded a peremptory e-mail to the DZW firm warning the client's lawyers not to disburse any settlement funds pending resolution of his fee claim. Because of uncertainty regarding the validity of such claims, attorneys for Lawan sought guidance from the federal court to determine whether the respondent could ethically share in attorneys' fees derived from settlement. On September 4, 2019, DZW and Gainsburgh filed a pleading styled: "Motion to Determine Conflict-Free Status and Entitlement to Attorneys' Fees." Respondent was served with a copy of the pleading but did not file a response.

Thereafter, the federal judge assigned to the case, the Honorable Jane Triche Milazzo, issued a ruling on October 7, 2019, confirming the existence of Respondent's conflict of interest and declared him ineligible to receive a fee because of his conflicted representation of Lawan.

Despite his failure to appear and oppose the motion, the Respondent nonetheless appealed Judge Triche Milazzo's ruling to the U.S. Fifth Circuit Court of Appeals. That court later dismissed the appeal as being untimely filed.

EVIDENCE ADDUCED

The testimony presented—unrebutted—by ODC consisted of a witness and the introduction of 22 relevant, probative documents:

The testimony of Attorney Michael Ecuyer of Gainsburg in New Orleans, established that he was involved in litigation concerning the respondent Kenneth Plaisance in which Plaisance and had been prior counsel for plaintiffs and established the following:

Ecuyer received a phone call from attorney Brian Katz at the Herman Herman law firm, who advised that he (Katz) had been contacted by some Texas attorneys who had been retained to represent individuals in Louisiana involved in a vehicle accident. (The accident in question involved the father running into the back of an 18-wheeler, resulting in injury to the minor son Lawan.)

These three individuals were a father, child, and the mother of the child, presenting a potential conflict between the father and the child (Lawan, represented by his mother), and counsel was therefore seeking to affiliate Gainsburgh as counsel for one of the two cases. (The Texas attorneys advised that they were not licensed to practice in the state of Louisiana, and therefore requested a *pro hac vice* admission.)

The Texas attorney had received a call shortly before the case had prescribed and was advised that there had been an earlier state court case filed by Respondent that had been removed

to federal court. Additionally, it was learned that the matter had been settled on behalf of the minor child against the father's insurer for the policy limits. (Notwithstanding the fact that Lawan's father, the driver of the vehicle, was also Respondent's client at the time, Respondent had filed suit on behalf of all three individuals in a state court pleading—filing an action on behalf of both the driver and the passenger in the vehicle, the minor child (Lawan), and further signed as attorney for both plaintiffs.)

Respondent Plaisance insisted on sharing the fee because he (Plaisance) claimed to have done work and was therefore entitled to a fee. The Texas attorneys then advised Respondent about his conflict of interest, specifying that he (Plaisance) could not represent both the father and the child. Although Respondent insisted that he had obtained waivers, Ecuver advised Respondent that it was an unwaivable conflict. Therefore, Ecuver fashioned and prepared to file a motion to determine conflict-free status of Respondent Plaisance.

Ecuver then explained to the son (Lawan) and mother—and to Respondent himself—that a conflict of interest existed with Plaisance's representation, because the father could have some fault in this case, and also because of that fault it was a nonwaivable conflict. Therefore, Ecuver explained that this would require separate counsel for the father and minor child and that his firm was prepared to represent the mother and also the child in this claim.

Importantly, with that explanation, Respondent expressed an understanding that he could not represent both sides because they had spent a good deal of time talking about the conflict.

However, it was later determined that Respondent had actually enrolled as counsel for the father Larry Taylor Jr. Once again, this was after the discussion in which Ecuver and his co-counsel had explained to Respondent Plaisance that he could not represent both sides of the litigation.

This was explained to the mother and child by Ecuyer. Thereafter, the clients understood that they could not go forward with Respondent as counsel on the matter and signed a new retainer without Respondent Plaisance in it.

However, after concluding a substantial six-figure settlement, which was arrived at pursuant to mediation, Respondent Plaisance nevertheless filed a petition to collect attorney's fees (demanding 32.5% of the settlement) in the portion of the case involving the settlement for Melvin and Lawan's claims, following the mediation. Having received the petition from Respondent, Ecuyer and his fellow attorneys attempted to have a conversation with the Respondent, which was followed by an exchange of emails stressing that there was a conflict, and that he (Respondent) could not receive a fee. They further indicated that such conduct would place Respondent Plaisance in violation of the Professional Rules of Conduct. When Respondent Plaisance persisted, counsel filed with the court the aforementioned "Motion to Determine Conflict-Free Status".

Based on this filing, the presiding federal judge ruled that because Plaisance had received a fee from the settlement of the father's (Taylor) claims, Respondent was not entitled to share in the fees from the settlement of plaintiff claims of Melvin and Lawan. However, even after U.S. District Judge Triche Milazzo entered her ruling, the Respondent persisted and filed a Notice of Appeal with the US 5th Circuit Court of Appeals, further delaying distribution of the settlement funds to the clients.

Ecuyer further testified that the delay was significant, because at the time Judge Triche Milazzo entered her order, the funds were ready to be disbursed to the plaintiffs by order of the Orleans Parish Civil District Court. Therefore, because of the appeal, the settlement money was held in trust, delaying it until the ruling of the Fifth Circuit, which occurred on March 23, 2020. As a result, the case did not become final until March 23, 2020.

FINDINGS OF FACT

Considering all of the testimonial and supporting documentary evidence presented—including all corroborative records and court filings, the Committee has determined that the totality of ODC's evidentiary presentation was complete, credible and reliable—and thus all facts presented fully supported all charges, to wit:

That by and through his acts and omissions, Respondent Kenneth Plaisance has knowingly and intentionally violated Rules of Professional Conduct 1.4 (failure to communicate the existence of an unwaivable conflict of interest in his representation); 1.7(a) (concurrent conflict of interest); 3.3 (seeking to collect attorneys' fees in pursuit of a conflicted representation); and 8.4(d) (conduct prejudicial to the administration of justice).

RULES VIOLATED

As set forth hereinabove, the Committee finds that the evidence presented has proven by clear and convincing evidence that the respondent has—as charged by ODC—violated the following Rules of Professional Conduct:

- 1.4 (failure to communicate the existence of an unwaivable conflict of interest in his representation);
- 1.7(a) (concurrent conflict of interest);
- 3.3 (seeking to collect attorneys' fees in pursuit of a conflicted representation); and
- 8.4(d) (conduct prejudicial to the administration of justice).*

The Respondent's knowing and repeated insistence on continuing to represent both the plaintiff father and minor child in spite of his conflict—is clearly established by compelling, unqualified testimony and supporting evidence—including:

- Respondent's documented insistence on receipt of a prohibited fee from which he had been disqualified by virtue of his having been explicitly advised by both Texas and Louisiana counsel of his unwaivable conflict;

* Respondent's exclusion from the conflicted representation of both the father and minor child plaintiffs by finding and order of the U.S. District Court; and

* His persistent—unsuccessful—appeal of said disqualification to the U.S. Fifth Circuit Court of Appeals.

Regarding Respondent's violation of Rule of Professional Conduct 8.4(d) (conduct prejudicial to the administration of justice), the evidence presented unequivocally established that the Respondent's protracted insistence on representing the interests of both the father and minor child following the auto accident and injuries *additionally prejudiced the administration of justice* in the following ways:

- o Respondent evidenced a significant disregard for the requirement of conflict-free representation of at least two clients, thus jeopardizing their constitutional 6th Amendment rights;
- o In so doing, Respondent also jeopardized their recovery of damages for their injuries;
- o Respondent caused additional work by and placed additional burdens upon legal counsel in at least two firms who were required to attempt to prevent the violation of the Rules by Respondent;
- o Respondent further increased unnecessarily the workload of both the U.S. District Court for the Eastern District of Louisiana and the U.S. Fifth Circuit Court of Appeals;
- o Respondent contributed to the erosion of trust in the integrity of the bar and the judicial system;
- o Respondent significantly delayed the payment of damages in the form of settlement funds to three plaintiffs and their families for approximately *eight or nine months* due to Respondent's persistent litigation;
- o Respondent caused added expenses—including costs and attorney's fees—on behalf of all parties, especially due to Respondent's motion to intervene in the federal court settlement and his subsequent frivolous appeal to the U.S. Fifth Circuit; and
- o Increased the attorney's fees and thereby reduced the recovery by the parties at issue.

SANCTION

Louisiana Supreme Court Rule XIX, §10(C), states that when imposing a sanction after a finding of lawyer misconduct, a committee shall consider the following factors:

- (1) Whether the lawyer has violated a duty owed to a client, to the public, to the legal system, or to the profession;
- (2) Whether the lawyer acted intentionally, knowingly, or negligently;
- (3) The amount of the actual or potential injury caused by the lawyer's misconduct; and
- (4) The existence of any aggravating or mitigating factors.

Here, Respondent violated duties owed to his client(s), the legal system, (including the Federal and state of Louisiana courts), other counsel involved in the litigation, and the legal profession.

Respondent acted with knowledge and intent in that he had been expressly advised and made aware of the conflict.

Respondent's misconduct caused actual, tangible harm, including:

- Delayed payment to the family of approximately six to eight months due to his persistent litigation;
- Additional expenses on behalf of all parties, especially due to Respondent's motion to intervene in the federal court settlement and his subsequent appeal to the U.S. Fifth Circuit; and
- Additional attorney's fees by requiring other legal counsel to do an extensive amount of otherwise unnecessary work—therefore reducing recovery by the injured parties as the direct result of the protracted delay of resolution and litigation Respondent caused.

ABA Standards for Imposing Lawyer Sanctions suggest that is the baseline sanction for Respondent's misconduct.

Those Standards require that the discipline to be imposed "should depend upon the facts, and circumstances of the case, should be fashioned in light of the purpose of lawyer discipline, and may take into account aggravating or mitigating circumstances" (Standard 7.1) [See generally Rule 10, ABA MRLEDE].

Thus, with regard to each category of misconduct, the Sanctions Committee provides the following:

-Discussion of what types of sanctions have been imposed for similar misconduct in reported cases;

-Discussion of policy reasons which are articulated in reported cases to support such sanctions; and

-Finally, a recommendation as to the level of sanction imposed for the given misconduct, absent aggravating or mitigating circumstances.

Violations of the Rules of Professional Conduct.

Respondent is found to have violated all rules as charged:

- * Rule of Professional Conduct 1.4 (failure to communicate the existence of an unwaivable conflict of interest in his representation);
- * Rule of Professional Conduct 1.7(a) (concurrent conflict of interest);
- * Rule of professional Conduct 3.3 (seeking to collect attorneys' fees in pursuit of a conflicted representation); and
- * Rule of professional Conduct 8.4(d) (conduct prejudicial to the administration of justice).

Duties Violated

- * Duty to the Client
- * Duty to the Legal System
- * Duty to the Profession

Mental State

- * Intentional

Harm and Extent of Harm

- * Actual

MITIGATING and AGGRAVATING FACTORS

The Committee has considered the following Mitigating Factors:

1. The Respondent's absence of any prior disciplinary infractions or issues.
2. The fact that the harm caused, while real, is moderate, based on a review of available relevant case law.

The Committee has considered the following Aggravating Factors:

1. The evidence establishes that the Respondent negligently or deliberately failed to engage *at all* in the LADB process.

He was given multiple opportunities to provide the committee with mitigation, to express remorse, or to contest, challenge or explain the ODC's claims; or to assist in any way in the fact-finding process. To the contrary, he at best failed to do so to any degree whatsoever.

2. A pattern of conduct evidenced by Respondent's continued insistence on conflicted representation of two parties.
3. Refusal of Respondent to acknowledge the wrongful nature of the conflict—and refusal to heed multiple admonitions, warnings and rulings.
4. A selfish, clearly financially driven motive for Respondent's pattern of maintaining the conflicted representations in question.

Summary of Evidence bearing on additional aggravating circumstances:

Testimony:

Ms. Janine Telio

Mr. Luke Fontana, Attorney

Documentary Evidence:

At a hearing on September 16, 2022, ODC further supplemented Exhibits 1-22 with an additional nine ODC Exhibits, 23-31, which had been previously introduced at the initial hearing on May 11, 2022.

According to evidence and testimony adduced and considered by the Committee:

- Respondent Plaisance did not appear at the scheduled hearing on the merits on May 11, 2022, nor did legal counsel or any representative for him.
- On the morning of the May 11 hearing, the committee received for the first time a motion filed at 9:06am, requesting a continuance, and indicating that respondent was under the care of a medical doctor for health reasons—and that on May 10, 2022 (the day before), Dr. Michelle Lagarde-May MD, had restricted Respondent from any work – related activities, and based upon that, counsel for Respondent was asking for an order continuing the proceedings.
- The file document bore a signature purported to be that of Dr. Lagarde-May, stating precisely the same thing.
- The motion bore the signature of a person purported to legal counsel, Mr. Luke Fontana. (However, Mr. Fontana was not present.)
- Mr. Robert Kennedy for ODC noted that it is incumbent upon the Respondent to at least make a telephone call and represent the true facts to the Committee, in order to give the Hearing Committee an opportunity to question him. This was acknowledged by the Committee.
- This placed the Committee in the position of not having an enrollment of counsel.
- The Committee further noted that the Respondent had not indicated a willingness to communicate with the Committee or anyone for that matter.
- The Hearing Committee chair asked ODC representative Kennedy or ODC to attempt to contact the Respondent, noting that Respondent had hung up the phone and refused to talk to any representative of ODC the day before.
- It is important note that according to ODC attorney Robert Kennedy, the Board attempted to reach the number provided, with no success, and additionally represented that the day before, the Disciplinary Board clerk's office contacted Respondent who refused to speak to them.
- In response to ODC's assertion that the evidence presented possibly suggested and artifice to attempt to gain a continuance, the committee in an abundance of caution determined that it would be appropriate to investigate whether the effort was legitimate, with the committee concluding that "What we're looking for is... something that... can authenticate the assertions made in [Respondent's] motion and the legitimacy of the [asserted] grounds."

- Having identified attorney Fontana's registered address, ODC attorney Kennedy requested the opportunity to make a note of evidence of ODC's efforts to try to locate Mr. Fontana.
- To that end, ODC representative Janine Telfo testified under oath that she accompanied ODC attorney Kennedy to Mr. Fontana's address at 1827 Burgundy St. in New Orleans, where they found no one to answer the door. Moreover, there was no sign of anyone being present, and no name on the front door.
- There was also nothing indicating the identity of the persons living at the address, and no signage whatsoever, including no doorbell.
- The witness, Ms. Telfo, also represented and wrote that neither she nor her office had received any contact or communication from attorney Fontana prior to the filing of the motion.
- They additionally attempted to call the telephone number provided and received a voicemail immediately, with no ring.
- She also texted a telephone number and left a message identifying herself, asking Mr. Fontana to return the call.

At the follow-up hearing on September 16, 2022, the Committee—in an effort to determine the legitimacy *vel non*, of Respondent's assertions of medical unavailability, heard the testimony of 2 witnesses:

Mr. Luke Fontana, attorney

ODC Investigator Alan Grimace

Mr. Fontana provided testimony under oath as follows:

- He does not practice law, therefore currently ineligible (for the past week prior to the testimony)...and was previously an active member of the Louisiana bar; for the past year prior to the hearing, he was a sole practitioner.
- Referring to the previous May 11, 2022 hearing date... prior to that day, Mr. Fontana testified he never spoke with Respondent; and since May 11, 2022, he has had no communications with Respondent.
- The witness was not aware whether his former paralegal, Chase Campbell, had any communications with the Respondent.

- * Fontana testified that he never authorized Campbell to make this or any representation to the board... nor did he ever speak with Mr. Campbell regarding representing Mr. Plaisance nor any other attorney in this or any other matter.
- * The witness testified that at some point, Campbell did work for him (Fontana). However, after a point, he never heard from Campbell again.
- * The witness examined the motion for continuance and testified that had never seen that motion before. He further noted that he did not sign the document, did not recognize the telephone number printed on it (504-732-5348); did not recognize the ZIP Code; did not recognize the post office box on the document; and contrary to page 1 of the motion continue, he (Fontana) was not retained as represented.
- * Fontana further testified that he did see a signature which resembled his own signature, but that his signature was not authorized on this document.
- * Fontana also testified that he did not sign the certificate of service.
- * Exhibit number 24 was introduced, which was presented as another motion for continuance filed for the Respondent (ostensibly by Attorney Fontana) on May 11, 2022. Once again, the witness testified that he did not recognize the document or the information contained in it, nor did he file it.
- * Further, contrary to representations in the request for a continuance filed on May 11, the witness testified that he never communicated with the individual named Dr. Michelle Lagarde-May; did not see the letter bearing her signature; and never sought nor authorized or signed the motion contrary to its indication.
- * QDC Exhibit number 26 was produced, identified as a memorandum filed Respondent Plaisance on August 3, 2022, indicating the Respondent "believed he was represented by attorney Fontana."
- * ODC introduced Exhibit 26, which is a message in which Respondent purports to have paid \$1000 to chase Campbell.
- * Once again, witness Fontana had no knowledge of any such payment; nor did he authorize Campbell to collect \$1000; nor did he receive \$1000 for anyone regarding this matter.
- * Witness Fontana testified that he never asked Campbell to handle this matter for him.
- * During his testimony, Fontana added that at one point, he had discovered that his driver's license had disappeared, and that his name had been used in a manner indicating incorrectly that he had appeared before a notary public. He also

discovered unauthorized intrusions into his computer and his bedroom, which he concluded likely had been carried out by Campbell.

ODC investigator Alan Grinace, as witness:

- * ODC investigator Grinace testified, inter alia, that he had emailed a subpoena duces tecum to respondent but had received no records nor a response.

Conclusions

The Committee collectively believes that although it is possible that Respondent believed he was represented for the May 11, 2022 hearing, pursuant to Mr. Fontana's testimony, that belief would have, under the circumstances, been unreasonable, since witness (attorney) Luke Fontana testified that the two men had never spoken. Therefore:

1. Even if the Respondent Plaisance *believed* he was represented at the May 11, 2022 Committee hearing, he has since learned that he was not, yet has still not provided the committee with any mitigation or even an explanation for his absence.
2. The single medical form provided to the committee was presented by, we now know, fraudulent means, either by Mr. Plaisance himself or by attorney/witness Fontana's former paralegal referenced in his testimony. The committee has received no subsequent information explaining Mr. Plaisance's absence; nor the apparently fraudulent filings; nor Mr. Plaisance's position as to the underlying charges.
3. The Committee finds that since the September 16, 2022 hearing, we can reach no conclusion as to whether Respondent Plaisance's absence was due to his own attempted fraud on the committee, or because he was a victim of the paralegal.

It is important to note that because the evidence tending to indicate an intent to obstruct the proceedings through false and fraudulent representations and forgery is not, as of the date of the writing of this Report, conclusive—the Committee will refrain from any consideration of such, in fashioning its recommended sanction.

Nonetheless, the Respondent's persistent non-participation in this process and failure to engage the LADB is unto itself a significant aggravator, which considered with the underlying

conflict-based conduct, demands a significant sanction. Such a carefully measured sanction will ensure that the Respondent must engage in an LADB process if he wants to practice in this state again.

In light of Respondent's failure to engage with LADB and the persistent unanswered factual questions surrounding the filings in this case, the Committee believes that requiring the respondent Plaisance to engage with process is a necessary component of any appropriate sanction in this matter, as discussed below.

Case Law Analysis

The Board and/or Court have imposed sanctions ranging from public reprimand to short suspensions based upon concurrent conflicts of interest similar to the facts present in this matter. In *In re Vidrine*, the Court upheld the Board's imposition of a public reprimand for engaging in a concurrent conflict of interest and for making false representations to a tribunal. 2011-1209 (La. 10/7/11), 72 So.2d 345. See also *In re Vidrine*, 10-DB-015, Ruling of the Louisiana Attorney Disciplinary Board (6/3/11). Mr. Vidrine was initially retained by two siblings seeking to probate the wills of their deceased parents. The siblings were named co-executors in the wills. The wills disinherited three other siblings. However, the two siblings decided not to proceed with the probate. Rather, Mr. Vidrine prepared and filed a petition on behalf of all five siblings seeking to proceed with the matter as an intestate succession. The petition falsely stated that there was no will. Subsequently, the two siblings favored by the wills had a change of heart and Mr. Vidrine filed the wills for probate on their behalf, which was detrimental to the three other siblings. The Board found that Mr. Vidrine negligently engaged in a conflict of interest and knowingly filed pleadings containing misrepresentations. The Board determined that Mr. Vidrine's misconduct

caused actual harm in the form of frustration and delay, but it did not cause actual financial harm. The only aggravating factor was Respondent's substantial experience in the practice of law. There were several mitigating factors: absence of a prior disciplinary record, absence of a dishonest or selfish motive, timely effort to rectify the consequences of the misconduct, full and free disclosure to the disciplinary board and a cooperative attitude toward the proceeding, character and reputation, and remorse.

In *In re Beevers*, the Board publicly reprimanded Mr. Beevers based upon a conflict of interest he had with the executor of a succession that was determined to be Mr. Beevers' client. 16-DB-014, Ruling of the Louisiana Attorney Disciplinary Board, (1/22/18). Mr. Beevers represented the executor's father in a contested succession. Mr. Beevers took certain actions against the executor in the succession matter, including filing a motion to have him removed as executor. It was determined that the executor was, in fact, represented by Mr. Beevers and his law firm. The Board upheld the Committee's findings that Mr. Beevers acted negligently and did not cause any actual injury. The following aggravating factors were present: two prior disciplinary offenses and substantial experience in the practice of law. Mitigating factors included full and free disclosure to ODC and cooperative attitude toward the proceedings, absence of dishonest or selfish motive, character or reputation, remorse, and remoteness of the prior offenses.

In *In re Cook*, the Court suspended Mr. Cook for six months, with all but thirty days deferred, for engaging in the conflict of interest in a succession matter. 2018-1076 (12/5/2018), 319 So.3d 272. Three siblings hired Mr. Cook to complete the succession of their deceased mother. At the direction of two of the siblings, Mr. Cook prepared a judgement of possession contrary to the interest of the third sibling. Upon realizing this, the third sibling hired another attorney to protect and pursue his interests. Despite this conflict, Mr. Cook continued to represent the other

two siblings. The Court found that Mr. Cook acted negligently. The following mitigating factors were present: the absence of a prior disciplinary record, the absence of a dishonest or selfish motive, full and free disclosure to the disciplinary board and a cooperative attitude toward the proceedings, inexperience in the practice of law (admitted 2012), and remorse. The only aggravating factor present was Mr. Cook's indifference to making restitution.

In *in re August*, the Court suspended Ms. August for two years, with all but sixty days deferred, for allowing a wrongful death action to prescribe, misleading the client about the prescription, and failing to withdraw from the matter after being sued for malpractice by the client (thereby creating a conflict). 2010-1546 (10/15/10), 45 So.3d 1019. The Court found that Ms. August acted knowingly and caused actual harm. The Court recognized the following aggravating factors: prior disciplinary offenses, a dishonest or selfish motive, and substantial experience in the practice of law. The mitigating factors of full and free disclosure to the disciplinary board and a cooperative attitude toward the proceedings and remoteness of prior offenses were also present.

COMMITTEE'S RECOMMENDED SANCTION

Baseline Sanctions:

There is here is no clear and convincing evidence of economic or other obstruction, as discussed above.

There is however, clear and convincing evidence of no attempt by Respondent to cooperate, or even to address the tribunal.

The Court has imposed up to one year and a day for failure to cooperate.

The actual offense produced actual harm to the individuals represented. In this case, the clients' recovery of monetary damages they were due was delayed, with additional increased expenses of unnecessary, protracted litigation.

The Respondent was nevertheless aggressive to hang onto the representation and pursue this matter notwithstanding clear warnings that he had a conflict, and these were aggravators.

Additional aggravators:

No remorse.
No admission.
No remediation.
Failing to show, communicate or respond.

CONCLUSION and RECOMMENDATION

Respondent Plaisance either negligently or deliberately failed to engage in the LADB process, despite having received multiple opportunities to provide the Committee with mitigation, to express remorse, to explain or to contest the ODC's claims.

We conclude that even if Respondent Plaisance believed he was represented at the May 11, 2022 hearing, he since learned that he was not, yet has still not provided the Committee with any mitigation or explanation for his absence. The single medical form provided to the committee was presented by, we now know as set forth hereinabove, fraudulent means—either by Respondent himself or by the former paralegal. We have received no subsequent information explaining Plaisance's absence, or the apparently fraudulent filings, or Respondent's position as to underlying charges.

The Committee therefore agrees that, despite our September 16, 2022 hearing, we can reach no conclusion as to whether Respondent Plaisance's absence was due to his own attempted fraud on the committee or because he was a victim of the former paralegal.

Nonetheless, Respondent's persistent absence in this process and failure to engage with LADB is a significant aggravator, such that the Committee concludes that a recommended sanction of two years and one day (with one year deferred) is appropriate.

Carefully considering the clear and convincing, unrefuted and even compelling evidence of the Respondent's conduct—as well as the aggravating and mitigating factors present—the Committee recommends that the Respondent, Kenneth M. Plaisance be suspended from the practice of law for two (2) years and one (1) day, *with one year deferred*, and further that according to Louisiana Supreme Court Rule XIX 24, Respondent be required to present evidence before a Hearing Committee demonstrating his fitness to resume the practice of law in Louisiana as a condition of reinstatement; and the Hearing Committee also recommends that the Respondent be assessed with the costs and expenses of the proceeding pursuant to Rule XIX, §10.1.

This opinion is unanimous and has been reviewed by each Committee member, all of whom concur and who have authorized James B. Letten, Hearing Committee #9 Chair, to sign on their behalf.

At New Orleans, Louisiana, this *30th* day of *December*, 2022.

Louisiana Attorney Disciplinary Board
Hearing Committee #9

James B. Letten, Committee Chair
Colin W. Reingold, Lawyer Member
Robert P. Ventura, Public Member

BY 
James B. Letten, Committee Chair
For the Committee

APPENDIX

Rule 1.4. Communication

- (a) A lawyer shall: (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules; (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished; (3) keep the client reasonably informed about the status of the matter; (4) promptly comply with reasonable requests for information; and (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.
- (b) The lawyer shall give the client sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued.
- (c) A lawyer who provides any form of financial assistance to a client during the course of a representation shall, prior to providing such financial assistance, inform the client in writing of the terms and conditions under which such financial assistance is made, including but not limited to, repayment obligations, the imposition and rate of interest or other charges, and the scope and limitations imposed upon lawyers providing financial assistance as set forth in Rule 1.8(e).

Rule 1.7. Conflict of Interest: Current Clients

- (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if: (1) the representation of one client will be directly adverse to another client; or (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

122

Rule 3.3. Candor Toward the Tribunal

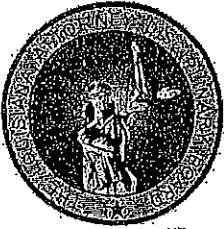
- (a) A lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer; (2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or (3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.
- (b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.
- (c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

Rule 8.4: Misconduct

It is professional misconduct for a lawyer to:

(d) Engage in conduct that is prejudicial to the administration of justice;



LOUISIANA ATTORNEY DISCIPLINARY BOARD

2800 Veterans Memorial Blvd., Suite 310
Metairie, Louisiana 70002
Phone: (504) 834-1488 • Fax: (504) 834-1449 • 1-800-489-8411
Website: www.ladb.org
December 9, 2022

Mr. Kenneth M. Plaisance
Attorney at Law
1148 Silber Rd Apt 1123
Houston, TX 77055

Mr. Christopher Kiesler
Deputy Disciplinary Counsel
4000 S. Sherwood Forest Blvd
Suite 607
Baton Rouge, LA 70816

RE: REPORT OF HEARING COMMITTEE
KENNETH M. PLAISANCE
DOCKET NO. 21-DB-066

Dear Parties of Record:

Enclosed is the Hearing Committee's Recommendation filed with the Board on
December 9, 2022.

Pursuant to Louisiana Supreme Court Rule XIX, §24(G), you have twenty (20) days
from the mailing or electronic transmission of the hearing committee's report in which
to file a notice of objection to the report. If an objection is filed by either party, the
matter will be docketed for appellate review by the Disciplinary Board.

If no objections are filed, the matter will be filed with the Louisiana Supreme Court for
review and final order.

In addition, attached is the statement of costs incurred in the referenced matter.

Kindest regards,

Donna P. Burgess
Sr. Docket Clerk

/db

Enclosure(s)

- 1 copy of Hearing Committee Report
- 1 copy of cost statement

184

CERTIFICATE OF MAILING

**IN RE: KENNETH M. PLAISANCE
DOCKET NO. 21-DB-066**

I, Donna L. Roberts, the undersigned Administrator for the Louisiana Attorney Disciplinary Board, certify that a copy of the foregoing Hearing Committee Report and Initial Cost Statement has been mailed to the Respondent or his/her Attorney of Record, by E-mail and/or United States Mail and E-Filed to the Office of Disciplinary Counsel, this 9th day December, 2022 at the following address:

**Mr. Kenneth M. Plaisance
Attorney at Law
1148 Silber Rd Apt 1123
Houston, TX 77055**

**Mr. Christopher Kielser
Deputy Disciplinary Counsel
4000 S. Sherwood Forest Blvd
Suite 607
Baton Rouge, LA 70816**



**Donna L. Roberts
Board Administrator**

185

THE LOUISIANA ATTORNEY DISCIPLINARY BOARD

2800 Veterans Memorial Blvd. Suite 310
Metairie, Louisiana 70002

COST STATEMENT ORIGINAL

Name: Kenneth M Plaisance
1148 Silber Rd Apt 1123

Statement Date: 12/09/22

Houston, TX 77055-

Case / Complaint	Date	Description	Charge
0038024	11/05/20	Deposition Sworn statement of respondent 10/05/20 P.O.# 20957 V#:20948 VEN:Associated Reporters, Inc. Ck#:4566	\$299.00
21-DB-066	12/13/21	Formal Charges Filed 12/13/2021 Formal Charges - Formal Charges	\$10.00
21-DB-066	02/26/22	Other - (See Memo) Conference call 02/08/2022 V#:22573 VEN:Premiere Global Services Ck#:5650 CkD:3/15/2022	\$0.15
21-DB-066	02/26/22	Other - (See Memo) Conference call 02/02/2022 V#:22573 VEN:Premiere Global Services Ck#:5650 CkD:3/15/2022	\$9.10
21-DB-066	04/13/22	Other - (See Memo) Online search 04/28/2022 V#:22831 VEN:TransUnion Risk & Alternative Data Solutions	\$0.40
21-DB-066	04/18/22	Witness Fee Witness fees for deposition 4/27/2022 V#:22741 VEN:Francis Valteau Ck#:5727 CkD:4/25/2022	\$172.96
0038024	04/22/22	Investigation Staff investigator expense to attempt service of subpoena on witness at 237 W Main St New Iberia LA 4/20/2022	\$92.00
0038024	04/22/22	Investigation Staff investigator expense to serve subpoena to witness at 237 W Main St New Iberia LA 4/20/2022	\$96.31
21-DB-066	04/26/22	Other - (See Memo) Conference call 04/25/2022 V#:22854 VEN:Premiere Global Services Ck#:5791 CkD:5/13/2022	\$0.75
21-DB-066	04/28/22	Other - (See Memo) Courier fees 4/25/2022 V#:22818 VEN:Federal Express Ck#:5778 CkD:5/13/2022	\$20.81
21-DB-066	05/02/22	Other - (See Memo) Staff investigator expense to serve Subpoena to Franklin G Shaw at 512 B Boston St Covington LA 70433 4/29/2022	\$57.21
21-DB-066	05/02/22	Other - (See Memo) Staff investigator expense to serve subpoena to Michael J Ecuyer at 1100 Poydras St New Orleans LA 70163 4/29/2022	\$57.21
21-DB-066	05/02/22	Other - (See Memo) Staff investigator expense to attempt to serve subpoena to Ferdinand Valteau III at 237 Main St New Iberia LA 70560 5/2/2022	\$164.60
21-DB-066	05/02/22	Other - (See Memo) Staff investigator expense to serve subpoena to Ferdinand Francis Valteau III at 107 Stockstill St New Iberia LA 70563 5/3/2022	\$107.21
21-DB-066	05/05/22	Other - (See Memo) Courier charges 4/27/2022 V#:22819 VEN:Federal Express Ck#:5778 CkD:5/13/2022	\$21.18

THE LOUISIANA ATTORNEY DISCIPLINARY BOARD

2800 Veterans Memorial Blvd. Suite 310
Metairie, Louisiana 70002

COST STATEMENT

Name: Kenneth M Plaisance
1148 Silber Rd Apt 1123

Statement Date: 12/09/22

Houston, TX 77055-

Case / Complaint	Date	Description	Charge
21-DB-066	05/05/22	Deposition Transcript Fee Minimum fee for Ferdinand Valteau, III 4/27/2022 V#:22806 VEN:Associated Reporters, Inc. Ck#:5767 CkD:5/13/2022	\$143.00
0038024	05/09/22	Deposition Deposition of witness Ferdinand Valteau III 5/5/2022 V#:22803 VEN:Associated Reporters, Inc. Ck#:5767 CkD:5/13/2022	\$312.40
21-DB-066	05/26/22	Other - (See Memo) Conference call 05/02/2022 V#:22949 VEN:Premiere Global Services Ck#:5866 CkD:6/15/2022	\$0.90
21-DB-066	06/24/22	Deposition Transcript Fee Sworn statement of respondent 5/11/2022 V#:23013 VEN:Associated Reporters, Inc. Ck#:5894 CkD:6/30/2022	\$379.25
21-DB-066	08/26/22	Other - (See Memo) Conference call 08/10/2022 V#:23247 VEN:Premiere Global Services Ck#:6058 CkD:9/1/2022	\$22.43
21-DB-066	08/26/22	Other - (See Memo) Conference call 08/17/2022 V#:23247 VEN:Premiere Global Services Ck#:6058 CkD:9/1/2022	\$26.08
21-DB-066	09/23/22	Other - (See Memo) Staff attorney expense to attend hearing 9/23/2022 V#:23359 VEN:Christopher Kiesel Ck#:6125 CkD:9/29/2022	\$86.13
21-DB-066	10/17/22	Hearing Transcript Fee Hearing 9/23/2022 V#:23473 VEN:Associated Reporters, Inc. Ck#:6202	\$379.25
21-DB-066	12/09/22	Suspension Pending final judgment Pursuant to Rule XIX, Section 10.1(e)	\$1,500.00
Thank You.		Balance:	\$3,958.33

CERTIFICATE OF MAILING

**IN RE: KENNETH M. PLAISANCE
DOCKET NO. 21-DB-066**

I, Donna L. Roberts, the undersigned Administrator for the Louisiana Attorney Disciplinary Board, certify that a copy of the foregoing Hearing Committee Report and Initial Cost Statement has been mailed to the Respondent or his/her Attorney of Record, by E-mail and/or United States Mail and E-Filed to the Office of Disciplinary Counsel, this 9th day December, 2022 at the following address:

**Mr. Kenneth M. Plaisance
Attorney at Law
1148 Silber Rd Apt 1123
Houston, TX 77055**

**Mr. Christopher Kielser
Deputy Disciplinary Counsel
4000 S. Sherwood Forest Blvd
Suite 607
Baton Rouge, LA 70816**



**Donna L. Roberts
Board Administrator**

188

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: KENNETH M. PLAISANCE

DOCKET NUMBER: 21-DB-066

RECOMMENDATION TO THE LOUISIANA SUPREME COURT

INTRODUCTION

This attorney disciplinary matter arises out of formal charges filed by the Office of Disciplinary Counsel ("ODC") against Kenneth M. Plaisance ("Respondent"), Louisiana Bar Roll Number 19738.¹ ODC alleges that Respondent violated the following Rules of Professional Conduct: 1.4, 1.7(a), 3.3,² and 8.4(d).³

PROCEDURAL HISTORY

The formal charges were filed on December 13, 2021. Respondent filed an answer to the charges on January 4, 2022, in which he denied the allegations of misconduct in the formal charges. A scheduling conference was held on February 2, 2022, at which time the parties selected May 11-12, 2022, as hearing dates. On April 11, 2022, Respondent filed a motion to continue the hearing, stating that he was still attempting to retain an attorney and that discovery was incomplete. The motion was denied by order signed April 18, 2022. On April 25, 2022, Respondent filed a motion for summary judgment, which was denied by order signed April 27, 2022. On May 9, 2022, attorney Luke Fontana purportedly sought

¹ Respondent was admitted to the practice of law in Louisiana on October 6, 1989. Respondent is currently eligible to practice law.

² As discussed later in this Recommendation, the reference to Rule 3.3 (Candor Toward the Tribunal), as opposed to Rule 3.1 (Meritorious Claims and Contentions), in the formal charges appears to be inaccurate and may have been a typographical error.

³ The attached Appendix contains the text of these Rules, as well as the text of Rule 3.1.

to enroll as counsel for Respondent by filing a motion to continue, again stating that discovery was incomplete. The motion to continue was denied by order signed the same day. On May 11, 2022, another motion to continue purportedly was filed by Mr. Fontana, attaching a doctor's note which indicated, in pertinent part, that Respondent was "unable to attend scheduled meeting due to health concerns." Mr. Plaisance and Mr. Fontana did not appear for the hearing on May 11, 2022, and attempts to contact Mr. Fontana were unsuccessful. The motion to continue was denied, and the hearing proceeded before Hearing Committee No. 9 ("the Committee").⁴ Deputy Disciplinary Counsel Robert S. Kennedy appeared on behalf of ODC.

After the May 11th hearing, ODC and Respondent filed briefs with the Board which contained conflicting evidence as to whether Mr. Fontana was actually retained to represent Respondent. By order signed August 10, 2022, the Committee Chair re-opened the proceeding for the limited purpose of determining whether Mr. Fontana represented Respondent. A hearing was scheduled for September 23, 2022 and was held on that date before the Committee. Deputy Disciplinary Counsel Christopher Kiesel appeared on behalf of ODC. Respondent failed to appear, nor did counsel appear on his behalf.

On December 9, 2022, the Committee issued its report in this matter, finding that Respondent had violated the Rules of Professional Conduct as charged. The Committee recommended that Respondent be suspended from the practice of law for two years and one day, with one year deferred. The Committee also recommended that Respondent be

⁴ Members of the Committee included James B. Letten (Chair), Colin W. Reingold (Lawyer Member), and Robert P. Ventura (Public Member).

235

assessed with all costs and expenses of the proceeding pursuant to Rule XIX, Section 10.1. ODC did not object to the report. On December 29, 2022, Respondent objected to the Committee's report and its finding that he had violated the identified rules. He also requested that the report "be overruled, denied and declared to [sic] harsh of a sanction." ODC's pre-argument brief was filed on March 21, 2023. Respondent's pre-argument brief and response to ODC's pre-argument brief was filed on April 3, 2023. Oral argument before Panel "C" of the Board on was held April 20, 2023.⁵ Mr. Kiesel appeared on behalf of ODC. The Respondent did not appear.

FORMAL CHARGES

The formal charges read, in pertinent part:

On June 15, 2017, Respondent consulted with and agreed to jointly represent two personal injury claimants, Larry Taylor ("Taylor"), an adult, and Lawan Roussel [sic] ("Lawan"), the minor child of Melvia Hodges, who had been injured in a motor vehicle accident in New Orleans. At the time of the accident, Taylor was driving a vehicle when he rear-ended an eighteen-wheeler making an illegal U-turn, which raised issues of comparative negligence. Lawan was a passenger in the front seat of the vehicle. Taylor was ticketed by police for the offense of following too closely and was later found to have the controlled substance THC in his system, indicating recent ingestion of marijuana.

At the time he was retained, Respondent failed to disclose the existence of a concurrent conflict of interest inherent in his joint representation of both clients. On July 27, 2017, on behalf of Lawan, Respondent granted a full release of all claims against Taylor to Progressive Insurance Company (Taylor's auto insurer), in exchange for payment of the \$15,000 policy limits. Thereafter, on October 18, 2017, he filed a personal injury action in state court in Orleans Parish against Progressive (who was also the defendant's insurer) on behalf of both Taylor and Lawan as co-plaintiffs, alleging the truck driver's negligence. The defendant insurer later removed the matter to federal court in New Orleans. [FNI]. This suit was later dismissed without prejudice and re-filed under a different case number: No.

⁵ Members of Panel "C" included Paula H. Clayton (Chair), Aldric C. ("Rie") Poirier, Jr. (Lawyer Member), and Susan P. DesOrmeaux (Public Member).

18-cv-05889.] The respondent's lawsuit failed to include any claims by Lawan alleging the comparative negligence of Taylor.

In the latter part of 2017, the respondent approached the Covington firm of Leger and Shaw about enrolling as co-counsel on all claims. On December 26, 2017, an attorney with the firm expressly advised Respondent of conflict concerns with his joint representation of Taylor and Lawan and declined to participate in the case. Respondent then asked a Texas law firm, Derryberry, Zipps, and Wade, PLC, ("DZW"), to enroll as co-counsel on behalf of Lawan and Taylor. After agreeing to represent Lawan, lawyers at DZW independently advised Respondent of his concurrent conflict of interest in the dual representation and asked that he withdraw from Taylor's defense. Respondent initially agreed to do so, then retrenched by enrolling on Taylor's behalf. When DZW learned of this, the Texas firm enlisted the New Orleans law firm of Gainsburgh, Benjamin, David, Meunier, and Washauer as local counsel and met with the client to apprise her of the conflict issues. Ms. Hodges, on behalf of her son, thereafter discharged Respondent and executed a separate contingency fee agreement exclusively with DPW and GB.

A mediation was held between the parties in May 2018, with the respondent attempting to participate as counsel, but no settlement was reached at that time. On June 14, 2018, GB filed a federal complaint on behalf of Ms. Hodges and Lawan in the Eastern District of Louisiana. On October 16, 2018, Respondent filed a Motion to Intervene in federal court asking to re-open the earlier action that he had filed and seeking attorneys' fees for representing Lawan on the subject claims. [FN2. After receiving the Motion to Intervene, the clerk of the Eastern District served a "Notice of Deficiency" upon Respondent instructing him to correct the filing, and further advised him that failure to do so within 7 days would result in his filing would be [sic] rejected. The respondent thereafter failed to correct the deficiency and the clerk later withdrew the filing.] In May 2019, the parties reached an amicable settlement following a second mediation. Attorneys for Lawan thereafter petitioned the Orleans Parish Civil District Court for authority to enter into a settlement of the minor's claims, which was later granted.

On August 15, 2019, Respondent forwarded a peremptory e-mail to the DZW firm warning the client's lawyers not to disburse any settlement funds pending resolution of his fee claim. Because of uncertainty regarding the validity of such claims, attorneys for Lawan sought guidance from the federal court to determine whether the respondent could ethically share in attorneys' fees derived from settlement. On September 4, 2019, DZW and GB filed a pleading styled "Motion to Determine Conflict-Free Status and Entitlement to Attorneys' Fees." Respondent was served with a copy of the pleading but did not file a response. Thereafter, the federal judge assigned to the case, Jane Milazzo Triche, issued a ruling on October 7, 2019, confirming the existence of Respondent's conflict of interest and declared him ineligible to receive a fee because of his

conflicted representation of Lawan.

Despite his failure to appear and oppose the motion, the Respondent nonetheless appealed Judge Triche Milazzo's ruling to the U.S. Fifth Circuit Court of Appeals. That court later dismissed the appeal as being untimely filed.

By his acts and omissions, respondent Kenneth Plaisance has knowingly and intentionally violated Rules of Professional Conduct 1.4 (failure to communicate the existence of an un-waivable conflict of interest in his representation); 1.7(a) (concurrent conflict of interest); 3.3 (seeking to collect attorneys' fees in pursuit of a conflicted representation); 8.4(d)(conduct prejudicial to the administration of justice).

THE HEARING COMMITTEE'S REPORT

EVIDENCE/TESTIMONY INTRODUCED AT THE HEARINGS

In its December 9, 2022 report, the Committee noted that ODC Exhibits 1-22 were introduced into evidence at the May 11, 2022 hearing. Witnesses at the May 11th hearing were Michael Ecuyer, the complainant in this matter, and Janine Telio. The Committee described Mr. Ecuyer's testimony concerning the Respondent's participation in the underlying lawsuit at issue, particularly Respondent's conflict of interest in the lawsuit. Ms. Telio's testimony also was discussed in the Committee's report; her testimony related to ODC's unsuccessful efforts to locate Mr. Fontana prior to the May 11th hearing.

ODC Exhibits 23-31 were introduced at the subsequent September 23, 2022 hearing. Witnesses at this hearing included attorney Luke Fontana, Jr. and Allen Grimmis, an ODC investigator. In Mr. Fontana's testimony, he basically denied representing or filing pleadings on behalf of Respondent in this disciplinary matter, and his testimony was described in detail in the Committee's report. The Committee noted that Mr. Grimmis testified that, among other things, he had emailed a subpoena duces tecum to Respondent, but had not received records or a response from him. Hrg. Comm. Rpt., p. 16.

THE COMMITTEE'S FINDINGS OF FACT

In its report, the Committee appears to find that the formal charges, as alleged, were proven by ODC. *Id.* at pp. 5, 10. As to the issue of whether Mr. Fontana represented Respondent in this matter, the Committee determined:

The Committee collectively believes that although it is possible that Respondent believed he was represented [by Mr. Fontana] for the May 11, 2022 hearing, pursuant to Mr. Fontana's testimony, that belief would have, under the circumstances, been unreasonable, since witness (attorney) Luke Fontana testified that the two men had never spoken. Therefore:

1. Even if the Respondent Plaisance *believed* he was represented at the May 11, 2022 Committee hearing, he has since learned that he was not, yet has still not provided the committee with any mitigation or even an explanation for his absence;
2. The single medical form provided to the committee was presented by, we now know, fraudulent means, either by Mr. Plaisance himself or by attorney/witness Fontana's former paralegal referenced in his testimony. The committee has received no subsequent information explaining Mr. Plaisance's absence; nor the apparently fraudulent filings; nor Mr. Plaisance's position as to the underlying charges; [and]
3. The Committee finds that since the September 16, 2022 hearing, we can reach no conclusion as to whether Respondent Plaisance's absence was due to his own attempted fraud on the committee, or because he was a victim of the paralegal.

It is important to note that because the evidence tending to indicate an intent to obstruct the proceedings through false and fraudulent representations and forgery is not, as of the date of the writing of this Report, conclusive -- the *Committee will refrain from any consideration of such in fashioning its recommended sanction.*

Id. at p. 18.

RULES VIOLATED

The Committee also determined that ODC established that Respondent violated the Rules of Professional Conduct as charged. The Committee stated as follows:

As set forth hereinabove, the Committee finds that the evidence presented has proven by clear and convincing evidence that the respondent has -- as charged by ODC -- violated the following Rules of Professional Conduct:

- 1.4 (failure to communicate the existence of an un-waivable conflict of

interest in his representation);

- 1.7(a) (concurrent conflict of interest);
- 3.3 (seeking to collect attorneys' fees in pursuit of a conflicted representation); and
- 8.4(d) (conduct prejudicial to the administration of justice).

The Respondent's knowing and repeated insistence on continuing to represent both the plaintiff father and minor child in spite of his conflict -- is clearly established by compelling, unqualified testimony and supporting evidence -- including:

- Respondent's documented insistence on receipt of a prohibited fee from which he had been disqualified by virtue of his having been explicitly advised by both Texas and Louisiana counsel of his un-waivable conflict;
- Respondent's exclusion from the conflicted representation of both the father and minor child plaintiffs by finding and order of the U.S. District Court; and
- His persistent -- unsuccessful -- appeal of said disqualification to the U.S. Fifth Circuit Court of Appeals.

Regarding Respondent's violation of Rule of Professional Conduct 8.4(d) (conduct prejudicial to the administration of justice), the evidence presented unequivocally established that the Respondent's protracted insistence on representing the interests of both the father and minor child following the auto accident and injuries *additionally prejudiced the administration of justice* in the following ways:

- Respondent evidenced a significant disregard for the requirement of conflict-free representation of at least two clients, thus jeopardizing their constitutional 6th Amendment rights;
- In so doing, Respondent also jeopardized their recovery of damages for their injuries;
- Respondent caused additional work by and placed additional burdens upon legal counsel in at least two firms who were required to attempt to prevent the violation of the Rules by Respondent;
- Respondent further increased unnecessarily the workload of both the U.S District Court for the Eastern District of Louisiana and the

U.S. Fifth Circuit Court of Appeals;

- Respondent contributed to the erosion of trust in the integrity of the bar and the judicial system;
- Respondent significantly delayed the payment of damages in the form of settlement funds to three plaintiffs and their families for approximately *eight or nine months* due to Respondent's persistent litigation;
- Respondent caused added expenses -- including costs and attorney's fees -- on behalf of all parties, especially due to Respondent's motion to intervene in the federal court settlement and his subsequent frivolous appeal to the U.S. Fifth Circuit; and
- Increased the attorney's fees and thereby reduced the recovery by the parties at issue.

Id. at pp. 10-11.

As to the sanction, the Committee analyzed the Rule XIX, Section 10(C) factors and found that Respondent had violated duties owed to his client(s); the legal system, (including the federal and Louisiana state courts); other counsel involved in the litigation; and the legal profession. The Committee also determined that Respondent acted with knowledge and intent in that he had been expressly advised and made aware of the conflict. The Committee found that Respondent's misconduct caused actual, tangible harm, including:

- Delayed payment to the family of approximately six to eight months due to his persistent litigation;
- Additional expenses on behalf of all parties, especially due to Respondent's motion to intervene in the federal court settlement and his subsequent appeal to the U.S. Fifth Circuit; and
- Additional attorney's fees by requiring other legal counsel to do an extensive amount of otherwise unnecessary work -- therefore reducing recovery by the injured parties as the direct result of the protracted delay of resolution and litigation Respondent caused.

Id. at p. 12.

Aggravating factors found by the Committee included Respondent's negligent or deliberate failure to engage at all in the disciplinary process; pattern of misconduct evidenced by Respondent's continued insistence on conflicted representation of the two parties to the lawsuit; refusal of Respondent to acknowledge the wrongful nature of the conflict -- and refusal to heed multiple admonitions, warnings and rulings; and a selfish, clearly financially driven motive for Respondent's pattern of maintaining the conflicted representations in question. Mitigating factors found by the Committee included absence of a prior disciplinary record and the fact that the harm caused, while real, is moderate.

In determining the appropriate sanction, the Committee noted that "[i]n light of Respondent's failure to engage with LADB and the persistent unanswered factual questions surrounding the filings in this case, the Committee believes that requiring the respondent Plaisance to engage with [the] process is a necessary component of any appropriate sanction in this matter. . . ." Hrg. Comm. Rpt., p. 19. The Committee explained that the Board and Court have imposed sanctions ranging from public reprimand to suspensions based upon concurrent conflicts of interest similar to the facts presented in this matter. After discussing the similar matters of *In re Vidrine*, 2011-1209 (La. 10/7/11); 72 So.2d 345, *In re Beevers*, 16-DB-014, Ruling of the Louisiana Attorney Disciplinary Board (1/22/18); *In re Cook*, 2018-1076 (12/5/2018), 319 So.3d 272; and *In re August*, 2010-1546 (10/15/10), 45 So.3d 1019, the Committee determined that a two-year and one-day suspension, with one year deferred, is the appropriate sanction in this matter and recommended same. The Committee also recommended that Respondent be assessed with all costs and expenses of these

proceedings in accordance with Rule XIX, Section 10.1.

ANALYSIS OF THE RECORD BEFORE THE BOARD

I. Standard of Review

The powers and duties of the Disciplinary Board are defined in Section 2 of Louisiana Supreme Court Rule XIX. Rule XIX, Section 2(G)(2)(a) states that the Board is "to perform appellate review functions, consisting of review of the findings of fact, conclusions of law, and recommendations of hearing committees with respect to formal charges ... and prepare and forward to the court its own findings, if any, and recommendations." Inasmuch as the Board is serving in an appellate capacity, the standard of review applied to findings of fact is that of "manifest error." *Arceneaux v. Domingue*, 365 So. 2d 1330 (La. 1978); *Rosell v. ESCO*, 549 So. 2d 840 (La. 1989). The Board conducts a *de novo* review of the hearing committee's application of the Rules of Professional Conduct. *In re Hill*, 90-DB-004, Recommendation of the Louisiana Attorney Disciplinary Board (1/22/92).

A. The Manifest Error Inquiry

The Committee's findings of fact are not manifestly erroneous and are adopted by the Board. For further clarity, however, the Board also adopts the majority of the findings of fact proposed by ODC in its pre-argument brief.⁶ These factual findings are listed below (citations largely omitted).

Respondent's Frustration of the Disciplinary Process

1. On September 10, 2020, during the ODC's investigation, Respondent's sworn statement was scheduled. Just prior to the start of that sworn statement, Respondent attempted to postpone it in order "[t]o obtain the services of an attorney." Despite receipt of the

⁶ See pp. 2-10 of ODC's pre-argument brief.

243

complaint nearly one year earlier, Respondent admitted during this October 5, 2020 sworn statement that he had made no effort to retain an attorney to represent him.

2. The formal charges were filed in this matter on December 13, 2021. On January 4, 2022, Respondent filed his answer to the formal charges. Respondent thereafter failed to submit his identification of persons having knowledge of relevant facts, as required by Louisiana Supreme Court Rule XIX, Section 15A. On February 2, 2022, a scheduling conference was held. Therein, the parties selected May 11-12, 2022 as the hearing dates. On April 11, 2022, Respondent filed a motion to continue the hearing, claiming that he needed more time to retain counsel and that discovery was "incomplete." ODC opposed that motion for two primary reasons. First, Respondent had made no serious effort to retain counsel in the two-and-a-half years since he was served with the complaint or in the four months since he was served with the formal charges. Second, Respondent already had ample time to take any legitimate depositions. By order dated April 18, 2022, Respondent's motion to continue was denied.
3. Respondent did not file a pre-hearing memorandum. On April 25, 2022, Respondent filed a motion for summary judgment. By order dated April 27, 2022, Respondent's motion for summary judgment was denied. *See* Rule XIX, Section 18(B).
4. On May 9, 2022, a second motion for continuance was filed on Respondent's behalf. That motion represented that Respondent had retained attorney Luke Fontana ("Mr. Fontana") and that a continuance was needed to "review discovery, take depositions, and determine if discovery is complete." By order dated May 9 2022, the second motion for continuance was denied. Contrary to the representations in that motion, Respondent had not retained Mr. Fontana, and Mr. Fontana did not file that motion. At the hearing in this matter, Mr.

Fontana testified that in his fifty-seven years of practice, he had never represented an attorney in a disciplinary proceeding.

5. On May 10, 2022, the Board contacted Respondent in advance of the hearing. Claiming "advice of counsel," Respondent refused to speak with the Board. Respondent had not spoken to purported counsel (Mr. Fontana) at the time he made, or even after, that false representation.
6. On May 11, 2022, just prior to the start of the hearing, a third motion for continuance was filed on Respondent's behalf. That motion again represented that it had been filed by Mr. Fontana, and that Respondent "was under the care of a medical doctor for health reasons" and had "been restricted for any work-related activities." Mr. Fontana did not file this motion. The alleged medical form attached to the motion was presented by fraudulent means, either by Respondent or Mr. Fontana's former paralegal, Chase Campbell. The third motion for continuance was denied.
7. Respondent failed to attend the hearing on May 11, 2022. During the hearing, ODC requested that the record be temporarily left open to allow Respondent to "make any evidentiary presentation he wished to make to supplement this record." By May 11, 2022 Minute Entry and Order, the Committee Chair granted ODC's request and ordered that "the record of this matter be held open for fifteen days, until May 26, 2022, to allow Respondent to make any appropriate filing or submission." The Board served that order on Respondent the same day. Respondent did not file or submit anything by that deadline.
8. In light of concerns regarding whether Mr. Fontana actually was retained to represent Respondent, by order dated August 10, 2022, the Committee Chair re-opened the hearing for the limited purpose of determining whether Mr. Fontana represented Respondent. On

August 26, 2022, ODC served a subpoena duces tecum on Respondent for the production of records regarding Mr. Fontana's alleged representation of Respondent. That production was due on September 15, 2022. Respondent did not produce any records to ODC by or after that deadline. Respondent also did not attend the re-opened hearing on September 23, 2022. Respondent did not provide any explanation for his failure to comply with ODC's subpoena or his absence from the re-opened hearing.

The Underlying Misconduct

9. On June 14, 2017, Larry Taylor, Jr. ("Mr. Taylor") and Lawan, the minor child of Mr. Taylor and Melvia Hodges ("Ms. Hodges"), suffered injuries as a result of an automobile accident with an eighteen-wheeler truck. Mr. Taylor was the driver, and Lawan was a passenger in the front seat of Mr. Taylor's vehicle. On June 15, 2017, Ms. Hodges signed a retainer agreement for Respondent to represent Ms. Hodges, individually and on behalf of Lawan. Mr. Taylor also retained Respondent to represent Mr. Taylor's interests related to the accident.
10. From the date of the accident, it was clear that there was an un-waivable conflict of interest in representing both Mr. Taylor and Lawan. Mr. Taylor had rear-ended the truck, and therefore, had some comparative fault and liability in the matter. The police report documenting the accident specifically placed fault on Mr. Taylor and noted that he had been issued a ticket for following too closely to the truck. Mr. Taylor's drug screen also tested positive for THC, indicating that marijuana was present in his system at the time of the accident. Respondent admitted during his sworn statement that he knew Mr. Taylor "may have some fault" in the accident. At no time did Respondent disclose to his clients that an un-waivable conflict of interest would exist in representing both Mr. Taylor and

246

Lawan.

11. On July 27, 2017, Respondent (on behalf of Lawan) granted a full release of all claims against Mr. Taylor to Progressive Insurance Company ("Progressive"), Mr. Taylor's auto liability insurer, in exchange for payment of the \$15,000 limit under Mr. Taylor's policy. Respondent thereafter disbursed those settlement funds as follows: \$5,000 to Ms. Hodges (on behalf of Lawan), \$5,000 to Mr. Taylor and \$5,000 to Respondent as his attorney's fee.
12. On October 18, 2017, Respondent filed a civil suit in state court (Civil District Court, Parish of Orleans) on behalf of Mr. Taylor and Ms. Hodges, individually and on behalf of Lawan, against the truck driver and the truck driver's insurer. The lawsuit did not assert any claims by Lawan alleging the comparative negligence of Mr. Taylor. On December 1, 2017, the defendants removed the lawsuit to federal court. Respondent thereafter dismissed the lawsuit without prejudice. When asked why he dismissed the lawsuit, Respondent testified during his sworn statement, "I think because of the fact that there may have been conflicts of interest."
13. Shortly after the lawsuit had been removed to federal court, Respondent approached the Covington law firm of Leger & Shaw ("L&S firm") about assisting him in pursuit of that litigation. On December 26, 2017, the L&S firm advised Respondent that it would not do so and that Respondent "should consult with ethics counsel as soon as possible as to how [he] should proceed[.]"
14. In early 2018, Respondent next approached the Texas law firm of Derryberry Zips Wade, PLLC ("DZW firm") to gauge its interest in assisting in the litigation. On March 9, 2018, Respondent and Mr. Taylor executed a Consent to Associate Counsel permitting

Respondent to associate the DZW firm on Mr. Taylor's behalf.⁷ On March 28, 2018, Respondent met with the DZW firm at its Texas office to further discuss the matter. During that and subsequent meetings, the DZW firm discussed with Respondent his un-waivable conflict of interest and the need to have separate counsel represent Mr. Taylor and Ms. Hodges (individually and on behalf of Lawan).

15. In May of 2018, the DZW firm associated the New Orleans law firm of Gainsburgh, Benjamin, David, Meunier & Washauer ("GB firm") to serve as local counsel in connection with the claims of Ms. Hodges and Lawan only. On June 12, 2018, Ms. Hodges, Lawan, and Respondent met with the GB and DZW firms. During that meeting, Respondent's un-waivable conflict of interest was again discussed. As Mr. Ecuyer (the complainant and one of the GB firm attorneys) explained during the hearing:

[The GB firm] tried repeatedly and had discussions early on and throughout about the conflict of interest, that [Respondent] couldn't represent both parties . . . [T]here was a conflict and [it was] un-waivable.

[Ms. Hodges] and [Lawan] came to my office. [Respondent] came to the office . . . But I explained to [Lawan] and his mother about the conflict, and . . . Respondent, when he was there, that there was a conflict of interest because dad could have some fault in this case and because of that fault, it was an un-waivable conflict and that there would need to be separate counsel for dad and for [Lawan] and mom, and that we were prepared to represent mom and [Lawan] in this claim. They consented. They signed a retainer . . . With – and [Respondent] expressed an understanding that he could not represent both sides, . . . we spent a lot of time talking about that conflict.

May 11, 2022 Tr., pp. 47, 51-52.

⁷ However, the consent document contained in the record (ODC Exhibit 1, BN 34) does not show that the DZW firm signed the document.

At this meeting, Ms. Hodges was presented with a retainer agreement that reflected that DZW, GB and Plaisance would all represent Ms. Hodges and Lawan. The retainer was signed by Ms. Hodges, individually and on behalf of Lawan, Plaisance, and GB attorney, Michael Ecuyer.

16. On June 14, 2018, the GB firm filed a new lawsuit on behalf of Ms. Hodges and Lawan in the Eastern District of Louisiana, entitled *Hodges v. James*, Case No. 2:18-cv-5889 (E.D. La.). Respondent was not listed as counsel on that complaint due to uncertainty as to whether he was admitted to practice before the Eastern District, and moreover, whether he was eligible to practice law. On that same date, Mr. Taylor -- assisted by Respondent -- also filed a new lawsuit in the Eastern District of Louisiana, titled *Taylor v. CDMT Trucking*, Case No. 2:18-cv-5903 (E.D. La.). Mr. Taylor's filing was submitted as a *pro se* filing. On June 22, 2018, Respondent filed an *ex parte* motion to enroll as counsel for Mr. Taylor in his case, which was granted by the federal court on June 26, 2018.

17. On July 16, 2018, the federal court issued an order consolidating both matters. At no time prior to the consolidation did Respondent terminate his representation of Ms. Hodges and Lawan. On August 29, 2018, attorney Chris Robinson filed an *ex parte* motion to substitute himself in place of Respondent as Mr. Taylor's attorney in the federal suit. This filing was the first notice received by the GB firm that Respondent had earlier enrolled as counsel for Mr. Taylor. This motion to substitute was granted on September 12, 2019. Mr. Ecuyer testified about his surprise in learning that Respondent had enrolled as Mr. Taylor's counsel in the consolidated litigation:

This was after we had the discussion in our office explaining the conflict and that he could not represent both sides of the litigation. When we got a

copy of this [motion to enroll], we went back to Ms. Hodges and [Lawan] and Texas Counsel and said, 'Don't know' – 'He didn't call us. [Respondent] didn't call us. Didn't advise anything.' So we had [Ms. Hodges and Lawan] redo another contract, hiring just Texas counsel and us and took [Respondent] out of the representation in that retainer.

May 11, 2022 Tr., pp. 54-55.

18. On September 6, 2018, Ms. Hodges executed a new retainer agreement, individually and on behalf of Lawan, with only the DZW and GB firms.
19. On October 16, 2018, Respondent filed a "Motion/Petition to Intervene to Collect Attorneys Fee" in the consolidated action, claiming that he was entitled to collect an attorney's fee from any settlement of Ms. Hodges and Lawan's claims. The pleading was later stricken from the record as deficient by the clerk of court.
20. On May 7, 2019, a mediation was held, and the consolidated action was settled. Respondent collected an attorney's fee out of the settlement of Mr. Taylor's claims. Respondent again asserted that he had a right to collect an attorney's fee from the settlement of Ms. Hodges' and Lawan's claims. On June 17, 2019, the DZW firm sent Respondent a letter which stated, in pertinent part: "Importantly, we have previously discussed our concerns, on several occasions, of any potential fee sharing with you given what we believe are clear conflicts of interest that exist in connection with your claim to fees from the settlement of Plaintiffs' [.]"⁸ On August 15, 2019, Respondent instructed the DZW firm not to disburse any of Ms. Hodges' and Lawan's settlement funds pending resolution of Respondent's fee claim.
21. As a result of Respondent's actions, counsel for Ms. Hodges and Lawan sought

⁸ In June of 2019, Respondent produced to DZW two undated waivers of conflict of interest purportedly signed by Ms. Hodges and Mr. Taylor. As previously discussed, Respondent's conflict of interest could not be waived. Further, without any meaningful discussion of the conflict issues, Mr. Taylor and Ms. Hodges (individually and on behalf of Lawan) could not have given informed consent, even if Respondent's conflict had been waivable.

confirmation from the federal court that Respondent could not share in attorney's fees derived from their settlement. On September 4, 2019, the DZW and GB firms filed a Motion to Determine Conflict-Free Status and Entitlement to Attorneys' Fees ("Conflict Motion") in the consolidated litigation. Respondent was served with a copy of, but did not file any opposition to, the Conflict Motion.

22. On October 7, 2019, the court issued an order which confirmed Respondent's conflict of interest:

The police report at the time of the accident placed fault for the accident on Taylor, and he tested positive for THC following the collision. Accordingly, it was clear from the outset that there was a possibility that Taylor was at least partially liable for the injuries sustained by [Lawan] in the accident.

Here, it is clear that Plaisance's ability to secure damages for [Lawan] against those who caused his injuries was limited by his loyalty to Taylor, a possible cause of [Lawan's] injuries

The order ultimately concluded: "Because Plaisance received a fee from the settlement of Taylor's claims, he is not entitled to share in the fees from the settlement of [Ms. Hodges' and Lawan's] claims."

23. Despite his failure to oppose the Conflict Motion, Respondent appealed from the court's order to the United States Fifth Circuit Court of Appeals on December 18, 2019. On March 19, 2020, the appellate court dismissed Respondent's appeal due to lack of jurisdiction.

B. *De Novo* Review

The Committee correctly found that Respondent violated Rules 1.4, 1.7(a), and 8.4(d). The Board adopts these findings and the Committee's reasoning therefor. The Committee erred in finding a violation of Rule 3.3, as the citing of this alleged rule violation appears to be a typographical error in the formal charges. Instead, it appears that ODC intended to allege a

violation of Rule 3.1. Each alleged rule violation is discussed below:

Rule 1.4: Rule 1.4(b) states that "the lawyer shall give the client sufficient information to participate intelligently in decisions concerning the objectives of the representation and means by which they are to be pursued." By failing to adequately inform Ms. Hodges (individually and on behalf of Lawan) and Mr. Taylor of his un-waivable conflict of interest, Respondent failed to give them sufficient information to participate intelligently in decisions concerning their representation/choice of counsel in the state and federal court litigation. As Respondent testified in his sworn statement, he did not explain the issues associated with his conflict in any detail to his clients:

I didn't get too much into it terms of cross examinations because Larry's a laborer. I mean, he doesn't have a legal mind. . . . I didn't get into too much because both of them [Mr. Taylor and Ms. Hodges] are laborers or lay persons. I didn't get too much into the details of the cross examination and those things. I just said, "We might have a possible conflict of interest."

ODC Exhibit 3, BN 167-69.

Respondent's failure to give Mr. Taylor and Ms. Hodges sufficient information concerning his conflict of interest violated this Rule.

Rule 1.7(a): Rule 1.7(a) provides that a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client; or
- (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person or by a personal interest of the lawyer.

Here, Respondent's representation of Mr. Taylor was directly adverse to his representation of Lawan and Ms. Hodges (who filed suit individually and on behalf of Lawan) in violation of Rule 1.7(a)(1). Mr. Taylor was driving the vehicle during the accident in which his son and front

seat passenger, Lawan, was injured. Mr. Taylor rear-ended a truck, and therefore, had some comparative fault and liability in the accident. The police report documenting the accident specifically placed fault on Mr. Taylor and noted that he had been ticketed for following too closely to the truck. Mr. Taylor's drug screen also tested positive for THC, indicating that marijuana was present in his system at the time of the accident. Mr. Taylor's fault was sure to become an issue in the consolidated federal court litigation; in fact, Progressive Northern Insurance Company lists in its answer in the *Hodges* suit as its Fifth Defense that the accident was caused by the negligence of "Larry Taylor, and/or other third parties over whom [Progressive] had no control." ODC Exhibit 19, BN 317.

Further, there also existed a significant risk that the representation of Mr. Taylor would be limited by Respondent's responsibilities to Ms. Hodges and Lawan. Moreover, his representation of Ms. Hodges and Lawan would be limited by Respondent's representation of Mr. Taylor. This circumstance violates Rule 1.7(a)(2).

Rules 3.3 and 3.1: In *Louisiana State Bar Ass'n v. Keys*, 88-2441 (La. 9/7/90), 567 So.2d 588, 591, citing *In re Ruffalo*, 390 U.S. 544, 88 S.Ct. 1222, 20 L.Ed. 2d 117 (1968), the Court held that due process requires that an attorney be given notice of the misconduct for which the disciplinary authority seeks to sanction him. A Rule 3.3 violation is alleged in the formal charges. This rule addresses candor toward a tribunal, and provides, in pertinent part, that a lawyer shall not knowingly make a false statement of fact or law to a tribunal. However, the facts of the formal charges do not allege conduct involving a knowingly false statement made to a court, as is necessary for a Rule 3.3 violation. Accordingly, it appears that the allegation of the Rule 3.3 violation was a typographical error.

Instead, the facts allege that Respondent sought "to collect attorney's fees in pursuit of a

conflicted representation," and describe how he filed impermissible (*i.e.*, frivolous) pleadings to recover an attorney's fee despite the existence of an un-waivable conflict. More specifically, Respondent sought to intervene in the federal litigation and improperly receive attorney's fees for his representation regarding "Lawan Rousell's case or claims."⁹ He also appealed to the Fifth Circuit Court of Appeals the district court's ruling which confirmed his conflict of interest and prevented him from receiving attorney's fees from Ms. Hodges or Lawan.

The substance of the formal charges gave Respondent adequate notice of the asserted sanctionable misconduct, which constitutes a violation of Rule 3.1, not 3.3. Rule 3.1 states, in pertinent part, that a lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law.

By frivolously pursuing attorney's fees in the court system, to which he clearly was not legally entitled, Respondent violated Rule 3.1. The Board finds a violation of this Rule, although not specifically charged. *See In re Aucoin*, 2021-0847 (La. 12/7/21), 328 So.3d 409, 415 n. 2 (where the substance of the formal charges gave respondent adequate notice of the asserted sanctionable misconduct, the Board was correct in finding a violation of a rule not specially charged by the ODC).

Rule 8.4(d): Rule 8.4(d) provides that it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice. As noted by the Committee, Respondent's protracted insistence on representing the interests of both the father and the minor child following the auto accident prejudiced the administration of justice in that he disregarded the requirement of conflict-free representation of at least two clients and jeopardized their recovery of

⁹ As noted above, Respondent's motion/petition to intervene was later stricken by clerk of court due to its deficiencies.

damages for injuries; caused additional work for legal counsel and the federal courts because of the conflict issue; caused the delay in the payment of damages in the form of settlement funds to Lawan and Ms. Hodges for approximately seven months; and caused added expenses to the litigants, especially due to his motion to intervene in the federal court settlement and his subsequent frivolous appeal to the Fifth Circuit Court of Appeals. Respondent has additionally violated this Rule.

II. The Appropriate Sanction

A. The Rule XIX, Section 10(C) Factors

Louisiana Supreme Court Rule XIX, §10(C), states that when imposing a sanction after a finding of lawyer misconduct, the Court or Board shall consider the following factors:

- (1) Whether the lawyer has violated a duty owed to a client, to the public, to the legal system, or to the profession;
- (2) Whether the lawyer acted intentionally, knowingly, or negligently;
- (3) The amount of the actual or potential injury caused by the lawyer's misconduct; and
- (4) The existence of any aggravating or mitigating factors.

Here, Respondent has violated duties owed to his clients, the legal system, and the profession. His conduct was knowing and intentional. The Committee correctly found that Respondent's misconduct caused actual harm. Aggravating factors include prior disciplinary offense (2002 diversion for negotiating a settlement without client consent); dishonest or selfish motive; pattern of misconduct; multiple offenses; bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency; refusal to acknowledge wrongful nature of conduct; and substantial experience in the practice of law (admitted in 1989). No mitigating factors are present.

B. ABA Standards and Case Law

Under the ABA's *Standards for Imposing Law Sanctions*, suspension is the baseline sanction in this matter. Standard 4.32 provides that suspension is generally appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client. In the instant matter, Respondent failed to fully disclose or acknowledge to his clients the possible effect his conflict of interest could have had on them. Actual harm occurred in that his failure to acknowledge the conflict led to further litigation and costs for his clients and to a substantial delay in Ms. Hodges and her son receiving their settlement funds.

Sanctions ranging from a public reprimand to a significant suspension have been imposed for similar misconduct. For example, in *In re Vidrine*, the Court upheld the Board's imposition of a public reprimand upon Mr. Vidrine for engaging in a concurrent conflict of interest and for making false representations to a tribunal, 2011-1209 (La. 10/7/11), 72 So.3d 345. See also *In re Vidrine*, 10-DB-015, Ruling of the Louisiana Attorney Disciplinary Board (6/3/11). Mr. Vidrine was initially retained by two siblings seeking to probate the wills of their deceased parents. The siblings were named co-executors in the wills. The wills disinherited three other siblings. However, the two siblings decided not to proceed with the probate. Rather, Mr. Vidrine prepared and filed a petition on behalf of all five siblings seeking to proceed with the matter as an intestate succession. The petition falsely stated that there was no will. Subsequently, the two siblings favored by the wills had a change of heart and Mr. Vidrine filed the wills for probate on their behalf, which was detrimental to the three other siblings. The Board found that Mr. Vidrine negligently engaged in a conflict of interest

In *In re Beevers*, the Board publicly reprimanded Mr. Beevers based upon a conflict of interest he had with the executor of a succession who was determined to be Mr. Beevers' client. 16-DB-014, Ruling of the Louisiana Attorney Disciplinary Board (1/22/18). Mr. Beevers represented the executor's father in a contested succession. Mr. Beevers took certain actions against the executor in the succession matter, including filing a motion to have him removed as executor. It was determined that the executor was, in fact, represented by Mr. Beevers and his law firm. The Board upheld the Committee's findings that Mr. Beevers acted negligently and did not cause any actual injury. Aggravating factors included two prior disciplinary offenses and substantial experience in the practice of law. Mitigating factors included full and free disclosure to ODC and cooperative attitude toward the proceedings, absence of dishonest or selfish motive, character or reputation, remorse, and remoteness of the prior offenses.

257

mother. At the direction of two of the siblings, Mr. Cook prepared a petition and judgment of possession contrary to the interest of the third sibling. Upon realizing this, the third sibling hired another attorney to protect and pursue his interests. Despite this conflict, Mr. Cook continued to represent the other two siblings. The Court found that Mr. Cook acted negligently. The following mitigating factors were present: the absence of a prior disciplinary record, the absence of a dishonest or selfish motive, full and free disclosure to the disciplinary board and a cooperative attitude toward the proceedings, inexperience in the practice of law (admitted 2012), and remorse. The only aggravating factor present was Mr. Cook's indifference to making restitution.

In *In re Bellaire*, the respondent engaged in a conflict of interest when he represented both a buyer and seller in a real estate transaction without obtaining a conflict waiver. He also failed to cooperate with ODC's investigation. He was found to have violated Rules 1.7(a), 1.9(a), 8.1(b), and 8.1(c). 2022-1084 (La. 9/27/22), 347 So.3d 14. He acted negligently in engaging in the conflict of interest and knowingly in failing to cooperate with ODC. He also caused actual harm to his client and the disciplinary system. Three aggravating factors were present: pattern of misconduct, refusal to acknowledge the wrongful nature of the conduct, and substantial experience in the practice of law (admitted in 2002). Four mitigating factors were also present: absence of a prior disciplinary record, absence of dishonest or selfish motive, personal problems, and character or reputation. Given that some of Mr. Bellaire's conduct was knowing, combined with the aggravating factors present, the Court determined that an actual period of suspension was warranted. Mr. Bellaire was suspended from the practice of law for six months, with all but ninety days deferred.

In *In re Lapeyrouse*, the respondent engaged in a conflict of interest by providing legal

advice to both his client and his client's estranged wife in connection with their divorce and by disclosing confidential information to his client's estranged wife. He later filed a defamation petition against his client and another witness based on the information they provided to ODC regarding his conflict of interest. 2022-0571 (La. 10/21/22), 352 So.3d 59. Mr. Lapeyrouse's misconduct violated Rules 1.6, 1.7(a)(2), 3.1, 8.4(a), and 8.4(d), as well as Louisiana Supreme Court Rule XIX, Sections 9(a) and 12A. He acted knowingly and caused actual and potential harm. There were four aggravating factors present: dishonest or selfish motive, multiple offenses, refusal to acknowledge the wrongful nature of the conduct, and substantial experience in the practice of law. One mitigating factor was present: absence of a prior disciplinary record. Mr. Lapeyrouse was suspended from the practice of law for a period of one year, with six months deferred.

In *In re August*, the Court suspended Ms. August for two years, with all but sixty days deferred, for allowing a wrongful death action to prescribe, misleading the client about the prescription, and failing to withdraw from the matter after being sued for malpractice by the client (thereby creating a conflict). 2010-1546 (10/15/10), 45 So.3d 1019. The Court found that Ms. August acted negligently in failing to timely file the wrongful death lawsuit; thereafter, she acted knowingly, if not intentionally. Her conduct caused actual and potential harm. The Court recognized the following aggravating factors: prior disciplinary offenses, a dishonest or selfish motive, and substantial experience in the practice of law. The mitigating factors of full and free disclosure to the disciplinary board and a cooperative attitude toward the proceedings and remoteness of prior offenses were also present.

In the matter at hand, Respondent's misconduct was knowing and intentional. In an effort to collect a fee, he repeatedly ignored the advice of the other counsel with whom he

consulted in the *Hodges/Rousell/Taylor* litigation concerning his un-waivable conflict of interest. He also filed a frivolous appeal in the Fifth Circuit Court of Appeals following the district court's confirmation that he had a conflict of interest. His mental intent is similar to that seen in *Lapeyrouse* (knowing) and *August* (knowing, if not intentional), and as seen in those matters, his misconduct also caused actual harm. Seven aggravating factors and no mitigating factors are present in the instant matter. The sanction relating to his misconduct involving his conflict of interest falls in between *Lapeyrouse* and *August*. Moreover, the Committee was rightfully disturbed by Respondent's "persistent non-participation in this process." Hrg. Comm. Rpt., pp. 18-19. Such egregious conduct is addressed by the aggravating factor of bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency. Clearly, ODC and the Committee went to great lengths to ensure that Respondent had the formal opportunity to address the unusual filings in this matter, submit any evidence he wanted considered, and participate in the hearings, but he failed to do so.

Given the totality of the misconduct, the significant aggravating factors, ABA Standard 4.32, and the case law cited above, the Committee's recommended sanction of a two-year and one-day suspension, with one year deferred, appears to be reasonable and is adopted by the Board. Such a suspension will require Respondent to petition for reinstatement under Rule XIX, Section 24, should he wish to re-enter the practice of law. He will only be reinstated upon order of the Court, after meeting the requirements of Section 24(E) (or showing good or sufficient reason why he should nevertheless be reinstated) and demonstrating his fitness to practice law. The Board also adopts the Committee's recommendation that Respondent be assessed with all costs and expenses of these proceedings in accordance with Rule XIX,

260

Section 10.1.

CONCLUSION

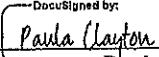
The Board adopts the Committee's findings of fact, with the clarifications noted above, and its findings that Respondent violated Rules 1.4, 1.7(a), and 8.4(d). The Board also finds that Respondent violated Rule 3.1. The Board further adopts the Committee's recommended sanction of a two-year and one-day suspension, with one year deferred. Finally, the Board adopts the Committee's recommendation that Respondent be assessed with all costs and expenses of these proceedings in accordance with Rule XIX, Section 10.1.

RECOMMENDATION

Given the above, the Board recommends that Respondent be suspended from the practice of law for two years and one day, with one year of the suspension deferred. The Board also recommends that Respondent be assessed with all costs and expenses and these proceedings in accordance with Rule XIX, Section 10.1.

LOUISIANA ATTORNEY DISCIPLINARY BOARD

R. Alan Breithaupt
Todd S. Clemons
Albert R. Dennis III
Susan P. DesOrmeaux
Aldric C. Poirier, Jr.
M. Todd Richard
Lori A. Waters

By: 
28E79ECB3001 Paula H. Clayton
FOR THE ADJUDICATIVE COMMITTEE

James B. Letten - Recused.

261

APPENDIX

Rule 1.4. Communication

(a) A lawyer shall: (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules; (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished; (3) keep the client reasonably informed about the status of the matter; (4) promptly comply with reasonable requests for information; and (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) The lawyer shall give the client sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued.

(c) A lawyer who provides any form of financial assistance to a client during the course of a representation shall, prior to providing such financial assistance, inform the client in writing of the terms and conditions under which such financial assistance is made, including but not limited to, repayment obligations, the imposition and rate of interest or other charges, and the scope and limitations imposed upon lawyers providing financial assistance as set forth in Rule 1.8(e).

Rule 1.7. Conflict of Interest: Current Clients

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if: (1) the representation of one client will be directly adverse to another client; or (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

Rule 3.1. Meritorious Claims and Contentions

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

Rule 3.3. Candor Toward the Tribunal

(a) A lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal

or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer; (2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or (3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

(c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

Rule 8.4. Misconduct

It is professional misconduct for a lawyer to:

(d) Engage in conduct that is prejudicial to the administration of justice.

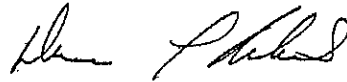
CERTIFICATE OF MAILING

In re: Kenneth M. Plaisance
Docket No(s). 21-DB-066

I hereby certify that a copy of the Recommendation of the Louisiana Attorney Disciplinary Board has this day been mailed and emailed to the Respondent(s) and/or the Counsel for the Respondent(s) by United States Mail and E-Filed to the Office of Disciplinary Counsel this 3rd day of **November, 2023** at the following address:

Mr. Kenneth M. Plaisance
Attorney at Law
2202 Touro Street
New Orleans, LA 70119

Mr. Christopher D. Kiesel
Deputy Disciplinary Counsel
4000 South Sherwood Forest Blvd.
Suite 607
Baton Rouge, LA 70816



DONNA L. ROBERTS
BOARD ADMINISTRATOR

264



2800 Veterans Memorial Boulevard, Suite 310
Metairie, Louisiana 70002
Phone: (504) 834-1488 • Fax: (504) 834-1449 • 1-800-489-8411

November 3, 2023

Ms. Veronica O. Koclanes
Clerk of Court
Louisiana Supreme Court
400 Royal Street
Suite 4200
New Orleans, LA 70130-8102

23 B 1460

In Re: KENNETH M. PLAISANCE
DOCKET NO(S): 21-DB-066
(FORMAL CHARGES)

Dear Ms. Koclanes:

We are transmitting herewith the records in the above referenced case pursuant to Supreme Court Rule XIX. Enclosed please find the following:

1. One (1) Original of Record –1 Vol.
2. One (1) Duplicate Original of Record – 1 Vol.
3. Two (2) Copies of Formal Charges, Answer, Hearing Committee Report & Recommendation to the Supreme Court
4. Two (2) Original Exhibit – ODC
5. Two (2) Transcript

RECEIVED
AT LOUISIANA

2023 NOV -6 PM 1:21

Veronica O. Koclanes
CLERK OF COURT

Very truly yours,

Mildred B. Williams
Mildred B. Williams
Docket Clerk

/mbw
Enclosures



**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

**MELVIA HODGES, INDIVIDUALLY
AND AS THE MOTHER AND
ADMINISTRATOR OF THE ESTATE
OF HER MINOR SON, LAWAN
ROUSELL**

VERSUS

**TRAVIS JAMES d/b/a CDMT
TRUCKING and PROGRESSIVE
NORTHERN INSURANCE COMPANY**

CIVIL ACTION

NUMBER: 2:18-cv-05889

SECTION: H

MAGISTRATE: 1

**MOTION TO DETERMINE CONFLICT-FREE STATUS
AND ENTITLEMENT TO ATTORNEY'S FEES**

NOW INTO COURT, comes Plaintiff, Melvia Hodges, Individually and as the Mother and Administrator of the Estate of her Minor Son, Lawan Rousell ("Plaintiff") and her counsel, who respectfully request this Court determine whether her prior counsel had an unwaivable conflict of interest under Rule 1.7 of the Louisiana Rules of Professional Conduct by representing both Lawan Rousell and his father, Larry Taylor, in connection with injuries they sustained in a motor vehicle collision, that would render him ineligible to receive a share of the attorney's fees derived from Plaintiff's settlement in this matter.

WHEREFORE, Plaintiff and her counsel respectfully request that this Court grant this Motion to Determine Conflict-Free Status and Entitlement to Attorney's Fees.

Respectfully Submitted,

**GAINSBURGH, BENJAMIN,
DAVID, MEUNIER & WARSHAUER, LLC**

/s/ Brittany R. Wolf

Brittany R. Wolf (La. Bar 36733)

Michael Ecuyer (La. Bar 23050)

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Phone: (504) 522-2304

Fax: (504) 528-9973

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-and-

DERRYBERRY ZIPS WADE, PLLC

DANIEL G. GIBBINS (*pro hac vice*)

DARYL L. DERRYBERRY (*pro hac vice*)

CRAIG D. ZIPS (*pro hac vice*)

100 E. Ferguson St.

Suite 1212

Tyler, Texas 75702

Telephone: (903) 526-2767

Facsimile: (903) 526-2714

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of September, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system.

/s/ Brittany R. Wolf

Brittany R. Wolf

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

**MELVIA HODGES, INDIVIDUALLY
AND AS THE MOTHER AND
ADMINISTRATOR OF THE ESTATE
OF HER MINOR SON, LAWAN
ROUSELL**

VERSUS

**TRAVIS JAMES d/b/a CDMT
TRUCKING and PROGRESSIVE
NORTHERN INSURANCE COMPANY**

CIVIL ACTION

NUMBER: 2:18-cv-05889

SECTION: H

MAGISTRATE: 1

**MEMORANDUM IN SUPPORT OF MOTION TO DETERMINE CONFLICT-FREE
STATUS AND ENTITLEMENT TO ATTORNEY'S FEES**

NOW INTO COURT, comes Plaintiff, Melvia Hodges, Individually and as the Mother and Administrator of the Estate of her Minor Son, Lawan Rousell ("Plaintiff") and her counsel, who respectfully request this Court determine whether her prior counsel had an unwaivable conflict of interest under Rule 1.7 of the Louisiana Rules of Professional Conduct by representing both Lawan Rousell and his father, Larry Taylor, in connection with injuries they sustained in a motor vehicle collision, that would render him ineligible to receive a share of the attorney's fees derived from Plaintiff's settlement in this matter.

I. Background

This case arises out of a motor vehicle collision on June 14, 2017 in which Plaintiff's minor son, Lawan Rousell ("Lawan"), was a passenger in a vehicle driven by his father, Larry Taylor ("Taylor"), when Taylor's vehicle was caused to collide with an eighteen-wheeler driven by Travis James d/b/a CDMT Trucking. Lawan and Taylor both suffered serious bodily injuries.¹

¹ The liability portion of this matter settled following a successful mediation between the parties on May 7, 2019.

On June 15, 2017, Plaintiff, individually and on behalf of Lawan, signed a retainer agreement with attorney Kenneth Plaisance (“Plaisance”) through which Plaisance agreed to provide representation to Plaintiff, individually and on behalf of Lawan, and Taylor.² (*See* Timeline chronicling Plaisance’s involvement in the litigation attached hereto as Exhibit “A” at p.1). Upon information and belief, Taylor also signed a retainer agreement with Plaisance on or around that date. Upon information and belief, a conflict waiver was not executed by either party at that time.³

From the inception of this litigation, the potential for an unwaivable conflict existed with respect to the dual representation of Lawan and Taylor because Taylor rear-ended the eighteen-wheeler after the truck effected an illegal U-turn and, therefore, Taylor likely had some liability in the matter. Furthermore, the police report documenting the collision placed fault on Taylor and that the driver of the truck, Mr. James, did not commit a traffic violation in connection with the collision. (*See* Incident Report, attached hereto as Exhibit “A” at Bates Labeled 000003.) This concern for a potentially unwaivable conflict should have become heightened when, following the collision, Taylor’s drug screen tested positive for THC, indicating that marijuana was present in his system.

Plaisance filed suit on behalf of Plaintiff and Taylor, individually and on behalf of their minor child Lawan, on October 18, 2017 (Civil Action No. 2017-9634). Defendant removed the matter on December 1, 2017. (*See* R. Doc. 1 in Case No. 17-cv-14040.) On December 22, 2017,

² A timeline detailing Plaisance’s representation of Plaintiff, Lawan, and Taylor, and his subsequent withdrawal from Plaintiff’s and Lawan’s claims is contained in Exhibit A. Where available, counsel has provided documentation to substantiate each event outlined in the timeline. Plaintiff and her counsel refer the Court to Exhibit A for an account of the events which give rise to the instant motion.

³ Following Plaisance’s assertion of claim for attorney’s fees, in June 2019 Plaisance produced to DZW two undated waivers of a conflict of interest signed by Plaintiff and Taylor. It is unclear when these waivers were executed, and it is likewise unclear whether Plaisance fully explained the potential conflict and whether Plaintiff and Taylor truly gave *informed* consent to the waiver.

Plaisance moved to dismiss the matter without prejudice. (*See* R. Doc. 8 in Case No. 17-cv-14040.)

Shortly after the matter was removed from CDC to this Court, Plaisance began looking to associate counsel to assist him in pursuing the litigation in federal court. Plaisance evidently approached the law firm of Leger & Shaw. On December 26, 2017, Franklin Shaw advised Plaisance by letter that his firm would not participate in the representation of Plaintiff, Lawan, or Taylor and “suggest[ed] that [Plaisance] consult with ethics counsel as soon as possible as to how [he] should proceed[.]” (Ex. A at Bates Labeled 000012) Whether Plaisance ever sought such counsel is unknown.

In early 2018, Plaisance approached the Texas law firm, Derryberry Zips Wade, PLLC (“DZW”) to gauge its interest in the case. On March 9, 2018, Plaisance and Taylor executed a Consent to Associate Counsel permitting Plaisance to associate DZW on his case. (Ex. A at Bates Labeled 000013.) On March 28, 2018, Plaisance presented to the DZW offices in Tyler, Texas to discuss the case. (Ex. A at p. 1.) During this meeting, attorney Daryl Derryberry and Plaisance engaged in a lengthy discussion of the matter and of the conflict issue that existed by virtue of Taylor’s potential liability in the collision. (Ex. A at Bates Labeled 00001–2.) Upon information and belief, at that time, Plaisance determined that he would remain involved in the representation of Plaintiff and Lawan, and that he would find other counsel to represent Taylor. Shortly thereafter, in May 2018, DZW associated the law firm of Gainsburgh, Benjamin, David, Meunier & Warshauer (“GB”) to serve as local counsel in connection with the claims of Plaintiff and Lawan only for the suit to be later filed in this Court.

On June 12, 2018, Plaintiff, Lawan, and Plaisance presented to GB’s office, where they met with undersigned counsel (attorneys for DZW participated in this conference via telephone).

At this meeting, the potential conflicts in the matter were discussed and the need for Lawan and Taylor to have separate counsel. Plaintiff was presented with a retainer agreement that reflected that DZW, GB, and Plaisance would all represent Plaintiff and Lawan. The retainer was signed by Plaintiff, individually and on behalf of Lawan, Plaisance, and GB attorney Michael Ecuyer. Also around this time, upon information and belief, Plaisance contacted attorney Craig Robinson (“Robinson”) to represent Taylor.

On June 14, 2018, undersigned filed a complaint on behalf of Plaintiff and Lawan in Civil Action No. 18-5889.⁴ On that same date, Taylor filed a pro se complaint in Civil Action No. 18-5903. On June 22, 2018, Plaisance filed an ex parte motion to enroll as counsel for Taylor. (*See* 18-5903 R. Doc. 5.) Three days later, the Court issued an order consolidating Taylor’s case (No. 18-cv-5903, R. Doc. 6) with Plaintiff’s and Lawan’s (No. 18-cv-5889). On August 29, 2018, Robinson filed an ex parte motion to substitute him in place of Plaisance as Taylor’s attorney, which was granted on September 12, 2018. (R. Docs. 13, 14.) This filing was the first notice received by undersigned that Plaisance had enrolled as counsel for Taylor.

Given Plaisance’s apparent change of heart with respect to his representation of Taylor, Plaintiff’s and Lawan’s counsel at DZW advised Plaisance that ethically he could no longer continue to represent Taylor and Plaintiff and Lawan. Plaisance told DZW that due to his relationship with Taylor, he determined it necessary to remain a part of Taylor’s case and understood that he could no longer continue to represent Plaintiff and Lawan. DZW advised Plaisance of the intention to have Plaintiff execute a new retainer agreement with only DZW and GB as counsel. This new retainer agreement was executed by Plaintiff, individually and on behalf of Lawan, on September 6, 2018.

⁴ Plaisance’s name was not listed on this complaint due to the uncertainty surrounding whether he was admitted to this Court, and moreover, whether his license had been reinstated following a suspension.

On October 16, 2018, Plaisance filed a “Motion/Petition to Intervene to Collect Attorneys Fees”, asserting his right to collect attorney’s fees from any settlement of Plaintiff and Lawan’s claims. (R. Doc. 20.) The following day, the Clerk’s Office issued a notice of deficiency, ordering Plaisance to refile the document within seven calendar days (by October 24, 2018) or it would be stricken by the court without further notice. Plaisance failed to correct this deficiency.

DZW and GB continued to represent Plaintiff and Lawan. A mediation was held in May 2019. At the mediation, DZW appeared for Plaintiff and Lawan and Craig Robinson represented Taylor; Plaisance did not attend. At that mediation, Defendants settled all claims against them, both on behalf of Plaintiff and Lawan, and Taylor. Upon information and belief, Robinson and Plaisance have collected attorney’s fees in connection with Taylor’s settlement.

Following settlement of Plaintiff and Lawan’s claims, Plaisance and DZW have exchanged several letters and emails in which Plaisance has asserted his right to collect a share of the attorney’s fees in connection with Plaintiff and Lawan’s settlement. DZW and GB believe there exists an unwaivable conflict of interest which precludes Plaisance from collecting a fee from Plaintiff and Lawan and have repeatedly advised Plaisance of their concern.

On July 19, 2019, undersigned contacted the Louisiana Office of Disciplinary Counsel to request an ethics opinion in the matter to ensure that neither GB or DZW, nor Plaisance, would run afoul of the ethical rules by sharing a fee with Plaisance.⁵ Undersigned was referred to the Ethics Advisory Committee of the LSBA for an ethics opinion. Shortly thereafter, undersigned spoke with a representative of the Ethics Advisory Committee,⁶ who advised that because the issue involved a dispute over attorney’s fees, the Committee would not provide an ethics opinion

⁵ Counsel did not mention Plaisance by name during this telephone call.

⁶ Again, counsel did not mention Plaisance by name during this telephone call.

in this matter. Instead, it was suggested that the parties place the matter before the Court for resolution.

To date, defense counsel has not provided counsel for Plaintiff and Lawan with payment for the settlement of the claims and is holding the settlement funds until further direction from Plaintiff's counsel. Thus, Plaintiff and Lawan have not been able to collect their portion of the settlement. The reasons for this delay are not limited solely to the question of attorney's fees involving Plaisance; counsel for Plaintiff and Lawan have been working to establish a Special Needs Trust for Lawan. Additionally, on August 15, 2019, undersigned appeared in CDC for a hearing on Plaintiff's Petition for Authority to Approve the Minor's Settlement. Following the hearing, Judge Nakisha Ervin-Knott approved the minor's settlement.

Plaintiff and Lawan and their counsel are moving this Court for a ruling on whether Plaisance is entitled to attorney's fees, given the apparent conflict in the dual representation of Lawan and Taylor. Counsel is apprehensive that sharing fees without such a ruling by an independent arbiter could risk both Plaintiff's counsel and Plaisance running afoul of the ethics rules and is seeking guidance from this Court.

II. Law and Argument

"The United States District Court for the Eastern District of Louisiana as adopted the Rules of Professional Conduct adopted by the Supreme Court of the State of Louisiana." *Johnson v. Clark Gin Serv., Inc.*, 15-3290, 2016 WL 7017267 at *8 (E.D. La. Dec. 1, 2016) (Jolivette Brown, J.). "A district court is 'obliged to take measures against unethical conduct occurring in connection with any proceeding before it.'" *Id.* (quoting *Woods v. Covington Cty. Bank*, 537 F.2d 804, 810 (5th Cir. 1976)).

Louisiana Rule of Professional Conduct 1.7, titled “Conflict of Interest: Current Clients,” provides:

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involved a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer’s responsibility to another client, a former client, or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) each affected client gives informed consent, confirmed in writing.

La. Rules of Prof’l Conduct R. 1.7 (eff. June 2, 2016). When the court is tasked with resolving whether there exists an unwaivable conflict under Rule 1.7,

the Court first considers whether there is either direct adversity between two or more Plaintiffs or a significant risk of material limitation on counsel’s advocacy due to counsel’s relationship with multiple clients. Then, if there is a conflict, the Court must determine if the conflict could be consented to. Finally, if the conflict could be consented to, the Court must determine whether or not there was informed consent given by all affected Plaintiffs.

Johnson, 2016 WL 7017267 at *8.

On March 29, 2008, the LSBA Rules of Professional Conduct Committee (“RPCC”) issued a Public Opinion (No. 08-RPCC-106) titled, “Conflict of Interest: Simultaneous Representation of Driver and Guest-Passenger”. (See LSBA RPCC Public Opinion 08-RPCC-016, attached hereto as Exhibit “B”.) The RPCC opined:

Lawyers often inquire whether the conflict rules permit them to represent both the driver and the guest-passenger in an automobile accident. In almost all such cases, there will be a prohibited conflict of interest between the driver and the guest-passenger that will prevent such a joint/simultaneous representation. The most common conflict will arise when the driver is even slightly at fault in the accident, which is a fact that may not be known or realized until the case is factually developed. Thus, even when a conflict is not apparent at the outset of the representation, in most cases a conflict will arise when the defense begins to assert and develop facts that the driver was partially at fault. At that moment, even the lawyer who believed in good faith that the driver was not at fault will have a conflict that must be addressed, since the passenger client will now have an interest in pursuing a claim based on that driver-fault theory, if ultimately proven true. For all of these reasons, the only safe ethical course is to decline the proposed joint representation of the driver and guest-passenger from the outset.

(Ex. B at p. 2.)

In *Johnson v. Clark Gin Service, Inc.*, the defendant filed a “Motion to Determine Conflict-Free Representation”, alleging that plaintiff’s counsel had an unwaivable conflict of interest that would disqualify them from representation of the plaintiffs in the litigation. See *Johnson*, 2016 WL 7017267 at *1. In *Johnson*, the plaintiffs brought multiple actions, which were consolidated, arising out of injuries sustained during a collision between an Amtrak train and a tractor-trailer. *Id.* Eight of the nine plaintiffs represented by counsel were employees of Amtrak, serving the train in different capacities at the time of the collision including a locomotive engineer, a conductor, and service crew members. One plaintiff was a passenger aboard the train. *See id.* Each of the plaintiffs brought claims against, *inter alia*, Amtrak, alleging negligence through its agents, servants, or employees acting in the course and scope of their employment. *Id.* at *1–*2.

In its motion, the defendant contended that the plaintiff’s counsel could not ethically provide dual representation to all plaintiffs because plaintiffs suggested that the vicarious liability of Amtrak was due, in part, to the negligent actions of the other plaintiffs. *See id.* at *2–*3. The defendant argued that the plaintiff’s counsel had an unwaivable conflict under Rule 1.7,

due to counsel's representation of one plaintiff would be materially limited because decisions as to the locomotive engineer's claims could impact and limit counsels' responsibilities to the other employee plaintiffs and the passenger plaintiff. *See id.* at *3. In support, the defendant cited RPCC Opinion No. 08-RPCC-106, analogizing the representation of the locomotive engineer and the crew and passengers of the train to the impermissible representation of driver and guest passenger. *Id.* at *4.

The court first found that the plaintiff's dual representation of all nine plaintiffs "involve[d] a material limitation conflict of interest under Rule 1.7(a)(2)." *Id.* at *9 (citing Model Rules of Prof'l Conduct R. 1.7(a)(2)). The court found two impermissible limitations: first, between representation the locomotive engineer, who may have had fault in causing the collision, and second, between the passenger plaintiff and the Amtrak employees. *See id.* at *9–*10. With respect to the first conflict, the court said the locomotive engineer "has an interest in denying fault for not issuing a warning, because his potential damages award could be reduced for contributory negligence[.]" while on the other hand, the other plaintiffs had an interest in proving Amtrak was at fault and the locomotive engineer's deposition testimony "suggests that his actions or inactions are relevant to proving Amtrak was at fault." *Id.* at *10. With regard to the passenger/employee conflict, the court found that furthering the passenger's claims against Amtrak would be contrary to the interests of the employee plaintiffs, because the passenger alleged his injuries were caused, in part, by the negligence of Amtrak's employees. Based upon these conflicts, the court found that there was "a 'significant risk' that Plaintiffs' counsel's 'ability to consider, recommend or carry out an appropriate course of action' for each of their clients will be materially limited by obligations to other clients in this action." *Id.* (quoting Model Rules of Prof'l Conduct R. 1.7(a)(2)).

After determining that an “actual conflict” existed in the dual representation of all the plaintiffs, the court next determined that the concurrent conflicts of interest were not consentable under Rule 1.7(b) due to “the serious and unavoidable conflicts of interest presented by the representation of Plaintiffs[.]” *Id.* at *11. Finally, the court found that even if the conflicts were consentable, plaintiffs’ counsel did not obtain the appropriate informed consent, which requires “each affected client ‘be aware of the relevant circumstances and of the material and reasonably foreseeable ways that the conflict could have adverse effects on the interests of that client.’” *Id.* at *12 (quoting Model Rules of Prof’l Conduct, R. 1., cmt. 18).

Although this case presents a far less complicated factual scenario, Plaintiff submits that *Johnson* provides the Court with guidance as to how to resolve the instant matter. The fact that Taylor rear-ended the vehicle driven by Mr. James and was attributed fault by the police report relating to the accident would have put a reasonable attorney on notice that there exists an ethical conflict in the dual representation of Taylor and Lawan. Even assuming the conflict was waivable, upon information and belief, Plaisance did not obtain informed consent from his clients at the inception of his representation of both clients. Given that Plaisance continued to represent Taylor, and received a fee from Taylor’s settlement, Plaintiff is uncertain whether he can ethically recover from her and Lawan.

III. Conclusion

For the reasons set forth above, Plaintiff and her counsel request the assistance of this Court in resolving the issue of whether Kenneth Plaisance is entitled to share in the attorney’s fees derived from the settlement of Plaintiff’s and Lawan’s claims or is he barred due to an unwaivable conflict of interest.

WHEREFORE, Plaintiff respectfully requests that this Court grant this Motion to Determine Conflict-Free Status and Entitlement to Attorney's Fees.

Respectfully Submitted,

**GAINSBURGH, BENJAMIN,
DAVID, MEUNIER & WARSHAUER, LLC**

/s/ Brittany R. Wolf-Freedman
Michael Ecuyer (La. Bar 23050)
Brittany R. Wolf-Freedman (La. Bar 36733)
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-and-

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CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of September, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system.

/s/ Brittany R. Wolf-Freedman
Brittany R. Wolf-Freedman

Exhibit A

Daryl L. Derryberry*
 Craig D. Zips*
 Guy I. Wade, III



derryberry zips wade
 ATTORNEYS
 TYLER DALLAS

Brandon J. Evans
 Daniel G. Gibbins, Jr.

*Board Certified - Personal Injury Trial Law - Texas Board of Legal Specialization

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 Phone: 903-526-2767

dan@dzlaw.com
 Fax: 903-526-2714

ROUSELL TIMELINE

DATE	EVENT	BATES LABELED
06-14-17	Crash made basis of suit	000001-7
06-15-17	Meliva signs Plaisance contract OBO Lawan Rousell	000008-10
07-27-17	Kenneth accepts \$15,000 OBO Lawan from Larry's liability policy: \$5,000 to Melvia, \$5,000 to Larry, \$5,000 to Kenneth based on what Melvia has advised us. There was no settlement approval by the Court or if there was we have not seen any documentation of the approval by any Court.	000011
12-26-17	Leger & Shaw Letter- recommends that Plaisance consult with ethics counsel.	000012
03-09-18	Consent to Associate Signed by Larry and Kenneth, not DZW. At this time, DZW was unaware that Melvia Hodges was Lawan's Tutor, not Larry.	000013
03-28-18	Met with Kenneth at DZW office to discuss case. Extensive discussion of conflict issue that exists because of Larry being the driver of the vehicle and the information in the crash report placing responsibility on Larry, coupled with Kenneth advising	n/a

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 (903) 526-2714 fax

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 (214) 468-8144 fax

www.dzwlaw.com

Petitioner's Exhibits_Plaisance_000112

	DZW he settled with Larry's liability carrier for limits of \$15,000.00. Kenneth advised DZW that Melvia OBO of Lawan did not execute a Release of claims against Larry in connection with this settlement. DZW was not advised of how or to whom the money was disbursed and Plaisance apparently did not obtain court approval of the settlement. DZW had extensive discussions with Plaisance concerning the need to have separate attorneys representing Larry on the one hand and Melvia, Individually and OBO Lawan on the other hand. Plaisance did not appear to understand the conflict. Plaisance was focused on a perceived conflict because Progressive was the insurer for Larry's liability policy and the Defendant's liability policy.	
06-11-18	Plaisance attends mediation without telling DZW or GBD.	n/a
06-12-18	DZW contract signed by Melvia Hodges OBO Lawan Rousell along with DZW, Plaisance and GBD. Plaisance was told he could only receive a fee from Lawan's claims and not from Larry's claims. He acknowledge that he understood this fact.	000014-22
06-14-18	Larry filed a Pro Se petition in this case with help of Plaisance..	000023-32
06-14-18	Plaintiff's Original Petition is filed by Melvia, individually and OBO of Lawan Rousell by DZW and GBD.	000033-40

06-22-18	Plaisance files Motion to Enroll as Larry Taylor's attorney of record in this case.	000041
06-26-18	Court signed Order approving Plaisance's representation of Larry Taylor in this case.	000042
07-16-18	Cases are consolidated.	000043-44
08-29-18	Motion and Order to Substitute Counsel filed by Craig Robinson. (Substituting in for Plaisance to represent Larry Taylor)	000045-46
09-06-18	Because of the conflict, DZW informed Plaisance that he could only receive a fee from Larry now that he was representing Larry in this case. And, DZW informed him that, as a result, DZW needed to get a new retainer agreement signed to reflect that he would not be receiving a fee from Lawan's case. A new contract was signed by Melva Hodges OBO Lawan with the attorneys being DZW and GBD.	000047-60
10-16-18	Plaisance files Motion/Petition to Intervene to Collect Attorneys' Fees for any funds paid to Melvia OBO Lawan Rousell.	000061-66
10-17-18	Motion/Petition to Intervene - >Clerk's office issues text entry of Notice of Deficient Filing which states that deficiency must be cured by 10/24/18 or will be stricken from court without further notice (Plaisance does not refile)	000067
05-07-19	Mediation attended by DZW and GBD for Melvia Hodges , individually and OBO Lawan Rousell.	000068-70

	Mediation attended by Craig Robinson for Larry Taylor. Craig Robinson confirmed Kenneth Plaisance is receiving a fee from Larry Taylor's case.	
06-17-19	Letter/Email to Kenneth from DZW stating that if he insisted on a fee from Melvia OBO Lawan's case then we will have to consult with ethics counsel at the LODC and obtain a written ethics opinion.	000071
06-18-19	DZW and GBD received letter from Kenneth Plaisance, dated 06-16-19, stating he wants a fee from Melvia OBO Lawan's case.	000072-93
Unknown	Plaisance has produced two waivers that are not dated. The waivers appear to address conflicts due to two Progressive insurance policies, the liability policy for Larry and the liability policy for Defendant. A waiver was not produced that was signed by Melvia OBO of Lawan Rousell, only one for Melvia Hodges, Individually	000094-97

Original Locked Report

Original Report Locked By : 'PHILIBERT, RUSSELL'

170614161044887

TOTAL NUMBER OF
VEHICLES INVOLVED **2**STATE OF LOUISIANA
UNIFORM MOTOR VEHICLE TRAFFIC CRASH REPORTPAGE #
01

DATE OF CRASH 06142017	TIME (0000) 1508	DISTRICT/ZONE 7B03	TROOP 0	LAT. 30.00410	F-17081-17
PARISH ORLEANS	PARISH CODE 36	CITY OR TOWN NEW ORLEANS	CITY CODE 1	LONG. 90.01505	
CRASH OCCURRED ON A. INTERSTATE B. U.S. HWY C. STATE HWY D. PARISH ROAD E. CITY STREET F. OFF ROAD/ PRIVATE PROPERTY G. TOLL ROAD E	HIGHWAY # 0	MILEPOST 0	ROADWAY NAME 6600 ALMONASTER AV	STREET/HIGHWAY JOURDAN RD	AT INTERSECTION <input type="checkbox"/>
DISTANCE 0.6	MILES <input checked="" type="checkbox"/> W FEET <input type="checkbox"/> NE <input type="checkbox"/> SW	STREET/HIGHWAY JOURDAN RD	AT INTERSECTION <input type="checkbox"/>	NOT AT INTERSECTION <input checked="" type="checkbox"/>	WORK ZONE <input type="checkbox"/>
DISTANCE 0	MILES <input type="checkbox"/> NE FEET <input type="checkbox"/> SW	STREET/HIGHWAY JOURDAN RD	AT INTERSECTION <input type="checkbox"/>	NOT AT INTERSECTION <input type="checkbox"/>	HIT & RUN <input type="checkbox"/>
					PHOTOS MADE <input type="checkbox"/>
					FATALITY <input type="checkbox"/>
					RR TRAIN INVOLVED <input type="checkbox"/>
					PED <input checked="" type="checkbox"/>
					INJURY <input checked="" type="checkbox"/>

ROAD SURFACE (ONE PER COLUMN)		ROADWAY CONDITIONS	TYPE OF ROADWAY	ALIGNMENT	PRIMARY FACTOR
A A. DRY B. WET C. SNOW/SLUSH D. ICE E. CONTAMINANT (SAND, MUD, DIRT, OIL, ETC.) Y. UNKNOWN Z. OTHER	A A. CONCRETE B. BLACK TOP C. BRICK D. GRAVEL E. DIRT Y. UNKNOWN Z. OTHER	A A. NO ABNORMALITIES B. SHOULDER ABNORMALITY C. HOLES D. DEEP RUTS E. BUMPS F. LOOSE SURFACE MATERIAL G. CONSTRUCTION, REPAIR H. OVERHEAD CLEARANCE LIMITED I. CONSTRUCTION - NO WARNING J. PREVIOUS CRASH K. WATER ON ROADWAY L. ANIMAL IN ROADWAY M. OBJECT IN ROADWAY Z. OTHER	D A. ONE-WAY ROAD B. TWO-WAY ROAD WITH NO PHYSICAL SEPARATION C. TWO-WAY ROAD WITH A PHYSICAL SEPARATION D. TWO-WAY ROAD WITH A PHYSICAL BARRIER Y. UNKNOWN Z. OTHER	A A. STRAIGHT-LEVEL B. STRAIGHT-LEVEL ELEVATED C. CURVE-LEVEL D. CURVE-LEVEL ELEVATED E. ON GRADE-STRAIGHT F. ON GRADE-CURVE G. HILLCREST-STRAIGHT H. HILLCREST-CURVE I. DIP, HUMP-STRAIGHT J. DIP, HUMP-CURVE Y. UNKNOWN Z. OTHER	A A. VIOLATIONS B. MOVEMENT PRIOR TO CRASH C. VISION OBSCUREMENTS D. CONDITION OF DRIVER E. VEHICLE CONDITIONS F. ROAD SURFACE G. ROADWAY CONDITION H. LIGHTING I. WEATHER J. TRAFFIC CONTROL K. KIND OF LOCATION L. CONDITION OF PEDESTRIAN M. PEDESTRIAN ACTIONS
WEATHER		KIND OF LOCATION	RELATION TO ROADWAY	ACCESS CONTROL	LIGHTING
B A. CLEAR B. CLOUDY C. RAIN D. FOG/SMOKE E. SLEET/HAIR F. SNOW G. SEVERE CROSSWIND H. BLOWING SAND, SOIL, DIRT, SNOW Y. UNKNOWN Z. OTHER	C A. MANUFACTURING OR INDUSTRIAL B. BUSINESS CONTINUOUS C. BUSINESS, MIXED RESIDENTIAL D. RESIDENTIAL DISTRICT E. RESIDENTIAL SCATTERED F. SCHOOL OR PLAYGROUND G. OPEN COUNTRY Z. OTHER	A A. ON ROADWAY B. SHOULDER C. MEDIAN D. BEYOND SHOULDER - LEFT E. BEYOND SHOULDER - RIGHT F. BEYOND RIGHT OF WAY G. GORE Y. UNKNOWN Z. OTHER	A A. NO CONTROL (UNLIMITED ACCESS TO ROADWAY) B. PARTIAL CONTROL LIMITED ACCESS TO ROADWAY C. FULL CONTROL (ONLY RAMP ENTRANCE & EXIT) Y. UNKNOWN Z. OTHER	A A. DAYLIGHT B. DARK - NO STREET LIGHTS C. DARK - CONTINUOUS STREET LIGHTS D. DARK - STREET LIGHT AT INTERSECTION ONLY E. DUSK F. DAWN Y. UNKNOWN Z. OTHER	

VEHICLE CONFIGURATION							VEHICLE TYPE						
A PASSENGER CAR	D A, B, C, OR S WITH TRAILER	G OFF-ROAD VEHICLE	J BUS W/SEATS FOR 9-15 OCCUPANTS	M SINGLE UNIT TRUCK W/3 AXLES OR MORE	Q TRACTOR SEMI-TRAILER	T FARM EQUIPMENT	A BUS	D FLATBED TRUCK	G AUTO TRANSPORTER	J HOPPER	K NO TRAILER	Z OTHER	
B LT. TRUCK (P.U., ETC.)	E MOTORCYCLE	H EMERGENCY VEHICLE IN USE	K BUS W/SEATS FOR 16 OR MORE OCC.	N TRUCK/ TRAILER	R TRUCK DOUBLE	V MOTOR HOME	B VAN/ENCLOSED BOX	E DUMP TRUCK/ TRAILER	H LOG TRUCK/ TRAILER	K NO TRAILER	X NO CARGO BODY	Z OTHER	
C VAN	F PEDALCYCLE	I SCHOOL BUS	L SINGLE UNIT TRUCK W/ 2 AXLES	P TRUCK/ TRACTOR	S SUV	Z OTHER	C CARGO TANK	F CONCRETE MIXER	L GARBAGE/ REFUSE	X NO CARGO BODY	Z OTHER	Z OTHER	

EMERGENCY SERVICES <input checked="" type="checkbox"/>	TIME CALLED 1508	ARRIVED SCENE 1514	DEPARTED SCENE 1530	ARRIVED HOSPITAL 1545	RESCUE UNIT <input type="checkbox"/>
AMBULANCE SERVICE E M S	FIRE DEPARTMENT				

INVESTIGATING AGENCY NEW ORLEANS POLICE DEPARTMENT	NAME OF AGENCY	TIME OF NOTIFICATION 1602	TIME OF ARRIVAL 1617	TIME ALL LANES OPENED
INVESTIGATION COMPLETE <input checked="" type="checkbox"/>	INVESTIGATING POLICE AGENCY B	A. STATE B. CITY C. PARISH Z. OTHER	DATE REPORT COMPLETED 06142017	

SPRIGGINS, DEBRA

INVESTIGATING OFFICER'S NAME (PRINT)

Report Printed By : 'JUPITER, CYNTHIA'

DPSP 3105 (REV. JAN. 2005)

SIGNATURE

EXHIBIT A - ROUSSELL, TIMELINE.000001

BADGE #
860SUPERVISOR'S
INITIALS OR BADGE#

Petitioner's Exhibits_Plaisance_000116

Original Locked Report

170614161044887

COMPUTER NUMBER

PAGE #

02

STATE OF LOUISIANA
UNIFORM MOTOR VEHICLE TRAFFIC CRASH REPORT
VEHICLE/PEDESTRIAN

F-17081-17

1	VEH #	OR	PEDESTRIAN
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CONF	CARGO BODY TYPE	YEAR	MAKE	MODEL	# DOORS	# AXLES	# TIRES
A	X see page 1 for selections	1995	BUICK	LESABRE	4	2	4

VIN	1G4HP52LXSH527871	VEHICLE TOWED	A YES B NO C LEFT AT SCENE	REMOVED BY GREEN ACRES
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LICENSER PLATE	2019	STATE	LA	NUMBER	YVG710	TYPE	PASSENGER	GYWR/GCWR	0	REASON TOWED	A VEHICLE DAMAGE B DRIVER ARRESTED C INSURANCE VIOLATION Z OTHER
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TRAILER DESCRIPTION	YEAR	MAKE	TYPE	LICENSER PLATE	YEAR	STATE	NUMBER
		NONE					

VEHICLE CLASSIFICATION	COMMERCIAL/BUSINESS VEHICLE	GOVERNMENT VEHICLE	PERSONAL VEHICLE
			X

COMPLETE INFORMATION BELOW IF THIS VEHICLE IS BEING USED FOR COMMERCE/BUSINESS, & HAS A GVWR/GCWR IN EXCESS OF 10,000 LBS., OR HAS A HAZMAT PLACARD, OR IS A BUS WITH SEATING FOR NINE OR MORE INCLUDING THE DRIVER.

CARRIER NAME _____ MC/MX ("ICC") # _____

STREET ADDRESS: _____ CITY _____ STATE _____ ZIP _____

 INTERSTATE CARRIER Y/N ☐ TRANSPORTING HAZARDOUS MATERIAL Y/N ☐ CLASS _____ ID# _____ PLACARDS DISPLAYED Y/N ☐ HAZ MAT RELEASED Y/N ☐

NAME (LAST, FIRST, MI) OF	X DRIVER	PEDESTRIAN	DATE OF BIRTH
TAYLOR, LARRY JR			04281976

STREET ADDRESS	2513 GALLIER ST	TELEPHONE #	
CITY	NEW ORLEANS	STATE	LA
		ZIP	70117

STATE	CLASS	ENDORSEMENTS	DRIVER'S LICENSE NUMBER	INSTRUCTED TO EXCHANGE INFORMATION	TRANSPORTED TO MEDICAL FACILITY
LA	E		8215080	Y/N <input type="checkbox"/>	A YES C. REFUSED AID B. NO Y. UNKNOWN

PEDESTRIAN ONLY	UPPER BODY CLOTHING	LIGHT	DARK	LOWER BODY CLOTHING	LIGHT	DARK	SEX	RACE	AGE	INJURY CODE

OWNER'S NAME (LAST, FIRST, MI OR COMPANY NAME)	X Same as Driver	TAYLOR, LARRY JR	TELEPHONE #

STREET ADDRESS	2513 GALLIER ST	TELEPHONE #	
CITY	NEW ORLEANS	STATE	LA
		ZIP	70117

INSURANCE CO. NAME	PROGRESSIVE	POLICY NUMBER	907163379	EXPIRATION DATE	11072017
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AGENT'S NAME/ADDRESS	N/A	PHONE #	800-776-4737
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CODES					
SEATING POSITION	EJECTION	TRAPPED OR EXTRICATED	AIRBAG	OCCUPANT PROTECTION SYSTEM USED	INJURY
A - FRONT SEAT-LEFT SIDE (MOTORCYCLE DRIVER)	A - NOT EJECTED	A - NOT TRAPPED	A - DEPLOYED	A - NONE USED-VEHICLE OCCUPANT	A - FATAL
B - FRONT SEAT-MIDDLE	B - TOTALLY EJECTED	B - TRAPPED/EXTRICATED	B - NON DEPLOYED	B - SHOULDER BELT ONLY USED	B - INCAPACITATING/SEVERE
C - FRONT SEAT-RIGHT SIDE	C - PARTIALLY EJECTED	C - TRAPPED/NOT EXTRICATED	C - NON-DEPLOYED/SWITCH OFF	C - LAP BELT ONLY USED	C - NON-INCAPACITATING/MODERATE
D - SECOND SEAT-LEFT SIDE (MOTORCYCLE PASSENGER)	Y - UNKNOWN	Y - UNKNOWN	D - NOT APPLICABLE	D - SHOULDER AND LAP BELT USED	D - POSSIBLE/COMPLAINT
E - SECOND SEAT-MIDDLE			Y - UNKNOWN	E - CHILD SAFETY SEAT (IMPROPERLY USED)	E - NO INJURY
F - SECOND SEAT-RIGHT SIDE				F - CHILD SAFETY SEAT USED	
G - THIRD ROW-LEFT SIDE (MOTORCYCLE PASSENGER)				G - HELMET USED	
H - THIRD ROW-MIDDLE				Y - RESTRAINT USE UNKNOWN	
I - THIRD ROW-RIGHT SIDE					

Original Locked Report

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PAGE #

03

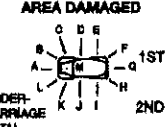
WRITE APPROPRIATE LETTER IN BLOCK

CONTRIBUTING FACTORS AND CONDITIONS

F-17081-17

VISION OBSCUREMENTS N A. RAIN, SNOW, ETC. ON WINDSHIELD B. WINDSHIELD OTHERWISE OBSCURED C. VISION OBSCURED BY LOAD D. TREES, BUSHES, ETC. E. BUILDING F. EMBANKMENT G. SIGN BOARDS H. HILL CREST I. PARKED VEHICLES J. MOVING VEHICLES K. BLINDED BY HEADLIGHTS L. BLINDED BY SUNGLARE M. DISTRACTED BY NEON LIGHTS IN FIELD OF VIEW N. NO OBSCUREMENTS Y. UNKNOWN Z. OTHER	CONDITION OF DRIVER/PED A A. NORMAL B. INATTENTIVE C. DISTRACTED D. ILLNESS E. FATIGUED F. APPARENTLY ASLEEP/BLACKOUT G. DRINKING ALCOHOL - IMPAIRED H. DRINKING ALCOHOL - NOT IMPAIRED I. DRUG USE - IMPAIRED J. DRUG USE - NOT IMPAIRED K. PHYSICAL IMPAIRMENT (EYES, EAR, LIMB) Y. UNKNOWN Z. OTHER	SEQUENCE OF EVENTS/HARMFUL EVENTS NON COLLISION A. OVERTURN/ROLL-OVER B. FIRE/EXPLOSION C. IMMERSION D. JACKKNIFE E. CARGO/EQUIPMENT LOSS OR SHIFT F. FELL/JUMPED FROM MOTOR VEHICLE G. THROWN OR FALLING OBJECT H. EQUIPMENT FAILURE (BLOWN TIRE, BRAKE FAILURE, ETC.) I. SEPARATION OF UNITS IN TRANSPORT J. RAN OFF ROAD RIGHT K. RAN OFF ROAD LEFT L. CROSSED MEDIAN/CENTERLINE M. DOWNHILL RUNAWAY N. OTHER NON-COLLISION COLLISION WITH PERSON, MOTOR VEHICLE, OR NON-FIXED OBJECT O. PEDESTRIAN P. PEDAL CYCLE Q. RAILWAY VEHICLE (TRAIN, ENGINE) R. ANIMAL S. MOTOR VEHICLE IN TRANSPORT T. PARKED MOTOR VEHICLE U. STRUCK BY FALLING, SHIFTING CARGO OR ANYTHING SET IN MOTION BY MOTOR VEHICLE V. WORK ZONE/MAINTENANCE EQUIPMENT W. OTHER NON-FIXED OBJECT COLLISION WITH FIXED OBJECT X. IMPACT ATTENUATOR/CRASH CUSHION Y. BRIDGE OVERHEAD STRUCTURE Z. BRIDGE PIER OR SUPPORT AA. BRIDGE RAIL BB. CULVERT CC. CURB DD. DITCH EE. EMBANKMENT FF. GUARDRAIL FACE GG. GUARDRAIL END HH. CONCRETE TRAFFIC SUPPORT II. OTHER TRAFFIC BARRIER JJ. TREE (STANDING) KK. UTILITY POLE/LIGHT SUPPORT LL. TRAFFIC SIGN SUPPORT MM. TRAFFIC SIGNAL SUPPORT NN. OTHER POST, POLE, OR SUPPORT OO. FENCE PP. MAILBOX QQ. OTHER FIXED OBJECT (WALL, BUILDING, TUNNEL, ETC.) YY. UNKNOWN 1st S 2nd 3rd 4th MOST HARMFUL EVENT S	
VIOLATION D A. EXCEEDING STATED SPEED LIMIT B. EXCEEDING SAFE SPEED LIMIT C. FAILURE TO YIELD D. FOLLOWING TOO CLOSELY E. DRIVING LEFT OF CENTER F. CUTTING IN, IMPROPER PASSING G. FAILURE TO SIGNAL H. MADE WIDE RIGHT TURN I. CUT CORNER ON LEFT TURN J. TURNED FROM WRONG LANE K. OTHER IMPROPER TURNING L. DISREGARDED TRAFFIC CONTROL M. IMPROPER STARTING N. IMPROPER PARKING O. FAILED TO SET OUT FLAGS, FLARES P. FAILED TO DIM HEADLIGHTS Q. VEHICLE CONDITION R. DRIVER CONDITION S. CARELESS OPERATION T. IMPROPER BACKING U. NO VIOLATIONS Y. UNKNOWN Z. OTHER	DRIVER DISTRACTION E A. CELL PHONE B. OTHER ELECTRONIC DEVICE (PAGER, PALM PILOT, NAVIGATION DEVICE, ETC.) C. OTHER INSIDE THE VEHICLE D. OTHER OUTSIDE THE VEHICLE E. NOT DISTRACTED Y. UNKNOWN	MOVEMENT PRIOR TO CRASH B A. STOPPED B. PROCEEDING STRAIGHT AHEAD C. TRAVELING WRONG WAY D. BACKING E. CROSSED MEDIAN INTO OPPOSING LANE F. CROSSED CENTER LINE INTO OPPOSING LANE G. RAN OFF ROAD (NOT WHILE MAKING TURN AT INTERSECTION) H. CHANGING LANES ON MULTI-LANE ROAD I. MAKING LEFT TURN J. MAKING RIGHT TURN K. STOPPED PREPARING TO, OR MAKING U-TURN L. MAKING TURN, DIRECTION UNKNOWN M. STOPPED, PREPARING TO TURN LEFT N. STOPPED, PREPARING TO TURN RIGHT O. SLOWING TO MAKE LEFT TURN P. SLOWING TO MAKE RIGHT TURN Q. SLOWING TO STOP R. PROPERLY PARKED S. PARKING MANEUVER T. ENTERING TRAFFIC FROM SHOULDER U. ENTERING TRAFFIC FROM MEDIAN V. ENTERING TRAFFIC FROM PARKING LANE W. ENTERING TRAFFIC FROM PRIVATE LANE OR DRIVEWAY X. ENTERING FREEWAY FROM ON RAMP Y. LEAVING FREEWAY VIA OFF RAMP Z. OTHER OR UNKNOWN	
TRAFFIC CONTROL R A. STOP SIGN B. YIELD SIGN C. RED SIGNAL ON D. YELLOW SIGNAL ON E. GREEN SIGNAL ON F. GREEN TURN ARROW ON G. RIGHT TURN ON RED H. LIGHT PHASE UNKNOWN I. FLASHING YELLOW J. FLASHING RED K. OFFICER, FLAGMAN L. RR CROSSING, SIGN M. RR CROSSING, SIGNAL N. RR CROSSING, NO CONTROL O. WARNING SIGN (SCHOOL, ETC.) P. SCHOOL FLASHING SPEED SIGN Q. YELLOW NO PASSING LINE R. WHITE DASHED LINE S. YELLOW DASHED LINE T. BIKE LANE U. CROSSWALK V. NO CONTROL Y. UNKNOWN Z. OTHER	REASON FOR MOVEMENT P A. TO AVOID OTHER VEHICLE B. TO AVOID PEDESTRIAN C. TO AVOID ANIMAL D. TO AVOID OTHER OBJECT E. PASSING F. VEHICLE OUT OF CONTROL, NOT PASSING G. VEHICLE OUT OF CONTROL, PASSING H. FOR TRAFFIC CONTROL I. DUE TO CONGESTION J. DUE TO PRIOR CRASH (COLLISION) K. DUE TO DRIVER CONDITION L. DUE TO DRIVER VIOLATION M. DUE TO VEHICLE CONDITION (FAILURE) N. DUE TO PAVEMENT CONDITION O. HIGH WIND P. NORMAL MOVEMENT Y. UNKNOWN Z. OTHER	VEHICLE CONDITION K A. DEFECTIVE BRAKES B. DEFECTIVE HEADLIGHTS C. DEFECTIVE REAR LIGHTS D. DEFECTIVE SIGNAL LIGHTS E. ALL LIGHTS OUT F. DEFECTIVE STEERING G. TIRE FAILURE H. WORN OR SMOOTH TIRES I. ENGINE FAILURE J. DEFECTIVE SUSPENSION K. NO DEFECTS OBSERVED Y. UNKNOWN Z. OTHER VEHICLE LIGHTING B A. HEADLIGHTS ON B. HEADLIGHTS OFF C. DAYTIME RUNNING LIGHTS Y. UNKNOWN TRAFFIC CONTROL CONDITIONS A A. CONTROLS FUNCTIONING B. CONTROLS NOT FUNCTIONING C. CONTROLS OBSCURED D. LANE MARKING UNCLEAR OR DEFECTIVE E. NO CONTROLS Y. UNKNOWN	
		ALCOHOL/DRUG INVOLVEMENT A ALCOHOL/DRUGS SUSPECTED..... A. NEITHER ALCOHOL NOR DRUGS B. YES-ALCOHOL C. YES-DRUGS D. YES-ALCOHOL AND DRUGS Y. UNKNOWN ALCOHOL..... B A. TEST REFUSED B. NO TEST GIVEN C. TEST GIVEN, RESULTS PENDING D. TEST GIVEN, BAC 0 0 0 0 0 0 % DRUGS..... A A. TEST NOT GIVEN B. TEST GIVEN, RESULTS PENDING C. TEST REFUSED D. DRUGS REPORTED (SPECIFY IN NARRATIVE) <div style="border: 1px solid black; padding: 5px; text-align: center;"> AFFIX BLOOD ALCOHOL KIT LABEL HERE (OR ENTER BLOOD ALCOHOL KIT NUMBER) </div>	

DIRECTION BEFORE CRASH		FINAL LOCATION OF VEHICLES	DISTANCE TRAVELED AFTER IMPACT	SPEED		SKIDMARK DATA (FEET)			
HEADED	ON HIGHWAY, STREET OR DRIVE			EST.	POSTED	FR	FL	RR	RL
E N E S W	ALMONASTER	ON ROAD	UNK	UNK	40	0	0	0	0

DAMAGE TO VEHICLE	
AREA DAMAGED  1ST A 2ND 3RD 	EXTENT OF DEFORMITY A. NONE B. VERY MINOR C. MINOR D. MINOR/MODERATE E. MODERATE F. MODERATE/SEVERE G. SEVERE H. VERY SEVERE Y. UNKNOWN 1ST H 2ND 3RD

CITATION NO.	VEH. PED.	R.S. OR ORD. NO.
J891645	<input checked="" type="checkbox"/> <input type="checkbox"/>	154-401
	<input type="checkbox"/> <input type="checkbox"/>	
	<input type="checkbox"/> <input type="checkbox"/>	
	<input type="checkbox"/> <input type="checkbox"/>	
	<input type="checkbox"/> <input type="checkbox"/>	

NOTICE OF INSURANCE VIOLATION ☐

DTS

INVESTIGATING OFFICER'S INITIALS

DPSSP 3106

Report Printed By : 'JUPITER, CYNTHIA EXHIBIT A ROUSSELL, TIMELINE 000003

Petitioner's Exhibits_Plaissance_000118

Original Locked Report

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COMPUTER NUMBER

PAGE #

04

STATE OF LOUISIANA
UNIFORM MOTOR VEHICLE TRAFFIC CRASH REPORT
VEHICLE/PEDESTRIAN

F-17081-17

2	VEH #	OR	PEDESTRIAN
---	-------	----	------------

CONF	CARGO BODY TYPE	YEAR	MAKE	MODEL	# DOORS	# AXLES	# TIRES
P	B see page 1 for selections	2008	PETERBILT	388	2	5	18

VIN	1XPWD49X38D749996	VEHICLE TOWED	B	A. YES B. NO C. LEFT AT SCENE	REMOVED BY
-----	-------------------	---------------	---	-------------------------------------	------------

YEAR	STATE	NUMBER	TYPE	GVWR/GCWR	REASON TOWED
2017	NE	196868	TRUCK	94000	A. VEHICLE DAMAGE B. DRIVER ARRESTED C. INSURANCE VIOLATION Z. OTHER

YEAR	MAKE	TYPE	YEAR	STATE	NUMBER
2016	TIMPT	BOX		NE	247489

VEHICLE CLASSIFICATION	COMMERCIAL/BUSINESS VEHICLE	GOVERNMENT VEHICLE	PERSONAL VEHICLE
	X		

COMPLETE INFORMATION BELOW IF THIS VEHICLE IS BEING USED FOR COMMERCE/BUSINESS, & HAS A GVWR/GCWR IN EXCESS OF 10,000 LBS., OR HAS A HAZMAT PLACARD, OR IS A BUS WITH SEATING FOR NINE OR MORE INCLUDING THE DRIVER. US DOT # 2279622

CARRIER NAME CDMT TRUCKING MC/MX (VCC) #

STREET ADDRESS: 537 STEWART ST CITY CAMPBELL STATE NE ZIP 68932

INTERSTATE CARRIER Y/N X TRANSPORTING HAZARDOUS MATERIAL Y/N CLASS ID# PLACARDS DISPLAYED Y/N HAZ MAT RELEASED Y/N

NAME (LAST, FIRST, MI) OF DRIVER PEDESTRIAN
JAMES, TRAVIS

STREET ADDRESS 537 STEWART ST TELEPHONE # 308-390-3374
CITY CAMPBELL STATE NE ZIP 68932

STATE CLASS ENDORSEMENTS DRIVER'S LICENSE NUMBER
NE A TN V00321862

PEDESTRIAN ONLY UPPER BODY CLOTHING LIGHT DARK LOWER BODY CLOTHING LIGHT DARK SEX RACE AGE INJURY CODE

OWNER'S NAME (LAST, FIRST, MI OR COMPANY NAME)
X JAMES, TRAVIS

STREET ADDRESS 537 STEWART ST TELEPHONE # 308-390-3374
CITY CAMPBELL STATE NE ZIP 68932

INSURANCE CO. NAME PROGRESSIVE POLICY NUMBER 039301970 EXPIRATION DATE 09222017

AGENT'S NAME/ADDRESS SKUPA PHONE # 800-444-4487

CODES						
SEATING POSITION	EJECTION	TRAPPED OR EXTRICATED	AIRBAG	OCCUPANT PROTECTION SYSTEM USED	INJURY	
A - FRONT SEAT-LEFT SIDE (MOTORCYCLE DRIVER)	A - NOT EJECTED	A - NOT TRAPPED	A - DEPLOYED	A - NONE USED-VEHICLE OCCUPANT	A - FATAL	
B - FRONT SEAT-MIDDLE	B - TOTALLY EJECTED	B - TRAPPED/EXTRICATED	B - NON DEPLOYED	B - SHOULDER BELT ONLY USED	B - INCAPACITATING/SEVERE	
C - FRONT SEAT-RIGHT SIDE	C - PARTIALLY EJECTED	C - TRAPPED/NOT EXTRICATED	C - NON-DEPLOYED/SWITCH OFF	C - LAP BELT ONLY USED	C - NON-INCAPACITATING/MODERATE	
D - SECOND SEAT-LEFT SIDE (MOTORCYCLE PASSENGER)	D - EJECTED	D - TRAPPED/NOT EXTRICATED	D - NOT APPLICABLE	D - SHOULDER AND LAP BELT USED	D - POSSIBLE/COMPLAINT	
E - SECOND SEAT-MIDDLE	E - UNKNOWN	E - UNKNOWN	E - UNKNOWN	E - CHILD SAFETY SEAT IMPROPERLY USED	E - NO INJURY	
F - SECOND SEAT-RIGHT SIDE	F - UNKNOWN	F - UNKNOWN	F - UNKNOWN	F - CHILD SAFETY SEAT USED		
G - THIRD ROW-LEFT SIDE (MOTORCYCLE PASSENGER)	G - UNKNOWN	G - UNKNOWN	G - UNKNOWN	G - HELMET USED		
H - THIRD ROW-MIDDLE	H - UNKNOWN	H - UNKNOWN	H - UNKNOWN	H - RESTRAINT USE UNKNOWN		
I - THIRD ROW-RIGHT SIDE	I - UNKNOWN	I - UNKNOWN	I - UNKNOWN			

Original Locked Report

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PAGE #

05

WRITE APPROPRIATE LETTER IN BLOCK

CONTRIBUTING FACTORS AND CONDITIONS

F-17081-17

VISION OBSCUREMENTS N A. RAIN, SNOW, ETC. ON WINDSHIELD B. WINDSHIELD OTHERWISE OBSCURED C. VISION OBSCURED BY LOAD D. TREES, BUSHES, ETC. E. BUILDING F. EMBANKMENT G. SIGN BOARDS H. HILL/CREST I. PARKED VEHICLES J. MOVING VEHICLES K. BLINDED BY HEADLIGHTS L. BLINDED BY SUNGLARE M. DISTRACTED BY NEON LIGHTS IN FIELD OF VIEW N. NO OBSCUREMENTS Y. UNKNOWN Z. OTHER		CONDITION OF DRIVER/PED A A. NORMAL B. INATTENTIVE C. DISTRACTED D. ILLNESS E. FATIGUED F. APPARENTLY ASLEEP/BLACKOUT G. DRINKING ALCOHOL - IMPAIRED H. DRINKING ALCOHOL - NOT IMPAIRED I. DRUG USE - IMPAIRED J. DRUG USE - NOT IMPAIRED K. PHYSICAL IMPAIRMENT (EYES, EAR, LIMBS) Y. UNKNOWN Z. OTHER		SEQUENCE OF EVENTS/HARMFUL EVENTS S. MOTOR VEHICLE IN TRANSPORT T. PARKED MOTOR VEHICLE U. STRUCK BY FALLING, SHIFTING CARGO OR ANYTHING SET IN MOTION BY MOTOR VEHICLE V. WORK ZONE/MAINTENANCE EQUIPMENT W. OTHER NON-FIXED OBJECT COLLISION WITH FIXED OBJECT X. IMPACT ATTENUATOR/CRASH CUSHION Y. BRIDGE OVERHEAD STRUCTURE Z. BRIDGE PIER OR SUPPORT AA. BRIDGE RAIL BB. CULVERT CC. CURB DD. DITCH EE. EMBANKMENT FF. GUARDRAIL FACE GG. GUARDRAIL END HH. CONCRETE TRAFFIC SUPPORT II. OTHER TRAFFIC BARRIER JJ. TREE (STANDING) KK. UTILITY POLE/LIGHT SUPPORT LL. TRAFFIC SIGN SUPPORT MM. TRAFFIC SIGNAL SUPPORT NN. OTHER POST, POLE, OR SUPPORT OO. FENCE PP. MAILBOX QQ. OTHER FIXED OBJECT (WALL, BUILDING, TUNNEL, ETC.) YY. UNKNOWN 1st S 2nd 3rd 4th MOST HARMFUL EVENT	
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PEDESTRIAN ACTIONS A. CROSSING, ENTERING ROAD AT INTERSECTION B. CROSSING, ENTERING ROAD NOT AT INTERSECTION C. WALKING IN ROAD - WITH TRAFFIC D. WALKING IN ROAD - AGAINST TRAFFIC E. SLEEPING IN ROADWAY F. STANDING IN ROADWAY G. GETTING ON OR OFF OTHER VEHICLE H. PUSHING, WORKING ON VEHICLE IN ROAD I. OTHER WORKING IN ROADWAY J. PLAYING IN ROADWAY K. NOT IN ROADWAY Y. UNKNOWN Z. OTHER		VEHICLE LIGHTING B A. HEADLIGHTS ON B. HEADLIGHTS OFF C. DAYTIME RUNNING LIGHTS Y. UNKNOWN		ALCOHOL/DRUG INVOLVEMENT A ALCOHOL/DRUGS SUSPECTED A. NEITHER ALCOHOL NOR DRUGS B. YES-ALCOHOL C. YES-DRUGS D. YES-ALCOHOL AND DRUGS Y. UNKNOWN ALCOHOL A. TEST REFUSED B. NO TEST GIVEN C. TEST GIVEN, RESULTS PENDING D. TEST GIVEN, BAC 0.000000% DRUGS A. TEST NOT GIVEN B. TEST GIVEN, RESULTS PENDING C. TEST REFUSED D. DRUGS REPORTED (SPECIFY IN NARRATIVE) AFFIX BLOOD ALCOHOL KIT LABEL HERE (OR ENTER BLOOD ALCOHOL KIT NUMBER)	
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DIRECTION BEFORE CRASH		FINAL LOCATION OF VEHICLES	DISTANCE TRAVELED AFTER IMPACT	SPEED		SKIDMARK DATA (FEET)			
HEADED	ON HIGHWAY, STREET OR DRIVE			EST.	POSTED	FR	FL	RR	RL
E N SW	ALMONASSTER	ON ROAD	UNK	U	N	4	0	0	0

DAMAGE TO VEHICLE	
AREA DAMAGED	EXTENT OF DEFORMITY
A. UNDER-CARRIAGE B. TOTAL C. OTHER D. NONE Y. UNKNOWN	A. NONE B. VERY MINOR C. MINOR D. MODERATE E. SEVERE F. MODERATE/SEVERE G. SEVERE H. VERY SEVERE Y. UNKNOWN
1ST H	1ST E
2ND I	2ND E
3RD	3RD

NOTICE OF INSURANCE VIOLATION ☐

DTS

INVESTIGATING OFFICER'S INITIALS

DPSP 3106

Report Printed By : 'JUPITER, CYNTHIA' EXHIBIT A-ROUSELL TIMELINE, 000005

Petitioner's Exhibits_Plaisance_000120

Original Locked Report

OFFICER'S NARRATIVE: DESCRIBE ANY UNUSUAL CIRCUMSTANCES ASSOCIATED WITH CRASH, INCLUDING OFFICER'S OBSERVATIONS AND OPINIONS.
INCLUDE WITNESS NAMES, ADDRESSES, PHONE NUMBERS, ETC.

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PAGE #

IF NECESSARY, INDICATE DAMAGE TO PUBLIC OR PRIVATE PROPERTY (WITH OWNER'S NAME & ADDRESS) AT THE END OF THE NARRATIVE.

06

REFER TO EACH BY VEHICLE NUMBER F-17081-17

UPON ARRIVAL TO THE SCENE, DRIVER AND PASSENGER IN VEHICLE 1 HAD BEEN TAKEN TO UNIVERSITY HOSPITAL FOR MODERATE INJURIES. VEHICLE 1 HAD COME TO A REST IN THE RIGHT LANE, EAST ON ALMONASTER AVE IN FRONT CRESCENT CROWN. VEHICLE 2 HAD PULLED TO THE RIGHT SHOULDER ON ALMONASTER AVE (WEST).

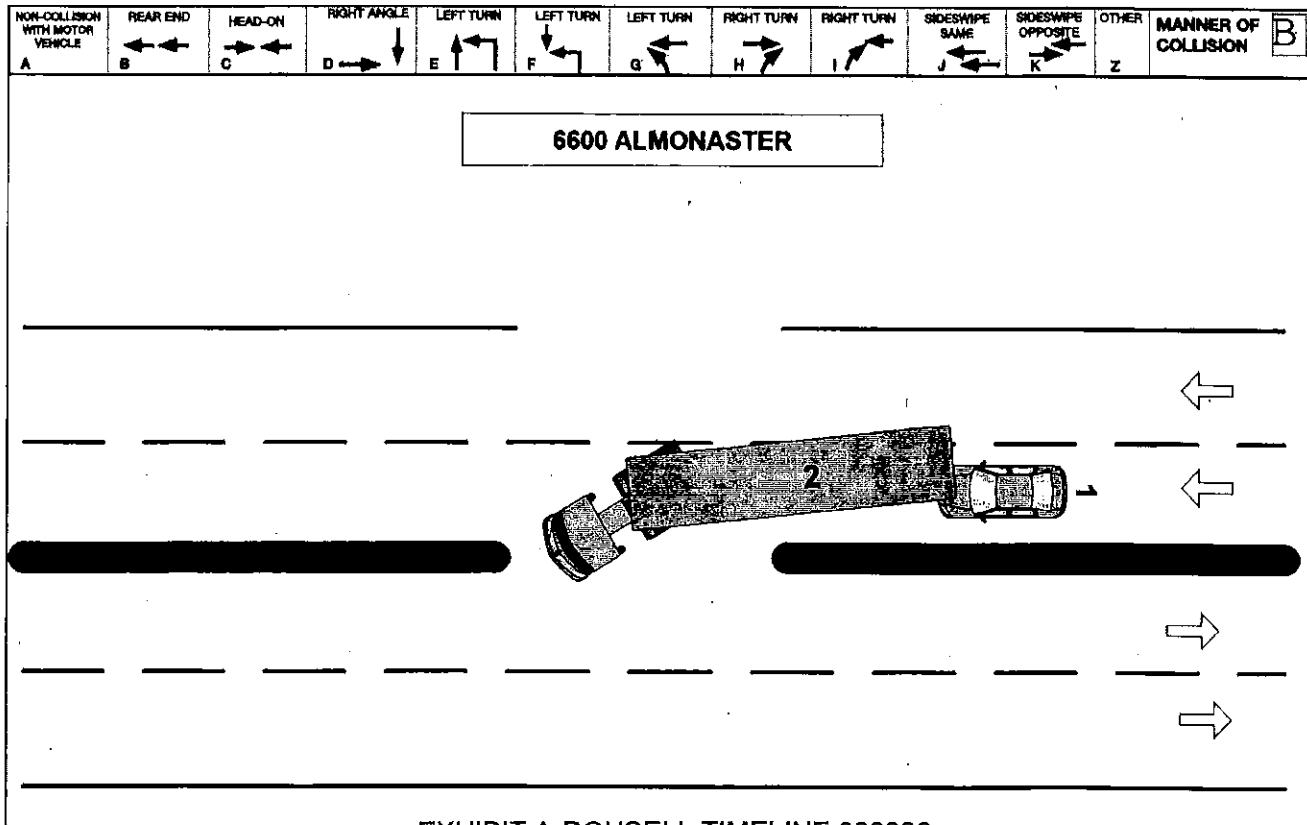
DRIVER 2, WHO DID NOT GIVE A WRITTEN STATEMENT, STATED HE WAS DRIVING EAST ON ALMONASTER AVE IN THE RIGHT LANE WHEN HE WAS STUCK BY VEHICLE 1. DRIVER 2 STATED HE WAS DRIVING AT A LOW RATE OF SPEED BECAUSE HE WAS LOST. DRIVER 2 WENT ON TO SAY HIS EMERGENCY LIGHTS WERE ACTIVATED TO ALERT MOTORIST OF HIS SLOW MOVEMENT. AS DRIVER 2 REACHED A TURN AROUND LOCATED IN FRONT 6600 ALMONASTER AVE, DRIVER 2 ACTIVATED HIS LEFT SIGNAL. AS DRIVER 2 SLOWED TO MAKE THE LEFT TURN, DRIVER 2 WAS STRUCK IN THE REAR BY VEHICLE 1.

OFFICER SPRIGGINS RELOCATED TO UNIVERSITY HOSPITAL AND SPOKE WITH DRIVER 1, LARRY TAYLOR JR. DRIVER 1, WHO WAS UNABLE TO GIVE A WRITTEN STATEMENT, STATED HE WAS DRIVING EAST ON ALMONASTER AVE WHEN HE STRUCK THE REAR OF VEHICLE 2. DRIVER 1, WHO WAS DRIVING IN THE RIGHT LANE, STATED DRIVER 2 WAS DRIVING IN THE MIDDLE OF THE ROADWAY AS THOUGH HE WAS LOST. DRIVER 1 STATED ALL OF A SUDDEN, DRIVER 2 CAME TO A SUDDEN STOP. DRIVER 1 TRIED TO AVOID DRIVER 2 BY CHANGING TO THE LEFT LANE, BUT STRUCK VEHICLE 2 ON ITS LEFT REAR WHEEL AND LADDER.

DRIVER 1 SUSTAIN AN INJURY TO HIS LEG AND PASSENGER IN VEHICLE 1 SUSTAINED A SEVERE LACERATION TO HIS FOREHEAD.

NO WITNESSES CAME FORWARD.

DRIVER 1 AT FAULT, CITED**FOLLOWING TOO CLOSE(154-401)**



Report Printed By : JUPITER, CYNTHIA (CMJUPITER) on Thursday, May 24, 2018

Petitioner's Exhibits_Plaisance_000121

Original Locked Report

170614161044887

STATE OF LOUISIANA
UNIFORM MOTOR VEHICLE TRAFFIC CRASH REPORT
NARRATIVE SUPPLEMENT

COMPUTER NUMBER

PAGE #

07

F-17081-17

OFFICER'S NARRATIVE: DESCRIBE ANY UNUSUAL CIRCUMSTANCES ASSOCIATED WITH CRASH, INCLUDING OFFICER'S OBSERVATIONS AND OPINIONS.
INCLUDE WITNESS NAMES, ADDRESSES, PHONE NUMBERS, ETC.

IF NECESSARY, INDICATE DAMAGE TO PUBLIC OR PRIVATE PROPERTY (WITH OWNER'S NAME & ADDRESS) AT THE END OF THE NARRATIVE.

REFER TO EACH BY VEHICLE NUMBER

ANY OTHER INFORMATION WILL BE SUBMITTED TO THIS REPORT AS A SUPPLEMENTAL.

BODY WORN CAMERA AND IN CAR CAMERA USED IN THIS INVESTIGATION.

DPSSP 3110

INVESTIGATING OFFICER'S INITIALS

DTS

Report Printed By : 'JUPITER, CYNTHIA' EXHIBIT AROUSEL TIMELINE 000007

Petitioner's Exhibits_Plaisance_000122

**PERSONAL INJURY
LEGAL RETAINER AGREEMENT
CONTINGENCY FEE(PERCENTAGE AGREEMENT)**

I/we, MELIA HODSON OROLOLAWAN ROUSELL the undersigned client(s), retain and employ **KENNETH MICHAEL PLAISANCE**, (A Professional Law Corporation), to render legal advice and services in connection with claim(s) or cases against any or all person, parties, firms and/or companies which may be responsible to me for damages as a result of AUTO ACCIDENT occurring on or about JUNE 14, 2017

I specifically authorize Attorney to undertake negotiations and/or file suit or institute legal proceedings necessary on my behalf. As used herein, the term "suit" includes, where applicable, the institution of proceedings to impanel a medical review panel. I further authorize Attorney to retain and employ at my expense, the services of any experts, including physicians and doctors, as well as the services of other outside contractors, as Attorney deems necessary or expedient in representing my interests. I agree and understand that you may associate other counsel on my behalf whenever you deem it necessary or desirable. However, the total fees chargeable under this agreement will not be increased by virtue of the association. That is, the fees of any other attorney retained will be included in the Attorneys fees.

I. ATTORNEY'S FEES

I understand that you will represent me in all stages of this claim and trial proceeding and will diligently prosecute this case to the best of your ability until settlement is reached or the complaint is filed and judgment results. Thereafter, we will discuss the necessity of appeal or appeal options.

For your services as attorney, I hereby assign, deliver, transfer and set over to my attorney(s), in accordance with the provisions of L.A. R.S. 37:218 and LA R.S. 9:5001, an undivided interest in the entire subject matter of the suit or claim.

It is agreed that the attorney shall receive the following percentage of the amount recovered before the deduction of cost and expenses as set forth in Section 2 herein:

Thirty Three and a Third percent (~~33.33%~~ 28.5%) of any amount recovered before suit is filed in the event of settlement,

Forty percent (40%) of any amount recovered in the event suit is filed, and

Fifty percent (50%) of any amount recovered subsequent to an appeal of the case or cases.

"Recovery" shall mean anything of value, including without limitation medical, pain and suffering, wage loss, loss of use, property damage, loss of earning capacity, loans, or deferred payment terms attorney's fees, if any, and pre and post petition judgment interest, if any, that are awarded by the Court or are applicable pursuant to statute or rule.

NO RECOVERY NO FEE

It is understood and agreed that this employment is upon a contingency fee basis and, if no recovery is made, I will not be indebted to my Attorney for any sum whatsoever as Attorney's fees. (However, I agree to pay all costs and expenses as set forth in Section 2, herein, regardless of whether there is any recovery in this matter. In the event of recovery, costs and expenses shall be paid out of the settlement or judgment.) It shall be spelled out in a Settlement Statement.

2. COST AND EXPENSES:

In addition to paying Attorney's Fees, I agree to pay all costs and expenses in connection with Attorney's handling of this matter. I agree that I shall pay included but not limited too-- all costs of investigation, long distance telephone charges, photocopying (\$.30 per page), postage, facsimile costs, Federal express or other delivery charges, deposition fees, clerk's fees, court reporters, stenographers transcripts fees, witness fees, expert fees, subpoena costs, court costs, sheriff's and service fees, travel expenses jury fees, and appeal costs at the conclusion of my case, living and medical expenses; such expenses are to be deducted after the applicable contingent fee is calculated. Attorney has full right to collect monies for expenses and cost incurred. It has been explained that said attorney does not pay for cases or claims, but may advance the cost for medical treatment/living expenses.

3. NO GUARANTEE:

I acknowledge that Attorney has made no promise or guarantee regarding the outcome of my legal matter. In fact, Attorney has advised me that litigation in general is risky, can take a long time, can be very costly and can be very frustrating. I further acknowledge that Attorney shall have the right to cancel this agreement and withdraw from the case or matter, if, in Attorney's professional opinion, the matter does not have merit, I do not have a reasonably good possibility of recovery, I refuse to follow the recommendation of Attorney, fail to abide by the terms of this agreement, and/or if Attorney's continued representation would result in a violation of the Rules of Professional Conduct, or at any other time as or if permitted under the Rules of Professional Conduct.

4. ABANDONMENT OF CASE/TERMINATION OF REPRESENTATION:

I understand that I have a right to terminate the representation upon written notice to that effect. I understand and agree that if I elect to abandon my case or to substitute counsel, or violate this agreement, I am responsible for all fees and expenses incurred prior to the termination and to terminate the proceedings or obtain a Court Order permitting withdrawal. I further agree that I will compensate the attorney for his accumulated time expended on the case at a rate of \$250.00 per hour, but in no event will your fee be less than \$ 500.00 regardless of when your services are terminated, or at the contingency fee agreement rate which ever is the greatest. It is at the attorneys discretion. The attorney shall not be obligated to honor any termination instructions unless in writing signed by client.

I agree that you may withdraw as my attorney at any time after reasonable notice to me and I agree to keep you advised of my whereabouts at all times and to cooperate at all times in the preparation and trial of my case or cases, to appear upon reasonable notice to me for depositions and court appearances and to comply with all reasonable requests made of me in connection with the preparation and presentation of my case.

5. POWER OF ATTORNEY

It is understood neither you nor I may settle, compromise, release, discontinue or otherwise dispose of my case without the consent of the other. If I can not be found and after attorney diligently attempts to locate client or client is severely injured, then I hereby give you my power of attorney to execute all complaints, claims, checks, settlements, deposits, and orders as I could myself. If attorney is unable to contact client, then attorney is authorized to place proceeds checks, drafts or other instruments which may be used in, for and on behalf of client, in the attorney client trust fund --to affect settlement.

6. **LOUISIANA LAW:** This contract shall be governed by Louisiana Law.

7. ENTIRE AGREEMENT:

I have read the agreement in its entirety and I agree to and understand the terms and condition set forth in the contract. I acknowledge that there are no other terms or oral agreements existing between Attorney and Client. This agreement may not be amended or modified in any way without the prior written consent of Attorney and Client.

After having read the all the above agreement and after it has been fully explained to me by attorney, I do hereby sign my name as of this 15th day of June, 2017

Melinda Dodge 2000 LAMAR ROUSE II
CLIENT SIGNATURE

NAME

ADDRESS

MELINDA DODGE
1814 DIELLS ST. N.O. LA 70114

The foregoing agreement is hereby accepted on this 18th day of JUNE, 2017.

Kenneth M. Plaisance
KENNETH M. PLAISANCE

Referred by Larry Yellow pages/advertisement

PROGRESSIVE

6300 Wilson Mills Road
Mayfield Village, Ohio 44143
Telephone: 440-461-5000
progressive.com

July 27, 2017

Law offices of Kenneth M. Plaisance
5626 Elysian Fields Avenue
New Orleans, Louisiana 70122

Re: Policy Number: 03930197-0
Claim Number: 17-3131843 and 17-2835737
NAIC Code: 155-38628
Company Name: Progressive Northern Insurance Company

Mr. Plaisance,

I'm writing on behalf of Tricia Griffith, president and chief executive officer of The Progressive Corporation. I am responding to your emails dated July 21, 2017 and July 27, 2017.

Please be advised that we have not delayed or denied any claims being asserted under Mr. Taylor's policy.

While our liability investigation has not been finalized, after review of the claim and the medical specials you provided in your complaint, we have decided to tender our bodily injury limits of \$15,000 under Mr. Taylor's policy to the parents of Lawan Rousell, a minor. This amount is being tendered in exchange for a full final release for Mr. Taylor under his personal auto policy with us and the claim arising under 17-2835737 only. The release agreement proposed will reflect the same.

At this time, and since we expressed our intent to tender the full policy limits, the retention of an accident reconstructionist has not been explored. In the event the proposed settlement fails, we will revisit same.

With respect to any payment for property damage sustained to Mr. Taylor's vehicle, I note that Mr. Taylor's policy of insurance does not include Collision coverage.

Sincerely,

Scott Durman

Scott Durman
Claims Director
504-249-6464

LEGER & SHAW

ATTORNEYS AND COUNSELORS

WALTER J. LEGER, JR. *
FRANKLIN G. SHAW *
WALTER J. LEGER III
CHRISTINE SEVIN FAYARD
MATTHEW S. LANDRY

OF COUNSEL
WILLIAM S. POOLE, JR. **
CRAIG H. STEWART

*A PROFESSIONAL LAW CORPORATION
** ALSO ADMITTED TO ALABAMA BAR

512 EAST BOSTON STREET
COVINGTON, LOUISIANA 70433

TELEPHONE (985) 809-6625
(888) 708-8950
FACSIMILE (985) 809-6626

WWW.LEGERSHAW.COM

December 26, 2017

NEW ORLEANS

NEW ORLEANS EXCHANGE CENTER
935 ORAVIER STREET, SUITE 2150
NEW ORLEANS, LOUISIANA 70112
TELEPHONE: (504) 588-9043
FACSIMILE: (504) 588-9980

HOUMA OFFICE

627 SCHOOL STREET
HOUMA, LOUISIANA 70360
TELEPHONE: (985) 223-2000
FACSIMILE: (985) 223-6288

Kenneth M. Plaisance
5626 Elysian Fields Ave.
New Orleans, LA 70122
BY EMAIL: kplaws77@aol.com

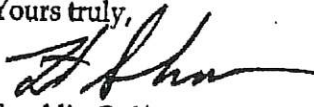
Dear Kenneth,

After speaking with you last Thursday and this morning, and reviewing the materials you provided, I have to respectfully decline any invitation to represent any of your clients in this matter. I would suggest that you consult with ethics counsel as soon as possible as to how you should proceed and can give you no advice in that regard.

As we discussed, any Motion for Remand must be filed within thirty (30) days of removal pursuant to 28 U.S.C. § 1447(c).

With kind regards,

Yours truly,



Franklin G. Shaw

FGS/fgs

CONSENT TO ASSOCIATE COUNSEL

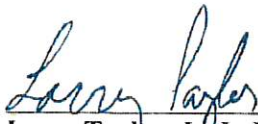
Larry Taylor, Jr. Individually and as Next Friend of Lawan Rousell, Minor ("Client") has previously executed a Contingent Fee Agreement ("Agreement") retaining Kenneth M. Plaisance, Attorney at Law to represent Client in regard to certain matters and/or causes of action identified in the Agreement. The Agreement also provides that Kenneth M. Plaisance, Attorney at Law, with Client's written consent, may associate another attorney in this matter to prosecute the Client's causes of action.

Kenneth M. Plaisance, Attorney at Law has recommended that Derryberry Zips Wade, PLLC be associated to assist in the Client's matter and to prosecute Client's causes of action. Client agrees that Kenneth M. Plaisance, Attorney at Law may associate with Derryberry Zips Wade, PLLC in this matter to prosecute Client's causes of action. It is further agreed and understood that:

- a) The fee to be paid to Derryberry Zips Wade, PLLC will not increase the total attorney's fee owed by client;
- b) Derryberry Zips Wade, PLLC and Kenneth M. Plaisance, Attorney at Law will assume joint responsibility for the representation of clients; and
- c) If a recovery is made on behalf of the clients, then the total attorneys' fee as conveyed in the Agreement will be divided in the following percentages (%'s):
 - 66 2/3 % Derryberry Zips Wade, PLLC
 - 33 1/3 % Kenneth M. Plaisance, Attorney at Law

Client's signature indicates its understanding and consent to associate Derryberry Zips Wade, PLLC in this matter, as well as its understanding of the sharing of the attorneys' fees to be paid in the event of a successful recovery on their behalf.

Signed this 9th day of March, 2018.



Larry Taylor, Jr. Individually and
As Next Friend of Lawan Rousell, Minor



Kenneth M. Plaisance, Attorney at Law
Kenneth M. Plaisance 240431460

Derryberry Zips Wade, PLLC
Daryl L. Derryberry

POWER OF ATTORNEY AND CONTINGENT FEE CONTRACT

This agreement (hereinafter referred to as "Agreement") is made between Client, Melba L. Brown, individually and as the Mother and Administrator of the Estate of her Minor Son, L.L.R. (hereinafter referred to as "Client") and DERRYBERRY ZIPS WADE, PLLC, KENNETH M. PLAISANCE, ATTORNEY AT LAW, AND GAINSBURGH, BENJAMIN, DAVID, MEUNIER & WARSHAUER, L.L.C. (HEREINAFTER REFERRED TO AS "ATTORNEYS");

In consideration of the mutual promises and agreements herein contained, the parties hereto agree as follows:

I. **PURPOSE OF REPRESENTATION**

1.01 Client hereby retains and employs Attorneys to assume the role of counsel, for the prosecution and trial of claims against any and all responsible entities or persons (hereinafter referred to as "Defendant") arising from the personal injuries, harms and losses of Client relating to the motor vehicle crash that occurred on or about June 14, 2017 in or about New Orleans, Louisiana (the "Case") and to recover compensation to which Client may be entitled, as well as to compromise and settle all claims arising out of the Case.

1.02 It is specifically agreed and understood that Attorneys' representation is limited to the specific persons and/or companies named herein as clients, and that Attorneys are not representing or expected to represent any person or entity not named herein as a client. It is expressly agreed and understood that Attorneys' obligations are limited to representing Client in the specific matters described herein, and Client does not expect Attorneys to do anything else.

II. **ATTORNEYS' FEES**

2.01 This Agreement is a contingency fee contract. If Attorneys are successful in recovering for Client money and/or other things of value as described in paragraph 2.02, below, "whether by settlement, arbitration award, or by order or judgment", Attorneys shall receive attorneys' fees calculated as follows:

- (a) if the recovery is obtained prior to the time that Attorneys file suit on

Client's behalf in a court of competent jurisdiction, then Attorneys shall receive as their fees the dollar amount equal to 35% of Client's total recovery determined in accordance with paragraph 2.02 and/or 2.03 below; and

- (b) if the recovery is obtained after Attorneys file suit on Client's behalf in a court of competent jurisdiction, then Attorneys shall receive as their fees the dollar amount equal to 40% of Client's total recovery determined in accordance with paragraph 2.02 and/or 2.03 below; and
- (c) if the recovery is obtained after notice of appeal has been filed, then Attorneys shall receive as their fees the dollar amount equal to 45% of Client's total recovery determined in accordance with paragraph 2.02 and/or 2.03, below.

Client consents to the fee sharing of the responsible attorneys and all recovered fees will be split between the responsible attorneys in the following manner:

Derryberry Zips Wade, PLLC	61 2/3%
Kenneth M. Plaisance, Attorney at Law	28 1/3%
Gainsburgh, Benjamin, David, Meunier & Warshauer, L.L.C.	10%

The above fee split is based on the work performed by each firm and/or the joint representation of Client and all firms remain jointly responsible for this matter.

If Attorneys do not obtain a recovery of money and/or other things of value for Client, then Client will not owe Attorneys any attorneys' fees.

2.02 The "total recovery" for purposes of calculating attorneys' fees pursuant to paragraph 2.01(a, b, c or d), above, includes all monies and everything of value (expressed in present cash dollars) recovered, received or obtained by Client as a result of any settlement of, or recovery pursuant to the Case, including but not limited to all liability insurance, umbrella insurance, personal injury protection (PIP) insurance, med pay insurance, uninsurance coverage and underinsurance coverage. Additionally, such things of value include, but are not limited to, modification, extinguishment or forgiveness of any loan or debt of Client or any interest or penalties relating thereto or any damages or monies Client owes or may be obligated for under any contract or the value of any performance thereunder.

2.03 In the event that Attorneys and Client cannot agree on the value, expressed in present cash dollars, of any item or thing included in the total recovery, the parties agree to retain the services of a mutually agreed upon accounting firm to make an appraised present cash value of such item or thing, which appraised value shall be assigned to such item or thing for purposes of determining the present cash value of the total recovery.

III.

ASSIGNMENT OF INTEREST

3.01 In consideration of Attorneys' services, Client agrees to pay, and hereby conveys and assigns to Attorneys, a lien on all monies received in connection with all of Client's claims and causes of action to the extent of the applicable percentage set out in Paragraph 2.01.

3.02 All sums due and to become due are payable at THE LAW OFFICES OF DERRYBERRY ZIPS WADE, PLLC in Smith County, Texas.

3.03 In the event that the case is successfully resolved, all or part of the settlement and/or judgment may be placed in the Attorneys' trust account. As part of the material consideration for the Attorneys' agreement to represent the Client, any interest which is earned on the Client's recovery while in the Attorneys' trust account is the sole property of the Attorneys.

IV.

DEDUCTION OF EXPENSES

4.01 It will be necessary for Attorneys to incur and advance certain court costs and other types of expenses on Client's behalf. These costs and other expenses may include, but are not limited to, the following: filing and service fees; costs for records; costs for investigative services; expert witness and consultant fees; mediator's fees; travel expenses (including air fare, ground transportation, vehicle mileage, lodging and meals); deposition expenses and court reporter fees; transcripts of court proceedings; charges for computer assisted legal research; preparation of exhibits and graphics; and miscellaneous copying (\$.15 per page), postage, long-distance telephone charges, facsimile charges at Attorney's usual rate, shipping expenses, and courier expenses. Client agrees that Attorneys may borrow funds from a financial lending institution to

finance or pay such Court costs and litigation expenses, and the reasonable interest charged by the institution on such borrowed funds will be added to the Court costs and litigation expenses. Client agrees to reimburse Attorneys for all such costs and expenses from Client's share of the total recovery, whether by settlement, arbitration award, or judgment. Upon Attorneys' receipt of the proceeds of any settlement, arbitration award, or judgment, Attorneys shall (1) retain as their attorneys' fees the applicable percentage of the total recovery in accordance with paragraph 2.01, above, (2) deduct from Client's share of the total recovery any costs and expenses Attorneys incur on Client's behalf and, if applicable, the amount of any liens and/or letters of protection applicable to the total recovery, and (3) disburse the remainder of Client's share of the total recovery to Client. Any payment or reimbursement of costs and expenses that we receive from another party, as a result of a court ruling or otherwise, will be credited against the amount Client would otherwise owe, or will be paid to Client if Client would not otherwise owe any such expenses. If Attorneys do not obtain a recovery of money or other things of value for Client, then Client will not be required to pay any expenses.

4.02 Client acknowledges that additional invoices or billing statements for expenses for which Client is liable may be received, posted or paid by Attorneys during and after preparation of Client's settlement statement. To aid in expeditiously handling these accounts, the Client authorizes Attorneys to withhold from the Client's share of the recovery 2% of the gross recovery or \$5,000 (whichever is greater). Said sums are to be held in a non-interest bearing trust account for 90 days from the date of disbursement of settlement proceeds to the Client. All expenses chargeable to the Client and not included in the Client's settlement statement and/or disbursement of proceeds to the Client shall be paid from the aforesaid sum being held in trust and the balance of said trust account funds shall be tendered to the Client at the end of the 90 day period.

V.

APPROVAL NECESSARY FOR SETTLEMENT

5.01 No settlement of the Case of any nature shall be made without Client's approval. Client agrees to consider any settlement offer Attorneys recommend before making a decision to accept or reject such offer. Client agrees to notify Attorneys prior to Client engaging directly in settlement discussions or negotiations with another party to the Case or with the attorney for another party to the Case.

5.02 Attorneys are hereby granted a power of attorney so that they may have full authority to prepare, sign and file all legal instruments, pleadings, drafts, authorizations and papers as shall be reasonably necessary to represent the Client or Clients in the case or to conclude this representation including settlement and/or reducing to possession any and all monies or other things of value due to the Client under the Case as fully as the Client could so do in person. This power of attorney specifically authorizes Attorneys to execute any settlement checks so that they can be placed in Attorney's trust account for further disbursement. Attorneys are also authorized and empowered to act as Client's negotiator in any and all settlement negotiations concerning the Case. In the event the Case is resolved by settlement or any other means, including a trial or arbitration, Client agrees that Attorneys are authorized, but are not obligated, to utilize the results of the Case in their promotional materials and website, as well as publicizing the results in public mediums and forums, including circulated publications.

VI. REPRESENTATIONS

6.01 It is understood and agreed that Attorneys cannot warrant or guarantee the outcome of the Case and Attorneys have not represented to Client that Client will recover all or any of the funds or other things of value so desired. CLIENT REALIZES THAT ATTORNEYS WILL BE INVESTIGATING THE LAW AND FACTS APPLICABLE TO THE CASE ON A CONTINUING BASIS AND SHOULD ATTORNEYS LEARN SOMETHING WHICH IN THE OPINION OF ATTORNEYS MAKES IT IMPRACTICAL FOR ATTORNEYS TO PROCEED WITH THE HANDLING OF THE CASE, THEN, SUBJECT TO APPLICABLE RULES, ATTORNEYS MAY WITHDRAW FROM FURTHER REPRESENTATION OF CLIENT BY SENDING WRITTEN NOTICE TO CLIENT'S LAST KNOWN ADDRESS.

6.02 Client acknowledges and represents that no person has solicited Client on behalf of Attorneys (or any lawyer or employee of Attorneys) by in-person or telephone contact that was not initiated by Client. Client further represents that with the exception of the Attorneys' agreements that are expressly set-forth herein, no one has promised Client anything to retain Attorneys.

VII.
COOPERATION OF CLIENT

7.01 Client agrees to cooperate with Attorneys at all times and to comply with all reasonable requests of Attorneys to permit Client's Case to be investigated and developed; to disclose to Attorneys all facts relevant to the Case; and to be reasonably available to attend any necessary meetings, depositions, preparation sessions, hearings, and trial. Client agrees to notify Attorneys in writing of each change in Client's mailing address and/or telephone number during this representation within fourteen (14) days of each such change. When the Case is over, Attorneys will provide Client the opportunity to retrieve Client's documents and tangible items. However, if Client has not retrieved those documents and tangible items within ninety (90) days after Attorneys have given Client written notice that the Case is over and that the Client's documents and tangible items are available to be picked up, Client agrees that Attorneys may dispose of those documents and tangible items.

7.02 Attorneys may, at their option and subject to applicable rules, withdraw from the Case and cease to represent the Client should Client fail to comply with any portion of this Agreement or should Attorneys decide that they cannot continue to be involved in the Case. Subject to applicable rules, such withdrawal will be effective by mailing written notice to Client's last known address.

VIII.
REFERRAL OR ASSOCIATION OF ADDITIONAL COUNSEL

8.01 Client agrees that Attorneys may refer this matter to another lawyer or associate additional lawyers to assist in representing Client and prosecuting the Case. Prior to any such referral or association, Client shall consent in writing to the terms of the agreement after being advised of (1) the identity of the lawyer(s) or law firm(s) involved, (2) whether the fees will be divided based on the proportion of services rendered or by lawyers agreeing to the joint responsibility for the representation, and (3) the share of the fee that each lawyer or law firm will receive, or if the division is based on the proportion of services performed, the basis on which the division will be made. The referral or association of additional attorneys will not increase the total fee owed by Client.

IX.
TEXAS LAW TO APPLY

9.01 This Agreement shall be construed under and in accordance with the laws of the State of Texas.

X.
PARTIES BOUND

10.01 This Agreement shall be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by applicable law, their respective heirs, executors, administrators, legal representatives, successors and assigns.

XI.
LEGAL CONSTRUCTION

11.01 In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions thereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

XII.
PRIOR AGREEMENTS SUPERSEDED

12.01 This Agreement constitutes the sole and only Agreement of the parties hereto. It supersedes any prior understandings (or written or oral agreement) between the parties respecting the subject matter of this Agreement. However, Attorneys have agreed that Client may revoke this agreement without Attorneys retaining any interest for 30 days from date of acceptance. This revocation provision will not apply if the Case is settled, in whole or in part, during that 30 days period. The parties agree that any amendment to this Agreement shall be made in writing and signed by each of the parties and that any alleged oral amendment is void and unenforceable.

I certify and acknowledge that I have had the opportunity to read this Agreement. I further state that I have voluntarily entered into this Agreement fully aware of its terms and conditions.

Signed, accepted and agreed on this 12 day of June, 2018.

Melvia T. Hodges
Client Signature
Printed Name: Melvia Taylor Hodges

(Client Address)

(City, State, Zip Code)

Client Home Phone Number(s)

Client Work Phone Number(s)

Client Cell Phone Number(s)

Client Email address(es)

Agreed:

DERRYBERRY ZIPS WADE, PLLC

By:

Daryl L. Derryberry
100 E. Ferguson St., Suite 1212
Tyler, TX 77702
(903) 526-2767
Facsimile: (903) 526-2714

KENNETH M. PLAISANCE, ATTORNEY AT LAW

By: 

Kenneth M. Plaisance
5626 Elysian Fields Avenue
New Orleans, LA 70122
(504) 905-1888
Facsimile: (888) 412-3988

GAINSBURGH, BENJAMIN, DAVID, MEUNIER & WARSHAUER, L.L.C.

By: _____

Michael J. Ecuyer
2800 Energy Centre
1100 Poydras Street
New Orleans, LA 70163
(504) 522-2304
Facsimile: (504) 528-9973

Case 2:18-cv-05903-JTM-JCW Document 1 Filed 06/14/18 Page 1 of 9

**THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA**

LARRY TAYLOR JR.,

Plaintiff

VERSUS

**CDMT TRUCKING, TRAVIS JAMES
PROGRESSIVE NORTHERN
INSURANCE COMPANY**

Defendants

Civil Action No.

JURY TRIAL DEMANDED

JUDGE:

**18-5903
SECT. HNAG. 1**

MAGISTRATE JUDGE

COMPLAINT FOR DAMAGES

Plaintiff, Larry Taylor Jr. respectfully alleges and represents as follows:

1. This is a civil action for personal injuries suffered by Plaintiff Larry Taylor Jr.
2. Plaintiff, is a person of the full age of majority and is a resident of and domiciled in New Orleans, Louisiana
3. Defendant, CDMT Trucking (CDMT), is a company organized under the laws of the State of Nebraska and, at all time pertinent hereto, it was authorized to do and doing business within the jurisdiction of this Honorable Court.
4. Defendant, Travis James a person of full age of majority and is a resident of the State of Nebraska.

☒ Fee 400.00
☐ Process _____
☒ Dktd _____
☐ CtRmDep _____
☐ Doc. No. _____

5. Defendant, Progressive Northern Insurance Company ("Progressive Northern") is an insurance company organized under the laws of and with its principal place of business in Wisconsin and, at all time pertinent hereto, it is authorized to do and doing business in the State of Louisiana and within the jurisdiction of this Honorable Court and upon information and belief, issues a policy of insurance (Policy No. 039301970) to CDMT., which provided coverage for the vehicle involved in the subject accident. It is sued herein pursuant to the Louisiana Direct Action Statute, La. R.S. Section 22:1269

6. Jurisdiction of this matter is based upon diversity of citizenship, 28 U. S. C. Section 1332 (a)(1), with the amount in controversy, exclusive of interest and costs, exceeding \$ 75000.00.

7. On or about June 14, 2017, Larry Taylor Jr. was operating his vehicle and traveling east on Almonaster Avenue within the jurisdiction of this Honorable Court when a commercial 18 wheeler operated by Travis James ("James"), attempted to make an unsafe U-turn and caused a violent crash with Larry's vehicle. At the time of the crash, the commercial 18-wheeler operated by James was being operated in the course and scope of his employment with CDMT.

8. James' failure to make a safe lane change while making a U-turn causing the injuries, harms, and losses sustained by Larry.

9. At the time and place of the accident in question, CDMT, by and

through its employee and/or permissive driver, James, was guilty of the following separate acts of negligence, each of which, singularly or in combination, were a proximate cause of the injuries, harms and losses alleged herein. Alternatively, in the event it is determined that James is not an employee of CDMT, then he was a permissive operator and/or statutory employee of CDMT and was using the commercial 18 wheeler owned or leased by CDMT with CDMT's knowledge, consent and approval. Further, James was guilty of negligence for the following reasons:

- (a) Failing to maintain a proper lookout as a person (who was trained to operate an 18 wheeler) using ordinary care would have done under the same or similar circumstances.
- (b) Failing to heed traffic laws as a person (who was trained to operate an 18 wheeler) using care would have done under the same or similar circumstances.
- (c) Failing to yield to traffic in a lane to which he was attempting to move;
- (d) Making an unsafe lane change and U turn; and
- (e) Failing to properly use his traffic turn signal while changing lanes.

10. Travis James was 100% at fault for the accident because he made a improper lane changes, made a improper U turn and was careless in operating the 2008 Peterbilt Tractor Trailor causing the accident sued upon.

11. Plaintiff would show that CDMT's omission or acts through their officers, employees or agents, as set forth herein and otherwise, constitutes negligence, each and all of which were a proximate cause of the crash and Plaintiffs' resulting injuries, harms and losses. These acts and/omissions include but are not limited to the following:

- a. Failing to stop its employees, permissive drivers and/or hired hands over whom it exercised control from operating company vehicles in an unsafe manner and failing to instruct employees, permissive drivers and/or hired hands over whom it exercised control to operate company vehicles in a manner that would have prevented the serious injuries sustained by Plaintiff on the date of the wreck;
- b. Failing to ensure a competent, adequately trained and experienced employee, permissive driver and/or hired had over whom it exercised control, was operating the subject company vehicle prior to and on the date of the wreck;

12. All of the above identified acts or omissions on the part of CDMT and/or its agents, servants, employees, permissive drivers and/or hired hands over whom it exercised control, including James, was or were a proximate cause of the wreck that makes the basis of this lawsuit and the resulting injuries, harms and losses sustained by plaintiff.

13. Plaintiff would show that each of the foregoing acts and/or omissions constituted negligence and that one, more than one, or any of such acts and/or omissions and various combinations thereof were a proximate cause of the wreck,

and the serious, debilitating and life altering injuries, harms and losses sustained by Plaintiff.

14. The occurrence made the basis of this suit and plaintiff(s) resulting injuries and damages were proximately caused by the negligence per se of Defendant, CDMT and James in one or more of the following respects:

- a. A vehicle shall be driven as nearly practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety. LA. REV. Stat. Section 32:79(1).
 - b. No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided herein to the driver of any vehicle immediately to the rear when there is opportunity to give such signal. La REV. Stat. Section 32: 104(c)
15. A professional truck driver is a superior actor in the eyes of the law.¹

1. According to *Rond v. Sims et al*, 355 So. 2d 591 (La Court of Apps. 4th Cir 1978), the 4th Circuit Court of Appeal affirmed the lower court ruling that a left turning motorist is held to a high degree of care in executing his maneuver, and when he makes a left turn from a lane other than the normal left turn lined in front of a vehicle in the left lane, without making sure that lane is clear, his (Sims) negligence is so apparent as not to require discussion. Sims was attempting his turn from the middle lane because he needed plenty of room in which to turn this large tractor-trailer. The court ruled that Sims was solely negligent for the accident. Moreover, under the jurisprudence, a greater burden of care is required for the motorist changing lanes than is demanded of a driver proceeding at a lawful rate on a straight line in a marked lane. *Averna v. Industrial Fabrication and Marine Service, Inc.*, 562 So. 2d 1157, 1161 (la. App. 4 Cir. 1990). Under the jurisprudence, when there is a change of lanes by a motorist immediately preceding an accident, the burden of proof is on the motorist changing lanes to show that it was first ascertained that the movement could be made safely. *Barrochere v. Baptiste*, 99-1800, p. 4 (La. App. 4th Cir. 2/2/2000), 752 So. 2d 324, 327; *Graham v. Edwards*, 614 So. 2d 811, 816 (La. App. 2 Cir. 1993), writ denied 619 So. 2d 547 (La. 1993). According to *Camatos v. Aetna Cas. & Sur. Co.*, 428 So 2d 1320 (La Court of Appeals, 3rd Circuit (1983), the Court of Appeals affirmed that the sole cause of the accident was the obstruction of the highway by a tractor trailer. In *Pruitt v. Nale*, 46 So. 3d 780 (La. Court of Appeals, 2nd Circuit 2010), the Court of Appeals affirmed the lower court ruling that the tractor trailer driver (Nale) was 100% at fault and noted: The turning maneuver violated state law which required that Defendant Nale make sure before the left turning that he could safely turn La. R. S. 32:104. Nale's began a left turn from the middle lane. Nale was ticketed for making an improper turn. Under this Statute, Nale was under a duty to refrain from making an left turn until such movement could be made with reasonable safety. Judicial interpretation of La. R. S. 32 a104 (A) have made it clear that a left-turning motorist has a strong duty of care. *Bruce v. State Farm Ins., Co.*, 37, 704 (La App. 2d Cir. 10/29/03), 859 So. 2d 296. The duty includes properly signaling an intention to turn left and keeping a proper lookout for both oncoming and overtaking traffic in order to ascertain that the left turn can be made with reasonable safety. *Id. Agency Rent A Car v. Hamm*, 401 So. 2d 1259 (La. App. 1st Cir 1981) The jurisprudence has recognized that commercial truck drivers are required to undergo testing and licensure which involve attending a special school designed to teach the mechanics and attendant hazards of operating large rigs. *Davis. V. Witz*, 02-3102 (La. 7/02/03) 851 So. 2d 1119. Base upon that premise, our courts have recognized that a professional truck driver is a superior actor in the eyes of the law. *Id*

Tractor Trailer driver owe a higher standard of care when operating a tractor trailer. service. Here, defendant Travis James had a duty that he have ascertained the movement in changing lanes could be made safely. Mr. James was careless in operating the tractor trailer, made an improper lane change, caused the accident sued upon, and thus was 100% at fault for the accident.

16. As all times material to this cause of action, Plaintiff(s) belonged to that class of persons for whom said statutes were enacted to protect. Plaintiff(s) would also show that each one of the foregoing acts and/or omissions constitutes negligence per se and that one, more than one, or all of such acts and/or omissions and various combinations thereof were a proximate cause of the incident in question, and the serious, painful and permanent injuries, harms and losses sustained by plaintiff.

17. Plaintiff would further show that each one of the following acts and/or omissions also constitute evidence of negligence and that one, more than one, or all of such acts and /or omission and various combinations thereof were a proximate cause of the violent incident in question, and the serious, painful and permanent injuries, harms and losses sustained by plaintiff.

18. At all times material to this cause of action, James was for all purposes a statutory employee of CDMT as contemplated by both the Federal

Motor Carrier Safety Responsibility Act (FMCSR) and Louisiana Statutes. An employee, as defined by FMSCR, “means any person engaged in a business affecting interstate commerce who owns or leases a commercial motor vehicle in connection with that business. . .” 49 C.F.R. Section 390.5 (1997) CDMT is thereby vicariously liable for the negligent actions and/or omissions of James.

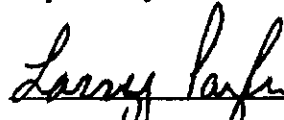
19. At all times relevant hereto, James, was in the course and scope of his employment with CDMT and /or of the companies owned or controlled by CDMT and/or was under CDMT’s supervision, direction and control as a permissive operator of the commercial 18-wheeler he was operating and/or the statutory employee of CDMT at the time of the incident, thereby rendering CDMT vicariously liable for the actions of its employee and/or permissive user and/or hired hand and/or statutory employee, James.

20. As a result of the crash, plaintiff sustained severe injuries including but not limited to fracture to his ribs, herniated discs to the neck and back, head injury(s) as well. Plaintiff will continue to suffer severe physical pain, mental anguish and emotional distress; Plaintiff sustained permanent and residual disabilities, and impairment, both physical and mental; he has suffered and will continue to suffer a loss of enjoyment of life and nervousness.

21. Plaintiff has required medical and hospital care and treatment for his injuries and the serious residuals thereof; plaintiff has been handicapped in plaintiff's everyday activities; Plaintiff has incurred medical, hospital and related expenses and will continue to incur such expenses in the future they will likely require additional medical and/or hospital care in the future, all for which plaintiff are entitled to recover damages from Defendants in all amounts reasonable under the premises.

WHEREFORE, Plaintiff, prays that defendants be served with a copy of this Complaint for damages and after due proceeding had, Plaintiff prays for judgment in his favor and against Defendants, jointly and severally, for all amounts reasonable under the premises, with legal interest thereon from date of judicial demand, including prejudgment interest, for all costs of these proceedings, for all general and equitable relief as the court may deem appropriate, and for a trial by jury.

Respectfully Submitted,



LARRY TAYLOR JR

2513 Gallier Street

New Orleans, Louisiana 70117

504-9147182

~~PLEASE SERVE hold service until 90.~~
Case 2:18-cv-05889-JTM-JCW Document 1 Filed 06/14/18 Page 9 of 9

PROGRESSIVE NORTHERN INSURANCE COMPANIES

through the

Louisiana Secretary of State

Tom Schedler

8585 Archives Ave

Baton Rouge, Louisiana 70809

and

CDMT and TRAVIS JAMES at

537 Steward Street, Cambell Nebraska 68932

JS 44 (Rev. 5/11)

Case 2:18-cv-05903-JTM-JCW Document 1-1 Filed 06/14/18 Page 1 of 1

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
LARRY TAYLOR, JR.

(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS
CDMT TRUCKING, TRAVIS JAMES, PROGRESSIVE NORTHERN
INSURANCE COMPANY

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE:

IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

18-5903
SECT. HNAG. 1

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☐ 1 ☐ 1 Incorporated or Principal Place of Business in This State ☐ 4 ☐ 4
Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal Place of Business in Another State ☐ 5 ☐ 5
Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchises	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input checked="" type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 D/WC/D/WV (405(g)) <input type="checkbox"/> 864 SSD Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729 (a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities Employment <input type="checkbox"/> 446 Amer. w/Disabilities Other <input type="checkbox"/> 448 Education	<input type="checkbox"/> Helms Corpus <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Conditions <input type="checkbox"/> 560 Civil Detainees - Conditions of Confinement	<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Other Immigration Actions	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

Click here to enter text.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT \$

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

EXHIBIT A-ROUSELL TIMELINE 000032

Petitioner's Exhibits_Plaisance_000147

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

**MELVIA HODGES, INDIVIDUALLY
AND AS THE MOTHER AND
ADMINISTRATOR OF THE ESTATE
OF HER MINOR SON, LAWAN
ROUSELL**

VERSUS

**TRAVIS JAMES d/b/a CDMT
TRUCKING and PROGRESSIVE
NORTHERN INSURANCE COMPANY**

CIVIL ACTION

NUMBER:

SECTION:

DIVISION:

JURY TRIAL REQUESTED

COMPLAINT FOR DAMAGES

**TO THE HONORABLE UNITED STATES DISTRICT COURT FOR THE EASTERN
DISTRICT OF LOUISIANA AND THE JUDGES THEREOF:**

The complaint of Melvia Hodges, individually and as the mother and administrator of the estate of her minor son, Lawan Rousell with respect represents that:

1.

Plaintiff, Melvia Hodges ("Hodges" or "Plaintiff"), individually and as the mother and administrator of the estate of her minor son, Lawan Rousell ("Lawan"), is a person of the full age of majority and is a resident of and domiciled in New Orleans, Louisiana. The minor, Lawan, is the natural son of Melvia Hodges.

2.

Defendant, Travis James, upon information and belief, is doing business as CDMT Trucking ("CDMT"), is a company organized under the laws of the State of Nebraska and, at all times pertinent hereto, it was authorized to do and doing business within the jurisdiction of this Honorable Court.

Case 2:18-cv-05889-JTM-JCW Document 1 Filed 06/14/18 Page 2 of 8

3.

Defendant, Progressive Northern Insurance Company ("Progressive Northern"), is an insurance company organized under the laws of and with its principal place of business in Wisconsin and, at all times pertinent hereto, it was authorized to do and doing business in the State of Louisiana and within the jurisdiction of this Honorable Court and, upon information and belief, issued a policy of insurance (Policy No. 039301970) to Travis James d/b/a CMDT, which provided coverage for the vehicle involved in the subject accident. It is sued herein pursuant to the Louisiana Direct Action Statute, La. R.S. § 22:1269.

4.

Jurisdiction of this matter is based upon diversity of citizenship, 28 U.S.C. §1332(a)(1), with the amount in controversy, exclusive of interest and costs, exceeding \$75,000.

5.

On or about June 14, 2017, Lawan was a passenger in a vehicle operated by his father, Larry Taylor ("Taylor"). Taylor was traveling east on Almonaster Avenue within the jurisdiction of this Honorable Court when a commercial 18-wheeler operated by, Travis James ("James"), attempted to make an unsafe U-turn and caused a violent crash with Larry's vehicle. At the time of the collision, the commercial 18-wheeler operated by James was being operated in the course and scope of his employment with CMDT.

6.

James' failure to make a safe lane change while making a U-turn caused the injuries, harms, and losses sustained by Lawan.

7.

At the time and place in question, Travis James d/b/a CMDT, by and through its owner/operator and/or permissive driver, James, was guilty of the following separate acts of

negligence, each of which, singularly or in combination, were a proximate cause of the injuries, harms and losses alleged herein. Alternatively, in the event it is determined that James is not an employee of Travis James d/b/a CDMT, then he was a permissive operator and/or statutory employee Travis James d/b/a CDMT and was using the commercial 18-wheeler owned or leased by Travis James d/b/a CDMT with Travis James d/b/a CDMT's knowledge, consent and approval. Further, James was guilty of negligence for the following reasons:

- (a) Failing to maintain a proper lookout as a person using ordinary care would have done under the same or similar circumstances;
- (b) Failing to heed traffic laws as a person using ordinary care would have done under the same or similar circumstances;
- (c) Failing to yield to traffic in a lane to which he was attempting to move;
- (d) Making an unsafe lane change and U-turn; and
- (e) Failing to properly use his traffic turn signal while changing lanes.

8.

Plaintiff would show that Travis James d/b/a CDMT's omissions or acts through their officers, employees, owners, or agents, as set forth herein and otherwise, constitutes negligence, each and all of which were a proximate cause of the crash and Lawan's resulting injuries, harms and losses. These acts and/omissions include but are not limited to the following:

- (a) Failing to stop its owners, employees, permissive drivers and/or hired hands over whom it exercised control from operating company vehicles in an unsafe manner and failing to instruct employees, permissive drivers and/or hired hands over whom it exercised control to operate company vehicles in a manner that would have prevented the serious injuries sustained by Plaintiff on the date of the wreck;
- (b) Failing to ensure a competent, adequately trained and experienced owner, employee, permissive driver and/or hired hand over whom it exercised control, was operating the subject company vehicle prior to and on the date of the wreck;

9.

All of the above identified acts or omissions on the part of Travis James d/b/a CDMT and/or its agents, servants, employees, owners, permissive drivers and/or hired hands over whom it exercised control, including James, was or were a proximate cause of the wreck that makes the basis of this lawsuit and the resulting injuries, harms and losses sustained by the Lawan.

10.

Plaintiff would show that each of the foregoing acts and/or omissions constituted negligence and that one, more than one, or all of such acts and/or omissions and various combinations thereof were a proximate cause of the wreck, and the serious, debilitating and life altering injuries, harms and losses sustained by Lawan.

11.

The occurrence made the basis of this suit and the Lawan's resulting injuries and damages were proximately caused by the *negligence per se* of Defendant, Travis James d/b/a CDMT in one or more of the following respects:

- (a) A vehicle shall be driven as nearly practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety. LA. REV. Stat. § 32.79(1).
- (b) No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided herein to the driver of any vehicle immediately to the rear when there is opportunity to give such signal. LA. REV. Stat. § 32.104(c).

12.

At all times material to this cause of action, Plaintiff belonged to that class of persons for whom said statutes were enacted to protect. Plaintiff would also show that each one of the foregoing acts and/or omissions constituted *negligence per se* and that one, more than one, or all of such acts and/or omissions and various combinations thereof were a proximate cause of the

incident in question, and the serious, painful and permanent injuries, harms and losses sustained by Lawan.

13.

Plaintiff would further show that each one of the foregoing acts and/or omissions also constitute evidence of negligence and that one, more than one, or all of such acts and/or omissions and various combinations thereof were a proximate cause of the violent incident in question, and the serious, painful and permanent injuries, harms and losses sustained by Lawan.

14.

At all times material to this cause of action, James was for all purposes a statutory employee of Travis James d/b/a CDMT as contemplated by both the Federal Motor Carrier Safety Responsibility Act ("FMCSR") and Louisiana statute. An employer, as defined by FMSCR, "means any person engaged in a business affecting interstate commerce who owns or leases a commercial motor vehicle in connection with that business..." 49 C.F.R. § 390.5 (1997). Travis James d/b/a CDMT is thereby vicariously liable for the negligent actions and/or omissions of James.

15.

At all times relevant hereto, James, was in the course and scope of his employment with Travis James d/b/a CDMT and/or one of the companies owned or controlled by Travis James d/b/a CDMT and/or was under Travis James d/b/a CDMT's supervision, direction and control as a permissive operator of the commercial 18-wheeler he was operating and/or the statutory employee of Travis James d/b/a CDMT at the time of the incident, thereby rendering Travis James d/b/a CDMT vicariously liable for the actions of its employee and/or permissive user and/or hired hand and/or statutory employee, James.

16.

As a result of the crash, Lawan sustained severe injuries including, but not limited to, a traumatic brain injury, fractured right hip, a fractured right wrist, a fractured lower back, right knee pain with possibly torn ligaments, and a cut from his forehead down to his upper eyelid; the aforesaid cut has unfortunately turned into a permanent scar down the middle of his face; in fact, the day after the collision, Lawan received a skin graft for eyelid avulsion. Lawan has suffered and will continue to suffer severe physical pain, mental anguish and emotional distress; he sustained permanently disfiguring injuries to his face; Lawan sustained residual and permanent disabilities, disfigurements and impairments, both physical and mental; he has suffered and will continue to suffer a loss of enjoyment of life.

17.

Lawan has required medical and hospital care and treatment for his injuries and the serious residuals thereof; he has been handicapped in his everyday activities; he has incurred medical, hospital and related expenses and will continue to incur such expenses in the future he will likely require additional medical and/or hospital care in the future; all for which Lawan is entitled to recover damages from Defendants in all amounts reasonable under the premises.

18.

As a result of the collision, Ms. Hodges also has a loss of consortium claim for her son's injuries. Lawan's pain and suffering caused Plaintiff Melvia Hodges to suffer mental anguish and emotional distress. Furthermore, Ms. Hodges was required to miss work to care for her son while Lawan was convalescing and is entitled to recover attendant care expenses for her time spent caring for Lawan.

WHEREFORE, Plaintiff, Melvia Hodges, individually and as the mother and administrator of the estate of her minor son, Lawan, prays that Defendants, Travis James d/b/a CDMT Trucking and Progressive Northern Insurance Company, be served with a copy of this Complaint for Damages and that after due proceedings had, Plaintiff prays for judgment in her favor and against Defendants, jointly and severally, for all amounts reasonable under the premises, with legal interest thereon from date of judicial demand, for all costs of these proceedings, for all general and equitable relief as the court may deem appropriate, and for a trial by jury.

Respectfully submitted,

**GAINSBURGH, BENJAMIN, DAVID,
MEUNIER & WARSHAUER, L.L.C.**

BY: s/Brittany R. Wolf

MICHAEL ECUYER (Bar No. 23050)
BRITTANY R. WOLF (Bar No. 36733)
2800 Energy Centre
1100 Poydras Street
New Orleans, Louisiana 70163-2800
Telephone: (504) 522-2304
Facsimile: (504) 528-9973
E-mail: mecuyer@gainsben.com
E-mail: bwolf@gainsben.com

*Attorneys for Plaintiff, Melvia Hodges
Individually and as the Mother and
Administrator of the Estate of her Minor Son,
Lawan Rousell*

SERVICE LIST:

Travis James d/b/a CDMT Trucking
Via the Louisiana Long Arm Statute
537 Stewart Street
Campbell, Nebraska 68932

-and-

Case 2:18-cv-05889-JTM-JCW Document 1 Filed 06/14/18 Page 8 of 8

Progressive Northern Insurance Company
Through the Honorable Secretary of State
8585 Archives Ave.
Baton Rouge, LA 70809

Page 8 of 8

EXHIBIT A-ROUSELL TIMELINE 000040

Petitioner's Exhibits_Plaisance_000155

**THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA**

LARRY TAYLOR JR.,

Plaintiff

VERSUS

CDMT TRUCKING, TRAVIS JAMES,
PROGRESSIVE NORTHERN
INSURANCE COMPANY

Defendants

* Civil Action No. 18-5903

* 2018 JUN 22 A 94 8

* JURY TRIAL DEMAND FILED

* JUDGE:
* SECTION.HMAG. 1

* MAGISTRATE JUDGE

MOTION TO ENROLL AS COUNSEL OF RECORD

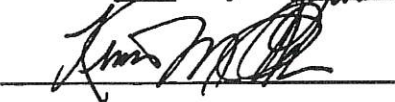
On motion of Kenneth Plaisance, on suggesting to the court that he was retained to represent LARRY TAYLOR JR and that ATTORNEY KENNETH PLAISANCE desires to enroll as attorney of record for LARRY TAYLOR JR.

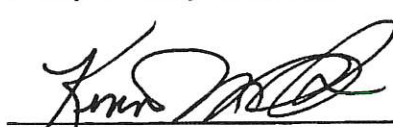
WHEREFORE, mover prays that after due deliberation, he be recognized and enrolled as counsel of record for the LARRY TAYLOR JR.

Respectfully Submitted,

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading has been served upon opposing counsel by first class mail, facsimile, or hand delivery on on this 22nd day of June, 2018.




Kenneth M. Plaisance (19738)
Attorney at Law
P. O. Box 8475
New Orleans, Louisiana 70182
Tel#: 504-905-1888
Fax: 888-412-3988
kplaws77@aol.com
kplaws88@gmail.com

Fee

Process

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CtRmDep

Doc. No.

**THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA**

LARRY TAYLOR JR.,

Plaintiff

VERSUS

**CDMT TRUCKING, TRAVIS JAMES,
PROGRESSIVE NORTHERN
INSURANCE COMPANY**

Defendants

*
*
*
*
*
*
*

Civil Action No. 18-5903

JURY TRIAL DEMANDED

**JUDGE:
SECTION. HMAG. 1**

MAGISTRATE JUDGE

ORDER

Considering the foregoing Motion,

IT IS ORDERED that **KENNETH M. PLAISANCE** be and mover is hereby
recognized as attorney of record for **LARRY TAYLOR JR.**

New Orleans, Louisiana this 26th day of June, 2018.


JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

MELVIA HODGES

*Individually and as the Mother and Administrator
of the Estate of her minor son, L.R.*

CIVIL ACTION

VERSUS

NO. 18-5889

TRAVIS JAMES ET AL

SECTION "H"(2)

ORDER CONSOLIDATING CASES

Considering the Motion to Consolidate Cases filed in Civil Action 18-5903 at Rec. Doc. 5;

IT IS ORDERED that the Motion is GRANTED and Civil Action Nos. 18-5889 and 18-5903 are **CONSOLIDATED**.

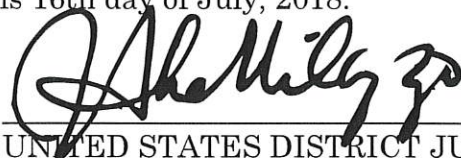
Pursuant to the Court's directive, all documents hereafter, including those referring to the consolidated proceeding, shall bear the caption of the lead case (18-5889) together with the docket number(s) of all cases within the consolidation. A separate notation should also be in the heading of each document listing as to which case(s) the document applies to, or the notation "ALL CASES" if it applies to all cases.

The clerk of court is directed to establish a master file and a master docket sheet for the consolidated group of cases.

All entries shall be made on the master docket sheet only, except that orders and documents terminating a party or disposing of a case will also be entered on the individual docket sheet by the clerk.

In the event that a case is separated from the consolidated group it shall be the responsibility of counsel to jointly designate the documents necessary to the continued litigation of the case to file such designation and copies of the documents.

Signed New Orleans, LA, on this 16th day of July, 2018.

A handwritten signature in black ink, appearing to read "Jane Triche Milazzo", written over a horizontal line.

UNITED STATES DISTRICT JUDGE
HON. JANE TRICHE MILAZZO

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

MELVIA HODGES, ET AL

*

Civil Action No. 2:18-cv-5889

*

Consolidated with 2:18-cv-5903

*

VERSUS

*

SEC. "H" DIV. "2"

*

*

JUDGE: JANE TRICHE MILAZZO

TRAVIS JAMES, ET AL

*

*

MAG.: JUDGE JOSEPH C.

This document relates to 2:18-cv-5903

*

WILKINSON, JR.

MOTION AND ORDER TO SUBSTITUTE COUNSEL

NOW INTO COURT, through undersigned counsel, comes Plaintiff, LARRY TAYLOR, JR., who heretofore has been represented by Kenneth M. Plaisance and who now moves this Honorable Court for an Order to withdraw Kenneth M. Plaisance and substitute Craig M. Robinson of Robinson Law Offices, LLC as counsel of record for said Plaintiff.

Respectfully submitted,

/s/ Craig M. Robinson

CRAIG M. ROBINSON (Bar No. 32934)

Robinson Law Offices, LLC

700 Camp Street

New Orleans, Louisiana 70130

T: (504) 458-5100

F: (504) 717-4627

E: craig@rlolegal.com*Attorney for Plaintiff, Larry Taylor, Jr.*

/s/ Kenneth M. Plaisance

KENNETH M. PLAISANCE (Bar No. 19738)

Attorney at Law

P.O. Box 8475

New Orleans, Louisiana 70182

T: (504) 905-1888

F: (888) 412-3988

E: kplaws88@gmail.comKplaws77@aol.com

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of August, 2018, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notice of electronic filing to all parties of record.

/s/ Craig M. Robinson

Craig M. Robinson

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

MELVIA HODGES, ET AL

*

Civil Action No. 2:18-cv-5889

*

Consolidated with 2:18-cv-5903

*

VERSUS

*

SEC. "H" DIV. "2"

*

*

JUDGE: JANE TRICHE MILAZZO

TRAVIS JAMES, ET AL

*

*

MAG.: JUDGE JOSEPH C.

This document relates to 2:18-cv-5903

*

WILKINSON, JR.

ORDER

IT IS HEREBY ORDERED that Craig M. Robinson be and is hereby substituted as counsel of record for Plaintiff, LARRY TAYLOR, JR., in lieu and in place of Kenneth M. Plaisance, and that the names of Craig M. Robinson of Robinson Law Offices, LLC be entered on the record and docket hereof.

NEW ORLEANS, LOUISIANA, this _____ day of _____, 2018.

JUDGE

POWER OF ATTORNEY AND CONTINGENT FEE CONTRACT

This agreement (hereinafter referred to as "Agreement") is made between Client, Melvia Taylor Hodges, Individually and as the Mother and Administrator of the Estate of her Minor Son, L.L.R. (hereinafter referred to as "Client"), DERRYBERRY ZIPS WADE, PLLC, AND GAINSBURGH, BENJAMIN, DAVID, MEUNIER & WARSHAUER, L.L.C. (HEREINAFTER REFERRED TO AS "ATTORNEYS"):

In consideration of the mutual promises and agreements herein contained, the parties hereto agree as follows:

I.

PURPOSE OF REPRESENTATION

1.01 Client hereby retains and employs Attorneys to assume the role of counsel, for the prosecution and trial of claims against any and all responsible entities or persons (hereinafter referred to as "Defendant") arising from the personal injuries, harms and losses of Client relating to the motor vehicle crash that occurred on or about June 14, 2017 in or about New Orleans, Louisiana (the "Case") and to recover compensation to which Client may be entitled, as well as to compromise and settle all claims arising out of the Case.

1.02 It is specifically agreed and understood that Attorneys' representation is limited to the specific persons and/or companies named herein as clients, and that Attorneys are not representing or expected to represent any person or entity not named herein as a client. It is expressly agreed and understood that Attorneys' obligations are limited to representing Client in the specific matters described herein, and Client does not expect Attorneys to do anything else.

II.

ATTORNEYS' FEES

2.01 This Agreement is a contingency fee contract. If Attorneys are successful in recovering for Client money and/or other things of value as described in paragraph 2.02, below, "whether by settlement, arbitration award, or by order or judgment". Attorneys shall receive attorneys' fees calculated as follows:

- (a) if the recovery is obtained prior to the time that Attorneys file suit on Client's behalf in a court of competent jurisdiction, then Attorneys shall receive as their fees the dollar amount equal to 35% of Client's total recovery determined in accordance with paragraph 2.02 and/or 2.03 below; and
- (b) if the recovery is obtained after Attorneys file suit on Client's behalf in a court of competent jurisdiction, then Attorneys shall receive as their fees the dollar amount equal to 40% of Client's total recovery determined in accordance with paragraph 2.02 and/or 2.03 below; and
- (c) if the recovery is obtained after notice of appeal has been filed, then Attorneys shall receive as their fees the dollar amount equal to 45% of Client's total recovery determined in accordance with paragraph 2.02 and/or 2.03, below.

Client consents to the fee sharing of the responsible attorneys and all recovered fees will be split between the responsible attorneys in the following manner:

Derryberry Zips Wade, PLLC	80%
Gainsburgh, Benjamin, David, Meunier & Warshauer, L.L.C.	20%

The above fee split is based on the work performed by each firm and/or the joint representation of Client and all firms remain jointly responsible for this matter.

If Attorneys do not obtain a recovery of money and/or other things of value for Client, then Client will not owe Attorneys any attorneys' fees.

2.02 The "total recovery" for purposes of calculating attorneys' fees pursuant to paragraph 2.01(a, b, c or d), above, includes all monies and everything of value (expressed in present cash dollars) recovered, received or obtained by Client as a result of any settlement of, or recovery pursuant to the Case, including but not limited to all liability insurance, umbrella insurance, personal injury protection (PIP) insurance, med pay insurance, uninsurance coverage and underinsurance coverage. Additionally, such things of value include, but are not limited to, modification, extinguishment or forgiveness of any loan or debt of Client or any interest or penalties relating thereto or any damages or monies Client owes or may be obligated for under any contract or the value of any performance thereunder.

2.03 In the event that Attorneys and Client cannot agree on the value, expressed in present cash dollars, of any item or thing included in the total recovery, the parties agree to retain the services of a mutually agreed upon accounting firm to make an appraised present cash value of such item or thing, which appraised value shall be assigned to such item or thing for purposes of determining the present cash value of the total recovery.

III. LIEN ON RECOVERY

3.01 In consideration of Attorneys' services, Client agrees to pay, and hereby conveys and assigns to Attorneys, a lien on all monies received in connection with all of Client's claims and causes of action to the extent of the applicable percentage set out in Paragraph 2.01.

3.02 All sums due and to become due are payable at THE LAW OFFICES OF DERRYBERRY ZIPS WADE, PLLC in Smith County, Texas.

3.03 In the event that the case is successfully resolved, all or part of the settlement and/or judgment may be placed in the Attorneys' trust account. As part of the material consideration for the Attorneys' agreement to represent the Client, any interest which is earned on the Client's recovery while in the Attorneys' trust account is the sole property of the Attorneys.

IV. DEDUCTION OF EXPENSES

4.01 It will be necessary for Attorneys to incur and advance certain court costs and other types of expenses on Client's behalf. These costs and other expenses may include, but are not limited to, the following: filing and service fees; costs for records; costs for investigative services; expert witness and consultant fees; mediator's fees; travel expenses (including air fare, ground transportation, vehicle mileage, lodging and meals); deposition expenses and court reporter fees; transcripts of court proceedings; charges for computer assisted legal research; preparation of exhibits and graphics; and miscellaneous copying (\$.15 per page), postage, long-distance telephone charges, facsimile charges at Attorney's usual rate, shipping expenses, and courier expenses. Client agrees that Attorneys may borrow funds from a financial lending institution to

finance or pay such Court costs and litigation expenses, and the reasonable interest charged by the institution on such borrowed funds will be added to the Court costs and litigation expenses. Client agrees to reimburse Attorneys for all such costs and expenses from Client's share of the total recovery, whether by settlement, arbitration award, or judgment. Upon Attorneys' receipt of the proceeds of any settlement, arbitration award, or judgment, Attorneys shall (1) retain as their attorneys' fees the applicable percentage of the total recovery in accordance with paragraph 2.01, above, (2) deduct from Client's share of the total recovery any costs and expenses Attorneys incur on Client's behalf and, if applicable, the amount of any liens and/or letters of protection applicable to the total recovery, and (3) disburse the remainder of Client's share of the total recovery to Client. Any payment or reimbursement of costs and expenses that we receive from another party, as a result of a court ruling or otherwise, will be credited against the amount Client would otherwise owe, or will be paid to Client if Client would not otherwise owe any such expenses. If Attorneys do not obtain a recovery of money or other things of value for Client, then Client will not be required to pay any expenses.

4.02 Client acknowledges that additional invoices or billing statements for expenses for which Client is liable may be received, posted or paid by Attorneys during and after preparation of Client's settlement statement. To aid in expeditiously handling these accounts, the Client authorizes Attorneys to withhold from the Client's share of the recovery 2% of the gross recovery or \$5,000 (whichever is greater). Said sums are to be held in a non-interest bearing trust account for 90 days from the date of disbursement of settlement proceeds to the Client. All expenses chargeable to the Client and not included in the Client's settlement statement and/or disbursement of proceeds to the Client shall be paid from the aforesaid sum being held in trust and the balance of said trust account funds shall be tendered to the Client at the end of the 90 day period.

V.

APPROVAL NECESSARY FOR SETTLEMENT

5.01 No settlement of the Case of any nature shall be made without Client's approval. Client agrees to consider any settlement offer Attorneys recommend before making a decision to accept or reject such offer. Client agrees to notify Attorneys prior to Client engaging directly in settlement discussions or negotiations with another party to the Case or with the attorney for another party to the Case.

5.02 Attorneys are hereby granted a power of attorney so that they may have full authority to prepare, sign and file all legal instruments, pleadings, drafts, authorizations and papers as shall be reasonably necessary to represent the Client or Clients in the case or to conclude this representation including settlement and/or reducing to possession any and all monies or other things of value due to the Client under the Case as fully as the Client could so do in person. This power of attorney specifically authorizes Attorneys to execute any settlement checks so that they can be placed in Attorney's trust account for further disbursement. Attorneys are also authorized and empowered to act as Client's negotiator in any and all settlement negotiations concerning the Case. In the event the Case is resolved by settlement or any other means, including a trial or arbitration, Client agrees that Attorneys are authorized, but are not obligated, to utilize the results of the Case in their promotional materials and website, as well as publicizing the results in public mediums and forums, including circulated publications.

VI. REPRESENTATIONS

6.01 It is understood and agreed that Attorneys cannot warrant or guarantee the outcome of the Case and Attorneys have not represented to Client that Client will recover all or any of the funds or other things of value so desired. CLIENT REALIZES THAT ATTORNEYS WILL BE INVESTIGATING THE LAW AND FACTS APPLICABLE TO THE CASE ON A CONTINUING BASIS AND SHOULD ATTORNEYS LEARN SOMETHING WHICH IN THE OPINION OF ATTORNEYS MAKES IT IMPRACTICAL FOR ATTORNEYS TO PROCEED WITH THE HANDLING OF THE CASE, THEN, SUBJECT TO APPLICABLE RULES, ATTORNEYS MAY WITHDRAW FROM FURTHER REPRESENTATION OF CLIENT BY SENDING WRITTEN NOTICE TO CLIENT'S LAST KNOWN ADDRESS.

6.02 Client acknowledges and represents that no person has solicited Client on behalf of Attorneys (or any lawyer or employee of Attorneys) by in-person or telephone contact that was not initiated by Client. Client further represents that with the exception of the Attorneys' agreements that are expressly set-forth herein, no one has promised Client anything to retain Attorneys.

VII.
COOPERATION OF CLIENT

7.01 Client agrees to cooperate with Attorneys at all times and to comply with all reasonable requests of Attorneys to permit Client's Case to be investigated and developed; to disclose to Attorneys all facts relevant to the Case; and to be reasonably available to attend any necessary meetings, depositions, preparation sessions, hearings, and trial. Client agrees to notify Attorneys in writing of each change in Client's mailing address and/or telephone number during this representation within fourteen (14) days of each such change. When the Case is over, Attorneys will provide Client the opportunity to retrieve Client's documents and tangible items. However, if Client has not retrieved those documents and tangible items within ninety (90) days after Attorneys have given Client written notice that the Case is over and that the Client's documents and tangible items are available to be picked up, Client agrees that Attorneys may dispose of those documents and tangible items.

7.02 Attorneys may, at their option and subject to applicable rules, withdraw from the Case and cease to represent the Client should Client fail to comply with any portion of this Agreement or should Attorneys decide that they cannot continue to be involved in the Case. Subject to applicable rules, such withdrawal will be effective by mailing written notice to Client's last known address.

VIII.
REFERRAL OR ASSOCIATION OF ADDITIONAL COUNSEL

8.01 Client agrees that Attorneys may refer this matter to another lawyer or associate additional lawyers to assist in representing Client and prosecuting the Case. Prior to any such referral or association, Client shall consent in writing to the terms of the agreement after being advised of (1) the identity of the lawyer(s) or law firm(s) involved, (2) whether the fees will be divided based on the proportion of services rendered or by lawyers agreeing to the joint responsibility for the representation, and (3) the share of the fee that each lawyer or law firm will receive, or if the division is based on the proportion of services performed, the basis on which the division will be made. The referral or association of additional attorneys will not increase the total fee owed by Client.

IX.
TEXAS LAW TO APPLY

9.01 This Agreement shall be construed under and in accordance with the laws of the State of Texas.

X.
PARTIES BOUND

10.01 This Agreement shall be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by applicable law, their respective heirs, executors, administrators, legal representatives, successors and assigns.

XI.
LEGAL CONSTRUCTION

11.01 In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions thereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

XII.
PRIOR AGREEMENTS SUPERSEDED

12.01 This Agreement constitutes the sole and only Agreement of the parties hereto. It supersedes any prior understandings (or written or oral agreement) between the parties respecting the subject matter of this Agreement. However, Attorneys have agreed that Client may revoke this agreement without Attorneys retaining any interest for 30 days from date of acceptance. This revocation provision will not apply if the Case is settled, in whole or in part, during that 30 days period. The parties agree that any amendment to this Agreement shall be made in writing and signed by each of the parties and that any alleged oral amendment is void and unenforceable.

I certify and acknowledge that I have had the opportunity to read this Agreement. I further state that I have voluntarily entered into this Agreement fully aware of its terms and conditions.

Signed, accepted and agreed on this 6 day of September, 2018.

Melvia T. Hedges

Client Signature

Printed Name:

4301 Mayo Blvd.

(Client Address)

N.O. La. 70126

(City, State, Zip Code)

Client Home Phone Number(s)

Client Work Phone Number(s)

504185-5710

Client Cell Phone Number(s)

taylorhannic26@yahoo.com

Client Email address(es)

Agreed:

DERRYBERRY ZIPS WADE, PLLC

By: 

Daryl L. Derryberry

100 E. Ferguson St., Suite 1212

Tyler, TX 77702

(903) 526-2767

Facsimile: (903) 526-2714

GAINSBURGH, BENJAMIN, DAVID, MEUNIER & WARSHAUER, L.L.C.

By: 

Michael J. Ecuyer
2800 Energy Centre
1100 Poydras Street
New Orleans, LA 70163
(504) 522-2304
Facsimile: (504) 528-9973

NOTICE TO CLIENTS

The State Bar of Texas investigates and prosecutes professional misconduct committed by Texas attorneys.

Although not every complaint against or dispute with a lawyer involves professional misconduct, the State Bar Office of General Counsel will provide you with information about how to file a complaint.

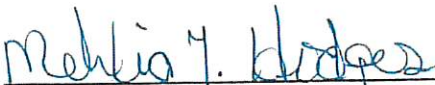
For more information, please call 1-800-932-1900. This is a toll-free phone call.

In addition, and in accordance with joint orders of the Texas Supreme Court and the Texas Court of Criminal Appeals, please take notice that those Courts have adopted the Texas Lawyers' Creed -- A Mandate for Professionalism and the Standards for Appellate Conduct. I have enclosed a copy of the Lawyers' Creed and the Standards for your information. The Creed and the Standards contain standards applicable to lawyers in their conduct towards the legal system generally, to clients, to other lawyers, and to judges. A principal goal of the Creed and the Standards is to reduce abusive tactics in litigation. In accordance with the orders of those Courts, we attempt to comply with the Creed and the Standards for Appellate Conduct, and we encourage you to familiarize yourself with the Creed and the Standards and to ask us any questions you might have about either and how they apply to the litigation process.

DERRYBERRY ZIPS WADE, PLLC

By: 

Daryl L. Derryberry
100 E. Ferguson St., Suite 1212
Tyler, TX 75702
(903) 526-2767
Facsimile: (903) 526-2714



Client Signature

Printed Name:

Melvin T. Hodges

Westlaw

TX R. LWYR'S CREED Mandate for Professionalism

Page 1

Texas Lawyer's Creed Mandate for Professionalism

Vernon's Texas Rules Annotated Currentness

The Texas Lawyer's Creed— a Mandate for Professionalism

ORDER OF ADOPTION

The conduct of a lawyer should be characterized at all times by honesty, candor, and fairness. In fulfilling his or her primary duty to a client, a lawyer must be ever mindful of the profession's broader duty to the legal system.

The Supreme Court of Texas and the Court of Criminal Appeals are committed to eliminating a practice in our State by a minority of lawyers of abusive tactics which have surfaced in many parts of our country. We believe such tactics are a disservice to our citizens, harmful to clients, and demeaning to our profession.

The abusive tactics range from lack of civility to outright hostility and obstructionism. Such behavior does not serve justice but tends to delay and often deny justice. The lawyers who use abusive tactics instead of being part of the solution have become part of the problem.

The desire for respect and confidence by lawyers from the public should provide the members of our profession with the necessary incentive to attain the highest degree of ethical and professional conduct. These rules are primarily aspirational. Compliance with the rules depends primarily upon understanding and voluntary compliance, secondarily upon re-enforcement by peer pressure and public opinion, and finally when necessary by enforcement by the courts through their inherent powers and rules already in existence.

These standards are not a set of rules that lawyers can use and abuse to incite ancillary litigation or arguments over whether or not they have been observed.

We must always be mindful that the practice of law is a profession. As members of a learned art we pursue a common calling in the spirit of public service. We have a proud tradition. Throughout the history of our nation, the members of our citizenry have looked to the ranks of our profession for leadership and guidance. Let us now as a profession each rededicate ourselves to practice law so we can restore public confidence in our profession, faithfully serve our clients, and fulfill our responsibility to the legal system.

The Supreme Court of Texas and the Court of Criminal Appeals hereby promulgate and adopt "The Texas Lawyer's Creed—A Mandate for Professionalism" as attached hereto and made a part hereof.

In Chambers, this 7th day of November, 1989.

THE TEXAS LAWYER'S CREED—A MANDATE FOR PROFESSIONALISM

I am a lawyer. I am entrusted by the People of Texas to preserve and improve our legal system. I am licensed by the Supreme Court of Texas. I must therefore abide by the Texas Disciplinary Rules of Professional Conduct, but I know that professionalism requires more than merely avoiding the violation of laws and rules. I am committed to this creed for no other reason than it is right.

I. OUR LEGAL SYSTEM

A lawyer owes to the administration of justice personal dignity, integrity, and independence. A lawyer should

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TX R LWYR'S CREED Mandate for Professionalism

Page 2

Texas Lawyer's Creed Mandate for Professionalism

always adhere to the highest principles of professionalism.

1. I am passionately proud of my profession. Therefore, "My word is my bond."
2. I am responsible to assure that all persons have access to competent representation regardless of wealth or position in life.
3. I commit myself to an adequate and effective pro bono program.
4. I am obligated to educate my clients, the public, and other lawyers regarding the spirit and letter of this Creed.
5. I will always be conscious of my duty to the judicial system.

II. LAWYER TO CLIENT

A lawyer owes to a client allegiance, learning, skill, and industry. A lawyer shall employ all appropriate means to protect and advance the client's legitimate rights, claims, and objectives. A lawyer shall not be deterred by any real or imagined fear of judicial disfavor or public unpopularity, nor be influenced by mere self-interest.

1. I will advise my client of the contents of this Creed when undertaking representation.
2. I will endeavor to achieve my client's lawful objectives in legal transactions and in litigation as quickly and economically as possible.
3. I will be loyal and committed to my client's lawful objectives, but I will not permit that loyalty and commitment to interfere with my duty to provide objective and independent advice.
4. I will advise my client that civility and courtesy are expected and are not a sign of weakness.
5. I will advise my client of proper and expected behavior.
6. I will treat adverse parties and witnesses with fairness and due consideration. A client has no right to demand that I abuse anyone or indulge in any offensive conduct.
7. I will advise my client that we will not pursue conduct which is intended primarily to harass or drain the financial resources of the opposing party.
8. I will advise my client that we will not pursue tactics which are intended primarily for delay.
9. I will advise my client that we will not pursue any course of action which is without merit.
10. I will advise my client that I reserve the right to determine whether to grant accommodations to opposing counsel in all matters that do not adversely affect my client's lawful objectives. A client has no right to instruct me to refuse reasonable requests made by other counsel.
11. I will advise my client regarding the availability of mediation, arbitration, and other alternative methods of resolving and settling disputes.

III. LAWYER TO LAWYER

A lawyer owes to opposing counsel, in the conduct of legal transactions and the pursuit of litigation, courtesy,

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TX R LWYR'S CREED Mandate for Professionalism

Page 3

Texas Lawyer's Creed Mandate for Professionalism

candor, cooperation, and scrupulous observance of all agreements and mutual understandings. IN feelings between clients shall not influence a lawyer's conduct, attitude, or demeanor toward opposing counsel. A lawyer shall not engage in unprofessional conduct in retaliation against other unprofessional conduct.

1. I will be courteous, civil, and prompt in oral and written communications.
2. I will not quarrel over matters of form or style, but I will concentrate on matters of substance.
3. I will identify for other counsel or parties all changes I have made in documents submitted for review.
4. I will attempt to prepare documents which correctly reflect the agreement of the parties. I will not include provisions which have not been agreed upon or omit provisions which are necessary to reflect the agreement of the parties.
5. I will notify opposing counsel, and, if appropriate, the Court or other persons, as soon as practicable, when hearings, depositions, meetings, conferences or closings are cancelled.
6. I will agree to reasonable requests for extensions of time and for waiver of procedural formalities, provided legitimate objectives of my client will not be adversely affected.
7. I will not serve motions or pleadings in any manner that unfairly limits another party's opportunity to respond.
8. I will attempt to resolve by agreement my objections to matters contained in pleadings and discovery requests and responses.
9. I can disagree without being disagreeable. I recognize that effective representation does not require antagonistic or obnoxious behavior. I will neither encourage nor knowingly permit my client or anyone under my control to do anything which would be unethical or improper if done by me.
10. I will not, without good cause, attribute bad motives or unethical conduct to opposing counsel nor bring the profession into disrepute by unfounded accusations of impropriety. I will avoid disparaging personal remarks or acrimony towards opposing counsel, parties and witnesses. I will not be influenced by any ill feeling between clients. I will abstain from any allusion to personal peculiarities or idiosyncrasies of opposing counsel.
11. I will not take advantage, by causing any default or dismissal to be rendered, when I know the identity of an opposing counsel, without first inquiring about that counsel's intention to proceed.
12. I will promptly submit orders to the Court. I will deliver copies to opposing counsel before or contemporaneously with submission to the Court. I will promptly approve the form of orders which accurately reflect the substance of the rulings of the Court.
13. I will not attempt to gain an unfair advantage by sending the Court or its staff correspondence or copies of correspondence.
14. I will not arbitrarily schedule a deposition, court appearance, or hearing until a good faith effort has been made to schedule it by agreement.
15. I will readily stipulate to undisputed facts in order to avoid needless costs or inconvenience for any party.
16. I will refrain from excessive and abusive discovery.

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TX R LWYR'S CREED Mandate for Professionalism

Page 4

Texas Lawyer's Creed Mandate for Professionalism

17. I will comply with all reasonable discovery requests. I will not resist discovery requests which are not objectionable. I will not make objections nor give instructions to a witness for the purpose of delaying or obstructing the discovery process. I will encourage witnesses to respond to all deposition questions which are reasonably understandable. I will neither encourage nor permit my witness to quibble about words where their meaning is reasonably clear.

18. I will not seek Court intervention to obtain discovery which is clearly improper and not discoverable.

19. I will not seek sanctions or disqualification unless it is necessary for protection of my client's lawful objectives or is fully justified by the circumstances.

IV. LAWYER AND JUDGE

Lawyers and judges owe each other respect, diligence, candor, punctuality, and protection against unjust and improper criticism and attack. Lawyers and judges are equally responsible to protect the dignity and independence of the Court and the profession.

1. I will always recognize that the position of judge is the symbol of both the judicial system and administration of justice. I will refrain from conduct that degrades this symbol.

2. I will conduct myself in Court in a professional manner and demonstrate my respect for the Court and the law.

3. I will treat counsel, opposing parties, the Court, and members of the Court staff with courtesy and civility.

4. I will be punctual.

5. I will not engage in any conduct which offends the dignity and decorum of proceedings.

6. I will not knowingly misrepresent, mischaracterize, misquote or miscite facts or authorities to gain an advantage.

7. I will respect the rulings of the Court.

8. I will give the issues in controversy deliberate, impartial and studied analysis and consideration.

9. I will be considerate of the time constraints and pressures imposed upon the Court, Court staff and counsel in efforts to administer justice and resolve disputes.

Texas Lawyer's Creed Mandate for Professionalism, TX R LWYR'S CREED Mandate for Professionalism

Current with amendments received through February 1, 2006

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END OF DOCUMENT

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Case 2:18-cv-05889-JTM-JCW Document 20 Filed 10/16/18 Page 1 of 6

**THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA**

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF LA.
2018 OCT 16 P 12:40
WILLIAM W. BLEVINS

**MELVIA HODGES AS THE
MOTHER AND ADMINISTRATOR
OF THE ESTATE OF HER MINOR
SON LAWAN ROUSELL**

Plaintiff

v.

**TRAVIS JAMES d/b.a CDMT
TRUCKING, PROGRESSIVE
NORTHERN INSURANCE**

COMPANY T AL,

Defendants

* **CIVIL ACTION No 18-cv-05889**
* *Consolidated with 2:18-cv-5903*

* **SEC "H" DIV. "2"**

* **JUDGE: JANE TRICHE
MILAZZO**

* **MAG.: JUDGE JOSEPH C
WILKINSON, JR.**

**MOTION/PETITION TO INTERVENE TO COLLECT ATTORNEYS
FEES MEMO INCORPORATED.**

Attorney Kenneth Plaisance files this Intervention in above entitled and numbered causes, who respectfully request that the court apportion 40% of the Gross Settlement amount or judgment against defendants as attorneys fees regarding plaintiff Lawan Rousell's case or claims and would show the following:

1.

Kenneth Plaisance was employed by and represented **LAWAN ROUSELL** through his natural parents and tutrix **MELVIA TAYLOR HODGES AND LARRY TAYLOR JR.** as shown by the attached contingency

☒ Fee
☒ Process
☒ Dktd
☐ CirMdop
☐ Doc Mf

contracts for an accident that happened on June 14, 2017, and service has been rendered for and on behalf of plaintiff(s) and cost have been expended on plaintiffs behalf.

2.

Under the term of the contingency agreement, the plaintiff and mover agreed in the following:

It is agreed that the attorney shall receive the following percentage of the amount recovered before the deduction of cost and expenses as set forth in Section 2 herein:

Thirty Three and a Third percent (33.33%) of any amount recovered before suit is filed in the event of settlement,

Forty percent (40%) of any amount recovered in the event suit is filed, and

Fifty percent (50%) of any amount recovered subsequent to an appeal of the case or cases.

"Recovery" shall mean anything of value, including without limitation medical, pain and suffering, wage loss, loss of use, property damage, loss of earning capacity, loans, or deferred payment terms attorney's fees, if any, and pre and post petition judgment interest, if any, that are awarded by the Court or are applicable pursuant to statute or rule. See: exhibit

3.

The attorney's fee agreed upon is fair and reasonable in the light of the hours expended by counsel, the result obtained, and the risks involved in taking this case on a contingency basis.

4.

On October 18, 2017, mover filed suit on behave of Lawan Rousell in Orleans Parish Civil District Court-- docket number 2017-9436. On or about December 1, 2017, the original case was removed to Federal Court-- docket number 2:17-cv-14040 KDF KWR See: petition and federal form.

5.

The original suit was dismissed without prejudice.

6.

Although there was a waiver(s) of conflict of interest, it was suggested that the cases and/or claims be referred out due to a conflict of interest.

7.

The above entitled and numbered cases were filed before June 14, 2018.

8.

The above entitled and numbered cases were consolidated.

9.

Undersigned desires to reopen 2:17-CV 14040 because of the statutory fees and penalties for bad faith assertions. See original petition.

10.

The undersigned attorney would show the Court that the fees represented are/were necessities, and that petitioner has a vested and choate property right and

his intervention to recover attorneys fees makes him a full party in the underlying action.

11.

According to *Saucier v. Hayes Dairy Product, Inc.* 373 So. 2d 102(1979), the La. Supreme Court allowed both the former and current attorney to collect 33.33% each of the amount recovered. The issue in the *Saucer case* was “Whether an attorney discharged without cause prior to the completion of his service is entitled to the percentage of his fee stipulated in his contingent fee contract, when the client subsequently recovers from the adverse party.” The Court of Appeals found that the first attorney was discharged without cause, and basing its award upon the contingent fee contract, it increased the award to 33.33% of the recovery. The Louisiana Supreme Court affirmed its decision and awarded both attorneys to charge 33.33% for attorneys’ fee each. It appears from *Saucier case*--that if the former attorney performed at least two years of work, then he/she is entitled to at least 33.33 % of any thing recovered.

12.

As intervener petitioner is permitted to litigate fully once admitted to the law suit and is vested with all of the same procedural rights and remedies of the original parties.

13.

Intervener has submitted a charging lien letter to Progressive for his service rendered, as well.

14.

Petitioner request judgment for attorneys fees as shown by the attached exhibit , plus any other fees and cost incurred in the filing and prosecution of this intervention.

WHEREFORE, intervener prays that upon final trial and hearing hereof, he be given judgment for attorney fees (both statutory and by contract) rendered through the date hereof and attorney fees renders from and after the date of filing of this Intervention, for his costs previously expended and to be expended in the future, for interest and for such other and further relief as he might show himself justly entitled. Mover states that a copy of this Motion has been forwarded to the all opposing parties.

Respectfully Submitted,



KENNETH M. PLAISANCE
ATTORNEY AT LAW

La. BAR NUMBER 19738

P. O. Box 8475

New Orleans, Louisiana 70182

Tel#: 504-905-1888

Fax: 888-412-3988

kplaws88@gmail.com

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading has been served upon that on the 16th day of October, 2018, I either filed by hand delivery or by electronically filed the forgoing with the Clerk of Court for the United States District Court for the Eastern District of Louisiana and notice of this filing will be sent to all counsel of record either by depositing a copy of same in the United States mail first class postage prepaid, or by email, facsimile transmission or by hand delivery


KENNETH M. PLAISANCE

<u>1</u>	Filed & Entered: 06/14/2018	Complaint
<u>2</u>	Filed & Entered: 06/14/2018	Initial Case Assignment
<u>3</u>	Filed & Entered: 06/14/2018 Terminated: 06/18/2018	Motion to Appear Pro Hac Vice
<u>4</u>	Filed & Entered: 06/14/2018 Terminated: 06/18/2018	Motion to Appear Pro Hac Vice
<u>5</u>	Filed & Entered: 06/14/2018 Terminated: 06/18/2018	Motion to Appear Pro Hac Vice
<u>6</u>	Filed & Entered: 06/15/2018	Summons Issued
<u>7</u>	Filed & Entered: 06/18/2018	Order on Motion to Appear Pro Hac Vice
<u>8</u>	Filed & Entered: 06/18/2018	Order on Motion to Appear Pro Hac Vice
<u>9</u>	Filed & Entered: 06/18/2018	Order on Motion to Appear Pro Hac Vice
<u>10</u>	Filed & Entered: 07/16/2018	Order
<u>11</u>	Filed & Entered: 07/20/2018	Answer to Complaint
<u>12</u>	Filed & Entered: 07/20/2018	Answer to Complaint
<u>13</u>	Filed & Entered: 08/29/2018 Terminated: 09/12/2018	Motion to Substitute Attorney
<u>14</u>	Filed & Entered: 09/12/2018	Order on Motion to Substitute Attorney
<u>15</u>	Filed & Entered: 09/12/2018	Request for Summons Issued
<u>16</u>	Filed & Entered: 09/13/2018	Summons Issued
<u>17</u>	Filed & Entered: 09/27/2018	Answer to Complaint
<u>18</u>	Filed & Entered: 09/27/2018	Answer to Complaint
<u>19</u>	Filed & Entered: 09/28/2018	Affidavit of Service
<u>20</u>	Filed & Entered: 10/16/2018 Terminated: 10/17/2018	Motion to Intervene
<u>21</u>	Filed & Entered: 01/07/2019	Answer to Complaint
<u>22</u>	Filed & Entered: 01/30/2019	Order
<u>23</u>	Filed & Entered: 02/26/2019	Scheduling Order
<u>24</u>	Filed & Entered: 03/18/2019	Status Report
<u>25</u>	Filed & Entered: 03/20/2019	Status Report
<u>26</u>	Filed & Entered: 05/14/2019	Order Dismissing Case
<u>27</u>	Filed & Entered: 05/16/2019 Terminated: 05/17/2019	Motion to Dismiss
<u>28</u>	Filed & Entered: 05/17/2019	Order on Motion to Dismiss

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

**MELVIA HODGES AS THE MOTHER
AND ADMINISTRATOR OF THE
ESTATE OF HER MINOR SON,
LAWAN ROUSELL**

**CIVIL ACTION NO: 2:18-CV-
05889**

VERSUS

SECTION: H

**CDMT TRUCKING, PROGRESSIVE
NORTHERN INSURANCE COMPANY,
and PROGRESSIVE CASUALTY
INSURANCE COMPANY**

MAGISTRATE: 2

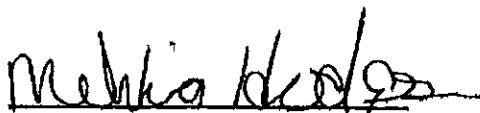
MEDIATION AGREEMENT

On this 7th day of May 2019, the undersigned parties and their attorneys reached an agreed resolution in the above referenced matter by accepting the mediator's proposal, with such resolution calling for the following:

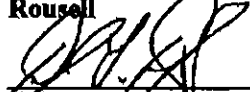
1. Plaintiffs, Melvia Hodges as Mother and Administrator of the Estate of her Minor Son, Lawan Rousell ("Plaintiffs") agrees to accept, and Defendants, CDMT Trucking, Progressive Northern Insurance Company and Progressive Casualty Insurance Company (the "Defendants") (collectively the "Parties") agrees to pay to Plaintiff, Melvia Hodges as Administrator of the Estate of her Minor Son, Lawan Rousell and her attorneys, the sum of \$ [REDACTED] and agrees to pay Melvia Hodges, Mother of Lawan Rousell and her attorneys, the sum of [REDACTED] full and complete settlement of any and all claims and damages arising from the injuries, harms and losses sustained by Plaintiffs in the wreck of June 14, 2017 (the "Wreck"). The entire sum is to be paid within thirty (30) days after the Court's approval of the settlement. The settlement check(s) shall be made payable in the

manner ordered by the approving Court. The settlement checks shall be delivered to the appropriate person or entities as directed by the Court approving the settlement.

2. Additionally, the costs associated with the formation of a trust and/or Medicaid set aside shall be borne solely by Defendants. However, all other Court costs are to be paid by the party incurring same and Plaintiffs agrees to execute a full and complete release, settlement, mutual confidentiality (Plaintiffs and Defendants) and indemnity agreement in favor of Defendants. The indemnity shall be for claims brought by, through or under Plaintiffs and shall be limited to the amount of consideration paid under this agreement.
3. Further, Plaintiffs agree to terminate and dismiss their lawsuit against Defendants with prejudice to the re-filing of same.
4. Plaintiffs agrees to satisfy all outstanding valid liens or medical bills that are related to the Plaintiffs' claimed damages in this lawsuit.
5. Defendants' counsel will be responsible for the preparation of the settlement documents and will submit same to Plaintiffs' counsel for approval and execution no later by May 14, 2019.
6. This Mediation Agreement is an enforceable agreement.
7. It is also agreed that (1) the attorneys for the Parties have jointly prepared and approved this Agreement, and that the Parties have relied entirely on the legal advice of their respective counsel in effecting this settlement; and (2) the Parties enter into this agreement of their own voluntary will and accord. The Parties further agree to execute and deliver such additional agreements and documents as shall be necessary to carry out the purposes of this Agreement.



Melvia Hodges, as Mother and Administrator of the Estate of her Minor Son, Lawan Rousell



Daryl L. Doerryberry
Plaintiffs' Counsel
Date: May 7, 2019

Tax ID# 72-1525075



Pat B. Rouen
Defendants' Counsel
Date: May 7, 2019

Daryl L. Derryberry*
Craig D. Zips*
Guy I. Wade, III



derryberry zips wade
ATTORNEYS

TYLER DALLAS

*Board Certified - Personal Injury Trial Law - Texas Board of Legal Specialization

Tyler, Texas
Phone: 903-526-2767

dld@dzwlaw.com
Fax: 903-526-2714

June 17, 2019

Kenneth Plaisance
P.O. Box 8475
New Orleans, Louisiana 70182

Via CMRRR: 7018 1830 0001 6760 3272
and Via Email

RE: *Melvia Hodges, et al. v. CDMT Trucking, et al.* in the
United States District Court for the Eastern District of Louisiana
Civil Action No. 18-5889 (the "Lawsuit")

Dear Mr. Plaisance:

With regard to your claim for a share of the attorneys' fees from the settlement of the claims of Plaintiff, Melvia Hodges as the Mother and Administrator of the Estate of Her Minor Son, Lawan Rousell ("Plaintiffs") in the Lawsuit, please be advised that if you insist upon receiving a share of these fees, we will require an ethics opinion from the Louisiana Office of Disciplinary Counsel ("LODC") prior to any such fee sharing. In this regard, it is imperative that the LODC be provided with all factual information concerning this matter, including your prior representation of Lawan and his mother (Melvia Hodges) and father (Larry Taylor). Importantly, we have previously discussed our concerns, on several occasions, of any potential fee sharing with you given what we believe are clear conflicts of interest that exist in connection with your claim to fees from the settlement of Plaintiffs', as defined above, claims in the Lawsuit. Thus, we want to ensure that neither you, nor we, run afoul of any ethics rules by sharing fees relating to the settlement of Plaintiffs', as defined above, claims in the Lawsuit. If we do not hear from you by July 8, 2019, your silence will be considered a voluntary waiver of any claim for fees associated with the settlement of Plaintiffs', as defined above, claims in the Lawsuit.

Very truly yours,

/s/ **Daryl L. Derryberry**

Daryl L. Derryberry

C: Michael Ecuyer *via email*

100 E. Ferguson Street
Suite 1212
Tyler, Texas 75702
(903) 526-2767
(903) 526-2714 fax

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EXHIBIT A-ROUSELL TIMELINE 000071

Petitioner's Exhibits_Plaisance_000186

**LAW OFFICES OF
KENNETH M. PLAISANCE
P. O Box 8475
NEW ORLEANS, LOUISIANA 70122**

**KENNETH M. PLAISANCE
ATTORNEY AT LAW
NOTARY PUBLIC
MEMBER OF THE BAR
UNITED STATES SUPREME COURT,
WASHINGTON, D. C.**

**TEL: (504) 905-1888
FAX: (888) 412-3988**

***Admitted in Louisiana and Texas
LLM in Employment Law***

June 16, 2019
Darryl Derryberry
DerryBerry, Zips, Wade
Attorneys 100 E. Ferguson Street
Suite 1212
Tyler, Texas 75702

Michael Ecuyer
Gainburgh, Benjamin, David, Meunier &
Warshauer, LLC Darryl Derryberry
2800 Energy Centre
1100 Poydras Street
New Orleans, Louisiana 70163-2800

**RE: MELVIA HODGES OBO LAWAN ROUSELL v. PROGRESSIVE
INSURANCE CO, ET AL
2:18CV 05889**

Dear Mr. Derryberry:

This correspondence is in reference to cost involved in the Lawan's case and my interest in his case. I have placed a lien on the claim to protect my interest in Lawan's case. I know there were some concerns about a conflict of interest but I had secured waivers of the potential conflict by all parties concerned.

Darryl Derryberry
June 16, 2019
Page 2

Nevertheless, your firm could not practice law in Louisiana or represent someone in Louisiana up until you obtained an order from a motion pro-hac-vice. I may obtain an opinion from Texas Bar. With respect to bad faith and Louisiana law on bad faith, your firm failed to pursue these issues, because your lack of knowledge on La. R. S. 22: 1973 and La. R. S. 22: 1892. If you would have pursued bad faith issued regarding not paying the medical bills when Progressive had satisfactory proof of loss, then you may have gotten attorneys fees' paid, instead of taking it from the proceeds. This takes it to another possibility of malpractice.

CONFLICT OF INTEREST

ISSUES

Issue is when can an attorney represent a father and son in the same case?

Is there any issue of representing the father and son, if the attorney obtains a waiver of a conflict of interest signed by the mother, the father and son?

LAW

The general rule is that if the attorney has a waiver of conflict of interest, then it is legal to represent both parties and proceed forward in litigating.

What are the exceptions? Please provide me with the case law from Louisiana, Texas and federal jurisdictions on the exceptions to waivers of conflicts. My understanding of the Louisiana law on conflict of interest is as follows:

According to Rule 1.7 of the Louisiana Rules of Professional Conduct provides

Darryl Derryberry

June 16, 2010

Page 3

Conflict of Interest

(a) Except as provided in paragraph (b) a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict adverse to another client: or

(1) the representation of one client will be directly adverse to another client; or

(2) There is a significant risk that the representation of one or more client's will be materially limited by the lawyers' responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph :

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before the tribunal; and

(4) each affected client gives informed consent, confirmed in writings.

Paragraph (b) requires the lawyer to obtain the informed consent of the client confirming in writing.

Darryl Derryberry

June 16, 2010

Page 4

Ordinarily, clients may consent to representation notwithstanding a conflict. Consent-ability is typically determined by considering the interest of the clients will be adequately protected if the clients are permitted to give there informed consent to a representation burden by a conflict of interest.

LIABILITY WAS NOT DETERMINED CLIENTS BELIEVE THAT DEFENDANTS WERE 100% AT FAULT FOR THE ACCIDENT.

In this case, liability was not determined. We believed that the defendants were 100% at fault for the accident. Out of the abundance of caution, I thought is wise to get a consent to waive the conflict of interest. I had the father (Larry) and the mother's (Mrs. Hodges) sign the waiver of the conflict of interest that potentially may exist in the negotiation and litigation of this matter.

So, it was appropriate to obtain an consent to waive the potential conflict of interest from the parents.

NON-CONSENTABLE LEGAL REPRESENTATION

It appears that your position is that the interests of the parties were directly against each other.

Paragraph (b)(3) describes conflicts that are non-consentable because of the institutional interest in vigorous development of each client's positions when the client are aligned, directly against each other. This paragraph does not preclude a lawyer's multiple representation of the adverse parties to a mediation.

Common representation is permissible where the clients are generally aligned in interest even though there are some difference in interest among them. However, a lawyer may not represent multiple parties for a litigation whose interest are fundamentally antagonist to each other.

Here, Larry and Lawan were not directly against each other nor their interests were antagonist to one and other. Thus, it is more likely than not that non-consentable representation does not apply to father and son.

Darryl Derryberry

June 16, 2010

Page 5

It was your position that we should get another attorney involve for Lawan and for Larry. It appears, that you attempted to cure a potential conflict of interest by dropping Larry in order to undertake the representation of another client, perhaps a more lucrative client.

Nevertheless and therefore, it is my opinion of Louisiana Law (to which you cannot give an opinion) that once I obtained a waiver of the conflict of interest I could represent both son and father.

You were supplied a copy of the contract and the copies of the waivers of conflict.

Nevertheless, below is a breakdown of work performed:

DATE	WORKED PERFORMED	EXPENSES	TIME/HOURS
06-14-17	Received phone call from Larry Taylor, LMTCB Larry was involved in a automobile accident on Almonaster Street In New Orleans Louisiana		
06-15-17	Prepared an initial letter Dos and don'ts letter to Client. Contacted Larry. Visit Louisiana State University Medical Center visited Larry. Larry was in the bed had contusions and concussions to the Head and several broken ribs. Met Mrs. Melvia Anne Taylor Hodges in the room Larry was under drugs But somewhat coherent and alert		

Darryl Derryberry

June 16, 2010

Page 6

Larry signed the contingency
Contract with HIPPA medical
Authorization forms for
His son Lawan and himself
Lawan receive severe cut
above the eye broken hipp
sprain and dislocated arm
and other injuries.
The slash is noticeable.
Received the police report item
number and citation
for following to close
and the witnesses name and
Telephone number
Larry called the witness from his
Hospital room. Spoke to witness
Asked if I can get a statement
From him. He said yes
He is a truck driver as well
and said that the driver of the
18 wheeler was attempt to
make a U-turn in front of
Larry car and cause the accident
the witness stated because he
drives 18 wheelers and was
extensively trained in what
to do when attempting a
U turn. It was the witnesses
opinion that Mr. James
was 100% at fault for
the accident.
Set up a date to take statement
From witness Prepared letter
To Progressive Insurance

4.00

Darryl Derryberry
 June 16, 2010
 Page 7

06-16-17	Prepared letter to Louisiana State University Medical Center and Children Hospital to obtain the medical bill For Lawan and Larry Prepared letter of representation. Double insured to Progressive Sent letter to Progressive Ins. Company,			.30
06-16-17	Went to the scene of the Accident took pictures,			1.00
06-17-17	Reviewed NOPD Vehicle Impoundment Form Visit Green acres wrecker yard to take picture of Vehicle on Almonaster Blvd. Second visit			2.00
06-19-17	Pick up Lawan's medical Bills from LSUMC in the amount \$ 49,011.11 Jay Toody claims representative Progressive Northern Ins. Co. Acknowledged undersigned's letter of representation,			1.15
06-20-17	Paid to have picture blown up \$ 3.95 10 pictures of Lawan and Car Went to three Walgreens	39.50		1.00
06-21-17	Prepared initial letter Do and don't letter Melvia Taylor Hodges With contract and			

Darryl Derryberry
 June 16, 2010
 Page 8

	Met with Mrs. Hodges She signed the contract Waiver of interest Gave client an advance	200.00	1.00
06-22-17	Research case on Damages Prepared edit, typed and mailed Lawan's settlement proposal with pictures to Jay Toddy Progressive Claims Adjustor.		6.00
06-22-17	Receive information from Progressives receptionist That Claims adjustor Casey Hirsch Of Progressive Ins. Co was assign Lawan's claim. Sent settlement Proposal with pictures to Casey Hirsch Received and reviewed email from Casey Hirsh		.15
06-24-17	Received and reviewed Affidavit Sent Affidavit to Casey Hirsch Progressive Sent Mr. Green's Statement as well.		.30
06-26-17	Prepared, typed, edited letter to Children's Hospital Visited Children's Hospital pick up medical bills in the amount of \$ 65,225.38		1.00
07-01-17	Visit UMC Received and reviewed medical bills from UMC		1.00

Darryl Derryberry
 June 16, 2010
 Page 9

07-03-17	Visited Police Department Obtained a copy of the Police Report	20.00	1.00
07-05-17	Received and reviewed email from Casey Hirsch Progressive adjustor Mrs. Hirsch rejected Settlement demand Submitted affidavit to Ms. Hirsch		.45
07-06-17	Went to Larry House to get His proof of insurance. Double Insured case. Emailed proof of insurance to Mrs. Hirsch		1.00
07-07-17	Emailed medical bills To Casey Hirsch Progressive Prepared letter to Progressive property damage department Emailed letter		.50
07-10-17	Paid for Medical bills UMC Sent Progressive Mr. Taylors affidavit.	189.00	.15 35
07-11-17	Prepared letter to LSUMC billing department requesting Medical reports on Lawan Rousell.		.30
07-12-17	Received letter from Claims representative Ashleigh Smothers Progressives Ins. Co.		.15

Darryl Derryberry

June 16, 2010

Page 10

07-12-17	Visited LSUMC to obtain Medical reports /bills for Lawan. Reviewed medical report Research cases on damages Sent email to Casey Hirsch requesting the reserves Progressive Set, Prepared settlement proposal letter to Progressive Northern Insurance Company addressed to Claims Representation Casey Hirsh-- attached medical Bills. Made a serious demand For the policy limits. Certified 7015 0640 0004 1908 0818 Went to post office mailed letter.		1.50	
				8.00
07-13-17	Sent and emailed Medical records to Ms. Hirsch Emailed correspondence to Mrs. Hirsch regarding receiving medical bills.		.15	
07-14-17	Prepared letter visited post office mailed letter certified 7015 0640 000419080978	\$ 6.59	1.30	
07-15-17	Legal Research trucking cases		6.00	
07-16-17	Legal Research liability cases		3.50	
07-17-17	Prepared letter to Progressive regarding Property damages Prepared typed edit letter to Progressive about my legal analysis		1.35	
07-18-17	Researched law on contract and double Insured. Prepared letter to Progressive			

Darryl Derryberry

June 16, 2010

Page 11

	President 12 page letter regarding Ambiguity of the policy. letter.	8.00
07-19-17	Legal research Received and reviewed letter from Rev claims.	3.00 .15
07-20-17	Research Louisiana civil code and cases on obligation and bad faith regarding obligation and Contracts. Prepared edit, typed emailed mailed letter to Lucinda Page Fourth claims adjustor handling the claims. Requesting The policy language with a copy of Mr. James' liability policy.	6.00
07-21-17	Prepared demand letter to President of Progressive with exhibits Receive email from Derouen Law firm he is not representing Progressive Corp Legal Research Liability	5.00
07-22-17	Legal Research Contract	3.00
07-23-17	Edited demand letter to President Tricia Griffith Went to post office mailed letter Certified 7015 0640 0004 1908 9660	2.00

Darryl Derryberry
 June 16, 2010
 Page 12

07-24-17	Prepared letter to President of Progressive Tricia Griffith certified letter 7015 0640 0004 1908 9134 With medical bills. Legal Research on vehicle products liability	4.00
07-25-17	Researched and prepared Memo / letter about Products liability	6.00
07-26-17	Prepared and sent letter to President of Progressive Regarding skid marks.	1.00
07-28-17	Received and reviewed letter to Michael J Kreiner Claims Director Progressive Corp stating that Mr. Jame's Policy with Progressive is \$ 1,000,000.00	.30
07-27-17	Received and reviewed letter from Scott Durman at Progressive Ins Co.	.30
08-04-17	Prepared edited typed Letter to Tricia Griffin regarding last letter to settle the case It appears that Progressive is forcing its insured to file suit. Research and Prepared rough draft of petition. 18 page petition.	8.00

Darryl Derryberry
 June 16, 2010
 Page 13

08-08-17	Received and reviewed correspondence From Progressive corp Stated that Progressive Corp do not provide our insured's policy to third parties absent a court order. Bad faith Misrepresenting statement of the policy	.30
08-14-17	Legal Research bad faith It has been more that 30-days Since the accident and more than 30-days since Progressive receive satisfactory proof of loss. La. R. S. 22:1892 La. R. S. 22: 1963, 1964, and 1973 Sent Tricia Griffin President Email requesting the policy language of Mr. James's policy with Progressive Prepared, edited, typed, emailed and mailed via certified mail 7015 0640 0004 1906 9196 to President of Progressive Tricia Griffith regarding bad faith.	\$ 6.80 8.00
08-30-17	Edited rough draft of petition.	2.00
09-02-17	Regarding the case In traffic court. Prepared Motion for Preliminary Examination, Motion to suppress Evidence Motion to Remand Pre-trial motions Went to Traffic Court Filed these motions	

Darryl Derryberry
 June 16, 2010
 Page 14

	Waited in court		
	Spoke with the City Attorney	8.00	
09-15-17	Received and reviewed letter with narrative From Dr. Kim Hardy	.40	
09-27-17	Legal Research on Products Liability Sudderth v Mariner Kevin Lawson Product Liability	2.00	
09-28-17	Receive letter from Defense Attorney Pat Derouen regarding the trailer.	.15	
10-02-17	Prepared letter to Civil District Court Orleans Parish fax filed complaint		
10-02-17	Edit petition for damages 18 pages.	5.00	
10-03-17	Researched issues	3.00	
10-05-17	Prepared discovery Interrogatories Request for Production of Documents Request for Admission of Facts	3.00	
10-10-17	Edit Petition for damages 19 Pages with exhibits with discovery	2.00	
10-18-17	Filed Petition in State Court 2017 9436	\$ 569.50	
	Service fees	198.72	1.00
10-20-17	Prepared settlement proposal To Progressive's Attorney Derougn Edit letter and went to Post Office and mailed letter certified 70150640000419069240	9.18	3.00

Darryl Derryberry
 June 16, 2010
 Page 15

11-16-17	Received letter from David Strauss with motion for extension of time to file responsive pleadings.	.10
11-24-17	Receive and reviewed exception of Of insufficiency of service Prepared a memo in opposition or in response	3.00
12-01-17	Received and reviewed Notice of Removal to Federal Court.	.15
12-04-17	Prepared letter to Secretary of State To serve a copy of the petition To the President of Progressive And Travis James	.10
	Met with Ed Downing at ghw legal.com To review whether he was Interest in litigating the case.	1.00
12-14-17	Received notice of David Straus Enrolling as counsel of record 2-17 cv 14040 KDE KWR	.10
12-16-17	Received letter from Ed Downing attorney stating he was not interest in Being lead counsel.	.10
12-19-17	Received and reviewed Motion to dismiss certain claims under rule 12(b)(6) From David Straus	

Darryl Derryberry

June 16, 2010

Page 16

	Prepared typed and edit rough draft of Memo in opposition To Progressive's 12(b) (6) motion,	6.00
12-21-17	Met with Mr. Shaw Regarding becoming lead counsel	2.00
12-22-17	Prepared and typed and filed Motion to dismiss without prejudice	1.15
12-26-17	Received letter from Mr. Shaw declining to be lead attorney	.35
01-10-18	Prepared letter to Pat De Rougen	.40
01-11-18	Attended seminar on	
01-13-18	wheeler cases in Dallas three day Drove to Dallas. Stayed at The Holiday Inn	30.00
	Gas 120.00	
	Food 100.00	
01-19-18	Receive and reviewed letter with document from Mr. Derouen,	.20
01-29-18	Prepared and sent letter of Guarantee letter of protection to Magnolia MRI	.15

Darryl Derryberry
 June 16, 2010
 Page 17

01-26-18	Recieved MRI reports from Magnolia Prepared and sent email to Pat Derougn with medical authorization for Lawan	1950.00	.15
	Can practice in Eastern District of La. Federal Court and in Texas.		
02-01-18	Received and reviewed Email about MAPS mediation from Pat Derougn		.10
02-25-18	Received and reviewed email from Pat Derougn Regarding mediation.		.10
03-03-18	Postpone mediation		
03-26-18	Contacted Dan Gibbins at Derryberry, Zips Wade, Need a litigation attorney To co-counsel with my firm.		.10
03-28-18	Met with Dan and Darryl at Derryberry Zip 100 E. Ferguson Street Tyler Texas 75702 Drove to Tyler Texas 6 hour each way Gas	70.00	14.00

Darryl Derryberry
 June 16, 2010
 Page 18

Gave Darryl the physical file
 Agreed to co-counsel.
 Darryl and Dan can
 not practice in Louisiana
 I will sponsor them
 To practice in the Eastern
 District of Louisiana

Can practice in Louisiana again

04-16-18	Prepared and sent letter With MRI report.	.15
04-24-18	Emailed Pat Derouen regarding the possibility of mediation again.	.10
05-03-18	Spoke about sending A copy of the file Through Drop box out	.10
05-14-18	Received text from Dan Gibbons	.10
05-15-18	Received text from Dan Gibbons	.10
05-17-18	Received text from Dan Gibbons	.10
05-18-18	Received text from Dan Gibbons Responded about three way phone call	.10
05-21-18	Set up three way with Larry Prepared and sent Settlement Proposal with medical bills	.35

Darryl Derryberry

June 16, 2010

Page 19

05-22-18	Received text from Dan Gibbons	.10
05-23-18	Received text from Dan Gibbons Responded with information	.10
05-24-18	Received text from Dan Gibbons	.10
05-29-18	Received text from Dan Gibbons	.10
05-30-18	Received text from Dan Gibbons Request Dec Page from Pat Derougn and From Progressive Northern	.15
05-31-18	Text Dan Gibbons	.10
06-02-18	Received and reviewed email from Sally Shushan Mediator.	.15
06-04-18	Received Text from Dan Gibbons Responded to Text Texas Firm can not practice in Louisiana.	.10
06-05-18	Received text from Dan Gibbons Received Email from the Mediator from Sally Shushan Sent settlement proposal To retired judge Shushan Research can represent each party if I have a waiver	1.00
06-06-18	Received Text from Dan Gibbons Emailed Lawan's 7-23-17 Settlement Proposal to Pat Derougn.	.20

Darryl Derryberry
 June 16, 2010
 Page 20

06-08-18	Received phone call From Derryberry Law Firm Received contract from To Dan at Derryberry Law firm regarding Lawan. Derryberry Can not practice in Louisiana Explained that Larry had marijuana in his system There was some baggage about why Lawan's name Was change to Rousell		.25
06-10-18	Prepared for mediation		3.00
06-11-18	Prepared for mediation Went to mediation Received Settlement Agreement Offer \$ 325,000.00 we will pay for all past, present and future medical bills for Lawan. Received text from Derryberry Law firm		8:00
06-12-18	I sent a text message stating that I will file suit and straighten out With the parties about the name change and marijuana. Sent signed contract to Derryberry Law firm. Derryberry Law firm Stated Attorney Michael Ecuyer was getting involved		.15
06-14-18	Received text communication from Derryberry Law Firm Prepared complaint and filed complaint on behalf of Larry	400.00	1.00

Darryl Derryberry
 June 16, 2010
 Page 21

06-18-18	Prepared lien letter on Lawan's case Sent lien letter to Lucinda Page At Progressive Ins co claims	.30
06-20-18	Prepared Motion to enroll Reviewed rules of federal court Filed Motion to enroll.	1.00
07-12-18	Prepared and filed Motion To Consolidate	1.00
07-19-18	Received and reviewed letter and discovery request from Pat Derouen	3.00
08-13-18	Receive acknowledgment of the Progressive about Lien letter.	
	Mr. Robinson became lead counsel	
10-01-18	Research and prepared Rough draft of motion to intervene	4.00
10-08-18	Prepared edited and typed filed Motion to intervene in Federal court	1.00
06-16-16	Prepared edit typed work perform letter	<u>4.00</u>
TOTAL TIME/HOURS		213.35

As set forth above, the total hours worked by
 my firm. Some of the phone
 calls and visit to the clients were not
 included At this time.

Darryl Derryberry
June 16, 2010
Page 22

Contract reads in case of filing suit
my firm is entitled to 40% of anything (40% of the proceeds)
that is recovered

???

or

at a hourly fee of \$ 250.00 per hour which ever is greater,

TOTAL AMOUNT OF ATTORNEY'S FEES

\$ 53,250.00

Please provide the settlement amount(s) so I can
calculate the 40% fee.

Sincerely,

Kenneth M. Plaisance

KENNETH M. PLAISANCE, ESQ.

Please remit as soon as possible.

LAW OFFICES OF
KENNETH M. PLAISANCE
5626 ELYSIAN FIELDS AVENUE
NEW ORLEANS, LOUISIANA 70122

KENNETH M. PLAISANCE
ATTORNEY AT LAW
NOTARY PUBLIC
MEMBER OF THE BAR UNITED STATES SUPREME COURT,
WASHINGTON, D. C.
Admitted in Louisiana and Texas
LLM in Employment Law

TEL: (504) 905-1888

FAX: (888) 412-3988

Melvia Annie Taylor Hodges
Larry Taylor
Lawan Rousell (son)

RE: Larry Taylor, Jr. et al v. Progressive Corporation et al. CDC
Docket Number: 2017-09436
My client(s): Larry Taylor Jr. and Lawan Rousell

Dear Mr. Taylor and Ms. Hodges:

WAIVER OF A CONFLICT OF INTEREST

My firm have represented and continue to represent Lawan Rousell (son) and you --Larry Taylor Jr. in above mentioned and entitled cause. Although, Lawan Rousell is Melvia Hodges and Larry Taylor's son, there may be a conflict of interest because of two insurance companies are being sued under Progressive Corporation. We need a informed consent to waive the conflict of interest.

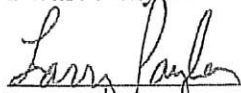
Very Truly yours:

Kenneth Plaisance

ACKNOWLEDGMENT AND CONSENT

Despite any potential or actual conflict of interest which may exist now or in the future, we hereby consent to the firm's simultaneous representation of both Lawan Rousell and Larry Taylor with respect to the above mentioned case. We futher agree that the firm may withdraw its representation of either client or both clients without prejudice should it determine the continued representation might violate applicable rules of professional conduct .

I waive any conflict of interest which may or may not occur.



Larry Taylor Jr.

Larry Taylor Jr. OBO Lawan Rousell



Melvia Annie Taylor Hodges

Sincerely,

Kenneth M. Plaisance
KENNETH M. PLAISANCE, ESQ.

LAW OFFICES OF
KENNETH M. PLAISANCE
5626 ELYSIAN FIELDS AVENUE
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TEL: (504) 905-1888
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Larry Taylor
Lawan Rousell (son)

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Docket Number: 2017-09436
My client(s): Larry Taylor Jr. and Lawan Rousell

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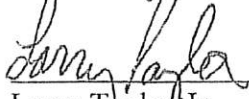
Very Truly yours:

Kenneth Plaisance

ACKNOWLEDGMENT AND CONSENT

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I waive any conflict of interest which may or may not occur.


Larry Taylor Jr.

 LAWAN ROUSELL
Larry Taylor Jr. OBO Lawan Rousell

Sincerely,

Kenneth M. Plaisance
KENNETH M. PLAISANCE, ESQ.

**Louisiana State Bar Association
Rules of Professional Conduct Committee**

PUBLIC Opinion 08-RPCC-016¹

March 29, 2008

Conflict of Interest: Simultaneous Representation of Driver and Guest-Passenger

Conflicts are probably the most perplexing ethical issues that a lawyer will encounter. In general, a lawyer will not be able to represent both a driver and a guest-passenger simultaneously in an automobile accident due to a prohibited conflict of interest that will usually arise as a matter of course. This conflict derives from the fact, which is present in almost all such cases, that the passenger will have a claim against the driver and/or his insurer if the driver is even slightly at fault in the accident. However, in some rare instances, the dual representation may be permissible if the conflict is reasonably waivable and if the lawyer strictly follows the rules for informed consent with both clients. Because these instances are so rare, and because the potential for failing to obtain truly informed consent from both clients is substantial, the safe and recommended ethical course of action is to avoid this type of dual representation entirely.

Because they customarily share some familial or social relationship, it is not unusual for drivers and their guest-passengers to seek joint legal representation following an automobile accident. Such representations are fertile ground for conflicts of interest due to the potential for driver fault and adverse and/or competing claims by the passengers. In these situations, the lawyer often

¹ The comments and opinions of the Committee—public or private—are not binding on any person or tribunal, including—but not limited to—the Office of Disciplinary Counsel and the Louisiana Attorney Disciplinary Board. Public opinions are those which the Committee has published—specifically designated thereon as “PUBLIC”—and may be cited. Private opinions are those that have not been published by the Committee—specifically designated thereon as “NOT FOR PUBLICATION”—and are intended to be advice for the originally-inquiring lawyer only and are not intended to be made available for public use or for citation. Neither the LSBA, the members of the Committee or its Ethics Counsel assume any legal liability or responsibility for the advice and opinions expressed in this process.

cannot adequately represent the passenger without compromising the lawyer's duty of loyalty to the driver, and vice versa.

Lawyers often inquire whether the conflict rules permit them to represent both the driver and the guest-passenger in an automobile accident. In almost all such cases, there will be a prohibited conflict of interest between the driver and the guest-passenger that will prevent such a joint/simultaneous representation. The most common conflict will arise when the driver is even slightly at fault in the accident, which is a fact that may not be known or realized until the case is factually developed. Thus, even when a conflict is not apparent at the outset of the representation, in most cases a conflict will arise when the defense begins to assert and develop facts that the driver was partially at fault. At that moment, even the lawyer who believed in good faith that the driver was not at fault will have a conflict that must be addressed, since the passenger client will now have an interest in pursuing a claim based on that driver-fault theory, if ultimately proven to be true. For all of these reasons, the only safe ethical course is to decline the proposed joint representation of the driver and guest-passenger from the outset.

Rule 1.7

The permissibility of a particular representation is fact-intensive and turns upon an application of the facts to Rule 1.7.² Rule 1.7(a)³ provides that a "concurrent" conflict of interest exists when: (1) the representation of one client will be "directly adverse" to another of the lawyer's clients; or (2) there is a "significant risk" that the lawyer's representation of one client will be "materially limited" by the lawyer's responsibilities to another client, a former client, a third person or by a personal interest of the lawyer.⁴

² Rule 1.7 of the Louisiana Rules of Professional Conduct.

³ Rule 1.7(a) of the Louisiana Rules of Professional Conduct.

⁴ Indeed, a lawyer considering a proposed simultaneous representation of a driver and guest-passenger should reflect upon whether the lawyer's own financial desires and/or pressures may be influencing the lawyer's

When there is a concurrent conflict of interest, the second part of the Rule – Rule 1.7(b)⁵ – governs whether the representation can still proceed nonetheless. There is essentially a three-step process that must be considered:

First, some conflicts are so pronounced that they are not susceptible to waiver⁶ by the clients and, accordingly, are fatal to the representation. For example, a lawyer representing two clients in the same litigation may never assert a claim by one of the clients against the other client in that same litigation.⁷

professional judgment about the prudence of the proposed representation, given the respective individual interests of each proposed client.

⁵ Rule 1.7(b) of the Louisiana Rules of Professional Conduct.

⁶ It should be noted, for technical accuracy, that Rule 1.7(b) does not use the term “waiver”, instead referring to “informed consent, confirmed in writing.” Rule 1.0 of the Louisiana Rules of Professional Conduct defines these terms. Rule 1.0(e) states: “...(e) ‘*Informed consent*’ denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct...” Rule 1.0(b) states “...(b) ‘*Confirmed in writing*,’ when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See paragraph (e) for the definition of ‘informed consent.’ If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter...”

⁷ The district court in Verret v. State Farm Mutual Automobile Insurance Company, 759 So. 2d 115 (La. App. 3rd Cir., 2000), vacated a default judgment on the grounds that the lawyer, on behalf of a guest-passenger, obtained it against his other client, the driver. While the court of appeal decided the case on a procedural issue without reaching the conflict, Rule 1.7(b)(3), as amended in 2004, expressly forbids this conduct.

Second, the lawyer must reasonably believe that he can “provide competent and diligent representation to each affected client,” notwithstanding the conflict.⁸ Of course, if the lawyer does not believe that he can do so (or a disinterested lawyer would find the belief unreasonable), the lawyer must decline the representation. In performing this analysis, the relationship and wishes of the clients should be taken into account. Moreover, the lawyer’s duty of disclosure is ongoing. Therefore, consent should be revisited if any new pertinent facts develop over the course of the litigation.

Third, assuming that the first two conditions noted above are satisfied, the lawyer must obtain the informed consent of each of the affected clients, confirmed in writing.⁹ The lawyer should include a discussion of options and available alternatives for the affected clients—in this case, noting the option of each client to choose alternate, independent legal counsel rather than continue with the proposed representation. If each client then still chooses to proceed with the proposed representation, acknowledging and waiving the option to choose alternate, independent legal counsel—and confirms that in writing—the lawyer has satisfied Rule 1.7(b) and may proceed with the proposed representation, despite the concurrent conflict.

As such, the Committee acknowledges that in very rare factual cases, simultaneous representation of the driver and the guest-passenger may be possible, though it is still not advisable. The Committee must stress that these cases in our view are very few, and still will usually present conflicts of interest that must be addressed. First, an objectively reasonable lawyer must conclude that the conflict is one that can be waived, which often will not be the case, even if the lawyer involved feels differently. Second, even if a reasonable lawyer would conclude that the conflict can be waived, the lawyer then must strictly comply with the rules of informed consent, as amplified above. Again, however, the Committee must urge great caution.

⁸ Rule 1.7(b)(1) of the Louisiana Rules of Professional Conduct.

⁹ Rule 1.7(b)(4) of the Louisiana Rules of Professional Conduct.

In cases such as these, the clients are often unsophisticated, thus elevating the risk that the lawyer may not be successful in obtaining truly informed consent even when he or she tries in good faith to do so.

An Example: Simultaneous Representation of Spouses

To understand the concept (which must be stated generally and contoured to the specific facts of each representation), it is helpful to consider a proposed dual/simultaneous representation of spouses. Many ethics inquiries feature husbands and wives who are adamant that they are not willing to allege claims against each other under any circumstances. Although it has been said that “love conquers all” and the lawyer may feel certain that the proposed representation poses no danger, prudence would still suggest that the lawyer recognize the concurrent conflict between a driver and guest-passenger and evaluate the facts under Rule 1.7.¹⁰

In terms of immediate rights, the passenger-spouse may not realize or understand that there may be insurance coverage available for the driver’s fault, i.e., that while the driver may not personally have to come out-of-pocket to satisfy a monetary award, the driver may still need to be sued in order to obtain a recovery from the driver’s insurer. By the same token, the passenger-spouse must also understand that the claims against the driver are subject to liberative prescription and may be lost forever if suit is not filed timely.¹¹

What is more, circumstances sometimes change. Spouses cooperating happily in pursuit of a tort action today may be warring ruthlessly in a divorce action tomorrow. Under those

¹⁰ Rule 1.7 of the Louisiana Rules of Professional Conduct.

¹¹ In cases such as this, it may even be advisable to invite independent counsel to advise the passenger, confirmed in writing, as to the conflict and the advisability of providing informed consent to the proposed simultaneous representation. If the passenger still chooses to provide the informed consent, then the shared lawyer has a very solid record on which to proceed with the joint representation.

circumstances, a lawyer who neglected to explain at the outset of the dual/simultaneous representation that confidentiality is shared commonly/equally between the co-clients is particularly at risk of being disqualified from continuing to represent either client.¹²

For reasons such as these, the Committee believes that facts will rarely be present to suggest that a simultaneous representation of driver and guest-passenger would be prudent, even if otherwise technically permitted by Rule 1.7.

Conclusion

Conflicts are probably the most perplexing ethical issues that a lawyer will encounter. In general, a lawyer will not be able to represent both a driver and a guest-passenger simultaneously in an automobile accident due to a prohibited conflict of interest that will usually arise as a matter of course. This conflict derives from the fact, which is present in almost all such cases, that the passenger will have a claim against the driver and/or his insurer if the driver is even slightly at fault in the accident. However, in some rare instances, the dual representation may be permissible if the conflict is reasonably waivable and if the lawyer strictly follows the rules for informed consent with both clients. Because these instances are so rare, and because the potential for failing to obtain truly informed consent from both clients is substantial, the safe and recommended ethical course of action is to avoid this type of dual representation entirely.

¹² In joint representations, confidentiality, under Rule 1.6 of the Louisiana Rules of Professional Conduct, may be simply characterized as an “all-for-one and one-for-all” arrangement—i.e., any information relating to the representation provided to the lawyer by either client is “pooled” for the mutual benefit of the clients and the lawyer can have no secrets about the case to the exclusion of either client. In the event the joint representation is cut short, Rule 1.9(c)—with its prohibition against using confidential information to the disadvantage of a former client—becomes particularly pertinent.

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

**MELVIA HODGES, INDIVIDUALLY
AND AS THE MOTHER AND
ADMINISTRATOR OF THE ESTATE
OF HER MINOR SON, LAWAN
ROUSELL**

VERSUS

**TRAVIS JAMES d/b/a CDMT
TRUCKING and PROGRESSIVE
NORTHERN INSURANCE COMPANY**

CIVIL ACTION

NUMBER: 2:18-cv-05889

SECTION: H

MAGISTRATE: 1

NOTICE OF SUBMISSION

TO: ALL COUNSEL OF RECORD

PLEASE TAKE NOTICE that Plaintiff, Melvia Hodges, Individually and as the Mother and Administrator of the Estate of her Minor Son, Lawan Rousell, and her counsel's Motion to Determine Conflict-Free Status and Entitlement to Attorney's Fees will come before the Court for submission on the 25th day of September 2019, at 10:00 a.m.

Respectfully Submitted,

**GAINSBURGH, BENJAMIN,
DAVID, MEUNIER & WARSHAUER, LLC**

/s/ Brittany R. Wolf

Brittany R. Wolf (La. Bar 36733)

Michael Ecuyer (La. Bar 23050)

2800 Energy Centre

1100 Poydras Street

New Orleans, Louisiana 70163

Phone: (504) 522-2304

Fax: (504) 528-9973

Email: bwolf@gainsben.com

Email: mecuyer@gainsben.com

-and-

DERRYBERRY ZIPS WADE, PLLC
DANIEL G. GIBBINS (*pro hac vice*)
DARYL L. DERRYBERRY (*pro hac vice*)
CRAIG D. ZIPS (*pro hac vice*)
100 E. Ferguson St.
Suite 1212
Tyler, Texas 75702
Telephone: (903) 526-2767
Facsimile: (903) 526-2714

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of September, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system.

/s/ Brittany R. Wolf
Brittany R. Wolf

EXHIBIT

3

**THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA**

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF LA.
LOUISIANA
2018 OCT 16 P 12:40

**MELVIA HODGES AS THE
MOTHER AND ADMINISTRATOR
OF THE ESTATE OF HER MINOR
SON LAWAN ROUSELL**

Plaintiff

V.

**TRAVIS JAMES d/b.a CDMT
TRUCKING, PROGRESSIVE
NORTHERN INSURANCE**

COMPANY T AL.

Defendants

* CIVIL ACTION No 18- cy 05889
* Consolidated with 2:18cv 5903

* SEC "H" DIV. "2"

* JUDGE: JANE TRICHE
* MILAZZO

* MAG.: JUDGE JOSEPH C
* WILKINSON, JR.

**MOTION/PETITION TO INTERVENE TO COLLECT ATTORNEYS
FEES MEMO INCORPORATED.**

Attorney Kenneth Plaisance files this Intervention in above entitled and numbered causes, who respectfully request that the court apportion 40% of the Gross Settlement amount or judgment against defendants as attorneys fees regarding plaintiff Lawan Rousell's case or claims and would show the following:

1.

Kenneth Plaisance was employed by and represented **LAWAN ROUSELL** through his natural parents and tutrix **MELVIA TAYLOR HODGES AND LARRY TAYLOR JR.** as shown by the attached contingency

Contingency Fee _____
 Process _____
 Dkt'd _____
 CirRmDep _____
 Dis No _____
 Exhibits Plaisance 000221 _____

contracts for an accident that happened on June 14, 2017, and service has been rendered for and on behalf of plaintiff(s) and cost have been expended on plaintiffs behalf.

2.

Under the term of the contingency agreement, the plaintiff and mover agreed in the following:

It is agreed that the attorney shall receive the following percentage of the amount recovered before the deduction of cost and expenses as set forth in Section 2 herein:

Thirty Three and a Third percent (33.33%) of any amount recovered before suit is filed in the event of settlement,

Forty percent (40%) of any amount recovered in the event suit is filed, and

Fifty percent (50%) of any amount recovered subsequent to an appeal of the case or cases.

"Recovery" shall mean anything of value, including without limitation medical, pain and suffering, wage loss, loss of use, property damage, loss of earning capacity, loans, or deferred payment terms attorney's fees, if any, and pre and post petition judgment interest, if any, that are awarded by the Court or are applicable pursuant to statute or rule. See: exhibit

3.

The attorney's fee agreed upon is fair and reasonable in the light of the hours expended by counsel, the result obtained, and the risks involved in taking this case on a contingency basis.

4.

On October 18, 2017, mover filed suit on behave of Lawan Rousell in Orleans Parish Civil District Court-- docket number 2017-9436. On or about December 1, 2017, the original case was removed to Federal Court-- docket number 2:17-cv-14040 KDF KWR See: petition and federal form.

5.

The original suit was dismissed without prejudice.

6.

Although there was a waiver(s) of conflict of interest, it was suggested that the cases and/or claims be referred out due to a conflict of interest.

7.

The above entitled and numbered cases were filed before June 14, 2018.

8.

The above entitled and numbered cases were consolidated.

9.

Undersigned desires to reopen 2:17-CV 14040 because of the statutory fees and penalties for bad faith assertions. See original petition.

10.

The undersigned attorney would show the Court that the fees represented are/were necessities, and that petitioner has a vested and choate property right and

his intervention to recover attorneys fees makes him a full party in the underlying action.

11.

According to *Saucier v. Hayes Diary Product, Inc.* 373 So. 2d 102(1979), the La. Supreme Court allowed both the former and current attorney to collect 33.33% each of the amount recovered. The issue in the *Saucer case* was “Whether an attorney discharged without cause prior to the completion of his service is entitled to the percentage of his fee stipulated in his contingent fee contract, when the client subsequently recovers from the adverse party.” The Court of Appeals found that the first attorney was discharged without cause, and basing its award upon the contingent fee contract, it increased the award to 33.33% of the recovery. The Louisiana Supreme Court affirmed its decision and awarded both attorneys to charge 33.33% for attorneys’ fee each. It appears from *Saucier case*--that if the former attorney performed at least two years of work, then he/she is entitled to at least 33.33 % of any thing recovered.

12.

As intervener petitioner is permitted to litigate fully once admitted to the law suit and is vested with all of the same procedural rights and remedies of the original parties.

13.

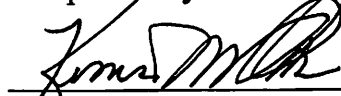
Intervener has submitted a charging lien letter to Progressive for his service rendered, as well.

14.

Petitioner request judgment for attorneys fees as shown by the attached exhibit , plus any other fees and cost incurred in the filing and prosecution of this intervention.

WHEREFORE, intervener prays that upon final trial and hearing hereof, he be given judgment for attorney fees (both statutory and by contract) rendered through the date hereof and attorney fees renders from and after the date of filing of this Intervention, for his costs previously expended and to be expended in the future, for interest and for such other and further relief as he might show himself justly entitled. Mover states that a copy of this Motion has been forwarded to the all opposing parties.

Respectfully Submitted,



KENNETH M. PLAISANCE
ATTORNEY AT LAW

La. BAR NUMBER 19738

P. O. Box 8475

New Orleans, Louisiana 70182

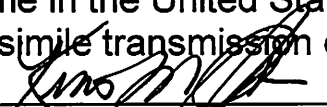
Tel#: 504-905-1888

Fax: 888-412-3988

kplaws88@gmail.com

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading has been served upon that on the 16th day of October, 2018, I either filed by hand delivery or by electronically filed the foregoing with the Clerk of Court for the United States District Court for the Eastern District of Louisiana and notice of this filing will be sent to all counsel of record either by depositing a copy of same in the United States mail first class postage prepaid, or by email, facsimile transmission or by hand delivery



KENNETH M. PLAISANCE

**THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA**

**MELVIA HODGES AS THE
MOTHER AND ADMINISTRATOR
OF THE ESTATE OF HER MINOR
SON LAWAN ROUSELL**

Plaintiff

v.

**TRAVIS JAMES d/b.a CDMT
TRUCKING, PROGRESSIVE
NORTHERN INSURANCE**

COMPANY T AL,

Defendants

*** CIVIL ACTION No 18- cv 05889**

*** Consolidated with 2:18cv 5903**

*** SEC "H" DIV. "2"**

*** JUDGE: JANE TRICHE**

MILAZZO

*** MAG.: JUDGE JOSEPH C**

WILKINSON, JR.

O R D E R

IT IS ORDERED that Kenneth M. Plaisance, mover is hereby permitted to
intervene in the above captioned and numbered matter(s).

New Orleans, Louisiana this ____ day of _____, 20__.

J U D G E

**PERSONAL INJURY
LEGAL RETAINER AGREEMENT
CONTINGENCY FEE(PERCENTAGE AGREEMENT)**

I/we, MELIA HODGSON ORO LAWAN ROUSELL the undersigned client(s), retain and employ **KENNETH MICHAEL PLAISANCE**, (A Professional Law Corporation), to render legal advice and services in connection with claim(s) or cases against any or all person, parties, firms and/or companies which may be responsible to me for damages as a result of AUTO ACCIDENT occurring on or about JUNE 14, 2017.

I specifically authorize Attorney to undertake negotiations and/or file suit or institute legal proceedings necessary on my behalf. As used herein, the term "suit" includes, where applicable, the institution of proceedings to impanel a medical review panel. I further authorize Attorney to retain and employ at my expense, the services of any experts, including physicians and doctors, as well as the services of other outside contractors, as Attorney deems necessary or expedient in representing my interests. I agree and understand that you may associate other counsel on my behalf whenever you deem it necessary or desirable. However, the total fees chargeable under this agreement will not be increased by virtue of the association. That is, the fees of any other attorney retained will be included in the Attorneys fees.

1. ATTORNEY'S FEES

I understand that you will represent me in all stages of this claim and trial proceeding and will diligently prosecute this case to the best of your ability until settlement is reached or the complaint is filed and judgment results. Thereafter, we will discuss the necessity of appeal or appeal options.

For your services as attorney, I hereby assign, deliver, transfer and set over to my attorney(s), in accordance with the provisions of L.A. R.S. 37:218 and LA R.S. 9:5001, an undivided interest in the entire subject matter of the suit or claim.

It is agreed that the attorney shall receive the following percentage of the amount recovered before the deduction of cost and expenses as set forth in Section 2 herein:

Thirty Three and a Third percent (~~33.33%~~) of any amount recovered before suit is filed in the event of settlement, 28.5%

Forty percent (40%) of any amount recovered in the event suit is filed, and

Fifty percent (50%) of any amount recovered subsequent to an appeal of the case or cases.

"Recovery" shall mean anything of value, including without limitation medical, pain and suffering, wage loss, loss of use, property damage, loss of earning capacity, loans, or deferred payment terms attorney's fees, if any, and pre and post petition judgment interest, if any, that are awarded by the Court or are applicable pursuant to statute or rule.

NO RECOVERY NO FEE

It is understood and agreed that this employment is upon a contingency fee basis and, if no recovery is made, I will not be indebted to my Attorney for any sum whatsoever as Attorney's fees. (However, I agree to pay all costs and expenses as set forth in Section 2, herein, regardless of whether there is any recovery in this matter. In the event of recovery, costs and expenses shall be paid out of the settlement or judgment.) It shall be spelled out in a Settlement Statement.

2. COST AND EXPENSES:

In addition to paying Attorney's Fees, I agree to pay all costs and expenses in connection with Attorney's handling of this matter. I agree that I shall pay included but not limited too-- all costs of investigation, long distance telephone charges, photocopying (\$.30 per page), postage, facsimile costs, Federal express or other delivery charges, deposition fees, clerk's fees, court reporters, stenographers transcripts fees, witness fees, expert fees, subpoena costs, court costs, sheriff's and service fees, travel expenses jury fees, and appeal costs at the conclusion of my case, living and medical expenses; such expenses are to be deducted after the applicable contingent fee is calculated. Attorney has full right to collect monies for expenses and cost incurred. It has been explained that said attorney does not pay for cases or claims, but may advance the cost for medical treatment/living expenses.

3. NO GUARANTEE:

I acknowledge that Attorney has made no promise or guarantee regarding the outcome of my legal matter. In fact, Attorney has advised me that litigation in general is risky, can take a long time, can be very costly and can be very frustrating. I further acknowledge that Attorney shall have the right to cancel this agreement and withdraw from the case or matter, if , in Attorney's professional opinion, the matter does not have merit, I do not have a reasonably good possibility of recovery, I refuse to follow the recommendation of Attorney, fail to abide by the terms of this agreement , and/or if Attorney's continued representation would result in a violation of the Rules of Professional Conduct, or at any other time as or if permitted under the Rules of Professional Conduct.

4. ABANDONMENT OF CASE/TERMINATION OF REPRESENTATION:

I understand that I have a right to terminate the representation upon written notice to that effect. I understand and agree that if I elect to abandon my case or to substitute counsel, or violate this agreement, I am responsible for all fees and expenses incurred prior to the termination and to terminate the proceedings or obtain a Court Order permitting withdrawal. I further agree that I will compensate the attorney for his accumulated time expended on the case at a rate of \$250.00 per hour, but in no event will your fee be less than \$ 500.00 regardless of when your services are terminated, or at the contingency fee agreement rate which ever is the greatest. It is at the attorneys discretion. The attorney shall not be obligated to honor any termination instructions unless in writing signed by client.

I agree that you may withdraw as my attorney at any time after reasonable notice to me and I agree to keep you advised of my whereabouts at all times and to cooperate at all times in the preparation and trial of my case or cases, to appear upon reasonable notice to me for depositions and court appearances and to comply with all reasonable requests made of me in connection with the preparation and presentation of my case.

5. POWER OF ATTORNEY

It is understood neither you nor I may settle, compromise, release, discontinue or otherwise dispose of my case without the consent of the other. If I can not be found and after attorney diligently attempts to locate client or client is severely injured, then I hereby give you my power of attorney to execute all complaints, claims, checks, settlements, deposits, and orders as I could myself. If attorney is unable to contact client, then attorney is authorized to place proceeds checks, drafts or other instruments which may be used in, for and on behalf of client, in the attorney client trust fund --to affect settlement.

6. **LOUISIANA LAW:** This contract shall be governed by Louisiana Law.

7. ENTIRE AGREEMENT:

I have read the agreement in its entirety and I agree to and understand the terms and condition set forth in the contract. I acknowledge that there are no other terms or oral agreements existing between Attorney and Client. This agreement may not be amended or modified in any way without the prior written consent of Attorney and Client.

After having read the all the above agreement and after it has been fully explained to me by attorney, I do hereby sign my name as of this 15th day of JUNE, 2017

MELIA DODGES 2000 LAWN ROUSE II
CLIENT SIGNATURE

MELIA A DODGES
NAME

1814 DIELLS ST. N.O. LA. 70111
ADDRESS

The foregoing agreement is hereby accepted on this 15th day of JUNE, 2017.

KENNETH M. PLAISANCE

Referred by Larry Yellow pages/advertisement

*LAW OFFICES OF
KENNETH M. PLAISANCE
5626 ELYSIAN FIELDS AVENUE
NEW ORLEANS, LOUISIANA 70122*

KENNETH M. PLAISANCE

ATTORNEY AT LAW

NOTARY PUBLIC

*MEMBER OF THE BAR UNITED STATES SUPREME COURT,
WASHINGTON, D. C.*

Admitted in Louisiana and Texas

LLM in Employment Law

TEL: (504) 905-1888

FAX: (888) 412-3988

Melvia Annie Taylor Hodges

Larry Taylor

Lawan Rousell (son)

RE: Larry Taylor, Jr. et al v. Progressive Corporation et al. CDC

Docket Number: 2017-09436

My client(s): Larry Taylor Jr. and Lawan Rousell

Dear Mr. Taylor and Ms. Hodges:

WAIVER OF A CONFLICT OF INTEREST

My firm have represented and continue to represent Lawan Rousell (son) and you --Larry Taylor Jr. in above mentioned and entitled cause. Although, Lawan Rousell is Melvia Hodges and Larry Taylor's son, there may be a conflict of interest because of two insurance companies are being sued under Progressive Corporation. We need a informed consent to waive the conflict of interest.

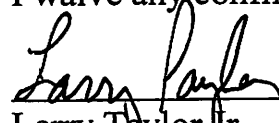
Very Truly yours:

Kenneth Plaisance

ACKNOWLEDGMENT AND CONSENT

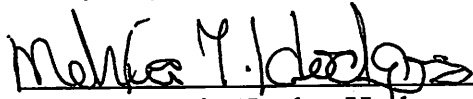
Despite any potential or actual conflict of interest which may exist now or in the future, we hereby consent to the firm's simultaneous representation of both Lawan Rousell and Larry Taylor with respect to the above mentioned case. We futher agree that the firm may withdraw its representation of either client or both clients without prejudice should it determine the continued representation might violate applicable rules of professional conduct .

I waive any conflict of interest which may or may not occur.



Larry Taylor Jr.

Larry Taylor Jr. OBO Lawan Rousell



Melvia Annie Taylor Hodges

Sincerely,

Kenneth M. Plaisance
KENNETH M. PLAISANCE, ESQ.

**LAW OFFICES OF
KENNETH M. PLAISANCE
5626 ELYSIAN FIELDS AVENUE
NEW ORLEANS, LOUISIANA 70122**

**KENNETH M. PLAISANCE
ATTORNEY AT LAW
NOTARY PUBLIC
MEMBER OF THE BAR UNITED STATES SUPREME COURT,
WASHINGTON, D. C.
Admitted in Louisiana and Texas
LLM in Employment Law**

**TEL: (504) 905-1888
FAX: (888) 412-3988**

Larry Taylor
Lawan Rousell (son)

RE: Larry Taylor, Jr. et al v. Progressive Corporation et al. CDC
Docket Number: 2017-09436
My client(s): Larry Taylor Jr. and Lawan Rousell

Dear Mr. Taylor:

WAIVER OF A CONFLICT OF INTEREST

We have represented and continue to represent Lawan Rousell (son) and you --Larry Taylor Jr. in above mentioned and entitled cause. Although, Lawan Rousell is Larry Taylor's son, there may be a conflict of interest because of two insurance companies are being sued under Progressive Corporation. We need a informed consent to waive the conflict of interest.

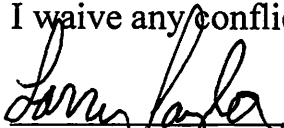
Very Truly yours:

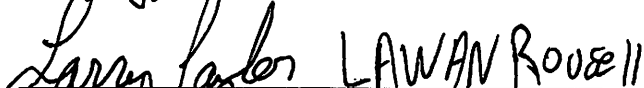
Kenneth Plaisance

ACKNOWLEDGMENT AND CONSENT

Despite any potential or actual conflict of interest which may exist now or in the future, we hereby consent to the firm's simultaneous representation of both Lawan Rousell and Larry Taylor with respect to the above mentioned case. We futher agree that the firm may withdraw its representation of either client or both cleints without prejudice should it determine the continued representation might violate applicable rules of professional conduct .

I waive any conflict of interest which may or may not occur.


Larry Taylor Jr.


Larry Taylor Jr. OBO Lawan Rousell

Sincerely,

Kenneth M. Plaisance

KENNETH M. PLAISANCE, ESQ.

JS 44 (Rev. 06/17)

Case 2:17-cv-14040-KDE-KWR Document 1-4 Filed 12/01/17 Page 1 of 2

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Larry Taylor, Jr., Melvia Taylor, aka Melvia Hodges, Individually,
and as Natural Mother and Parent and Administrator of her Minor
Child - LR, et al

(b) County of Residence of First Listed Plaintiff Orleans Parish

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Kenneth M. Plaisance, 5626 Elysian Fields Avenue,
New Orleans, LA 70122, (504) 905-1888

DEFENDANTS

Travis James, Tricia Griffith, President and Chief Executive Officer
of the Progressive Corporation, Progressive Northern Insurance
Company and Progressive Security Insurance Company
County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question
(U.S. Government Not a Party)
- ☒ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input checked="" type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 830 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
- ☒ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. 1441 and 1446

Brief description of cause:
Insurance Dispute

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD
 /s/ David A. Strauss, #24665

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

CIVIL DISTRICT COURT FOR PARISH OF ORLEANS

FILED

NO: 2017-9436

STATE OF LOUISIANA

2017 OCT 18 A 11:49

DIVISION
CIVIL
DISTRICT COURT

LARRY TAYLOR JR., MELVIA TAYLOR, aka MELVIA HODGES,
INDIVIDUALLY, AND AS NATURAL MOTHER AND PARENT AND
ADMINISTRATOR OF HER MINOR CHILD— [REDACTED], AND
LARRY TAYLOR JR., INDIVIDUALLY AND AS NATURAL FATHER
AND CO-ADMINISTRATOR OF THE MINOR— [REDACTED]

A

versus

SECTION 15

TRAVIS JAMES, TRICIA GRIFFITH, PRESIDENT AND CHIEF
EXECUTIVE OFFICES OF THE PROGRESSIVE CORPORATION,
PROGRESSIVE NORTHERN INSURANCE COMPANY AND
PROGRESSIVE SECURITY INSURANCE COMPANY

FILED: _____

DEPUTY CLERK

PETITION FOR DAMAGES

NOW INTO COURT, thought undersigned counsel, comes plaintiffs,

MELVIA HODGES AND LARRY TAYLOR JR. natural mother and nature tutrix

and nature father and administrators of and on behave of the minor [REDACTED]

[REDACTED], who asserts that [REDACTED] AND LARRY TAYLOR

suffered pecuniary lost, mental anguish, emotional pain and suffering and other

damage arising out of and automobile accident cause by the defendants TRAVIS

JAMES and PROGRESSIVE CORPORATION. Plaintiff(s) with respect

represents:

1.

Made defendants herein are:

- A. **TRICIA GRIFFITH, PRESIDENT AND CHIEF EXECUTIVE
OFFICES OF THE PROGRESSIVE CORPORATION
PROGRESSIVE INSURANCE COMPANIES**, the Progressive
Corporation and Progressive's President Tricia Griffith runs the day
to day operation of Progressive Corporation which is an insurance
corporation, who at all times relevant herein, is authorized to do and
doing business in the State of Louisiana, Orleans Parish, insured
TRAVIS JAMES AND LARRY TAYLOR with liability insurance

Joseph D. Smith
VERIFIED
10 18 18

for their respect vehicles, who was in control and custody of the policy insurance contract issued to TRAVIS JAMES, who have delayed in the payment of an obligation owed to plaintiffs regarding the property damage and medical bills and expensive and pain suffering; and who discrimination against [REDACTED] by treating him differently in violation of LSA. R.S.22:1963 and 1964.

- B. PROGRESSIVE NORTHERN INSURANCE COMPANY** which is an insurance company and an insurance division of THE PROGRESSIVE CORPORATION, who at all times relevant herein, is authorized to do and doing business in the State of Louisiana, Orleans Parish, who provided liability insurance and insured TRAVIS JAMES, who discriminated against [REDACTED] and breached the contract between the insureds and Progressive Northern Insurance Company, who have delayed in the payment of an obligation owed to plaintiff Larry Taylor regarding the property damage, medical bills and pain and suffering, who delay in the payment of an obligation owed to [REDACTED] regarding payment of his medical bills and pain and suffering and breach the warranty of good faith and fair dealings under Articles 1759 and 1983 of the La. Civil Code.
- C. TRAVIS JAMES**, a person of full age and majority, driver of the automobile, who at all time relevant herein, cause the accident sued upon, and who have delayed in the payment of an obligation owed to plaintiffs.

2.

Defendants are indebted to petitioner, with legal interest from judicial demand until finally paid, and all costs for the following:

3.

On June 14, 2017, at about 3:00 p.m. plaintiff were involved in an automobile accident with a Peterbilt Tractor Trailer driven by Travis James on or around the 6600 block of Almonaster Blvd., New Orleans, Louisiana. Plaintiff [REDACTED] was a guest passenger in a 1995 Buick LeSable, vehicle identification number 1G4hP526XSH527871, license plate number La. YVG710, traveling east bound in the left lane on Almonaster Blvd., New Orleans, Louisiana, when suddenly and without warning the 2008 Peterbilt tractor trailer vehicle identification number 1XPWWD49X38D749996, with Nebraska license plate number 196868 driven by Travis James, pulling a 2016 Timpte Box trailer with

4.

1. On June 14, 2017, at about 3:00 p.m. Larry Taylor, Jr. was involved in an automobile accident with a 2008 Peterbilt Tractor Trailer driven by Travis James on or around the 6600 block of Almonaster Blvd., New Orleans, Louisiana.
2. Larry Taylor, Jr was driving his 1995 Buick LeSable, vehicle identification number 1G4hP526XSH527871, license plate number La. YVG710, traveling east bound in the left lane on Almonaster Blvd., New Orleans, Louisiana,
3. Travis James, was operating a 2008 Peterbilt tractor Model 388 with vehicle identification number 1XPWD49X38D749996 with Nebraska license plate number 2017 NE 196868, pulling a 2016 Timpte Box trailer, license plate number 247489 traveling in the east bound in the right lane, on Almonaster Blvd., New Orleans, Louisiana.
4. Travis James changed lanes from the right lane, and then tried to make an U-turn causing the impact and collision with Larry Taylor's 1995 Buick LeSabre.
5. The point of impact was side rear of the 2008 Peterbilt Tractor and to the front of the 1995 Buick LeSabre.

6. After the impact, Travis James moved the tractor trailer on the west bound side of Almonaster--on the other side of the road.
7. Travis James--the driver of the Peterbilt Tractor Trailer made an improper and illegal lane change, attempting to make an U-turn, causing the collision with Mr. Taylor's 1995 Buick LeSabre.
8. Travis James has liability insurance with Progressive Insurance Company Policy number 039301970 expiration date 09-22-2017
9. Larry Taylor Jr. Has liability insurance with Progressive Insurance Company --Policy number 907163379 expiration date 11-07-2117
10. **Mr. James is from Nebraska and Mr. [REDACTED] is a 13-year-old boy, who resides in Orleans Parish, who sustained multiple injuries including but not limited to permanent scars on his face, fractured hip, fracture arm and neck and back pain.**

5.

Travis James was 100% at fault for the accident because he made a improper lane changes, made a improper U turn and was careless in operating the 2008 Peterbilt Tractor Trailor causing the accident sued upon.

6.

LAW AND NEGLIGENCE

Articles 2315 -2325 of Louisiana Civil Code is the primary source of law.

LSA. C.C. Article 2315 provides that:

"Every act, whatever of man, that causes damage to another obliges him by whose fault it happened to repair it."

LSA. C.C. Article 2316 provides that:

"Every person is responsible for the damage he occasions not merely by his act, but by his negligence, his imprudence, or his want of skill."

LSA. C.C. Article 2317 provides that:

"we are responsible, not only for the damage occasioned by our own act, but for that **which is caused by the act of persons for whom we are answerable**, or of the things which we have in our custody."

LSA R.S. 32:79 provides that:

The driver on a roadway laned for traffic must drive as nearly as practicable entirely within a single lane and must not move

from that lane until he or she has first ascertained such movement can be made with safety.

LSA-R. S. 32:104(A) provides that

No person shall turn. . . a vehicle from a direct course or move right or left upon a roadway unless and until such movement can be made with reasonable safety.

La R. S. 32:58 (Careless operation) provides that

Any person operating a motor vehicle on the public road if this state shall in a careful and prudent manner. Failure to drive in such a manner shall constitute careless operation

7.

A professional truck driver is a superior actor in the eyes of the law.¹ Tractor Trailer driver owe a higher standard of care when operating a tractor trailer service. Here, defendant Travis James had a duty that he have ascertained the movement in changing lanes could be made safely. Mr. James was careless in operating the tractor trailer, made an improper lane change, caused the accident sued upon, and thus was 100% at fault for the accident.

1. According to *Rond v. Sims et al*, 355 So. 2d 591 (La Court of Apps. 4th Cir 1978), the 4th Circuit Court of Appeal affirmed the lower court ruling that a left turning motorist is held to a high degree of care in executing his maneuver, and when he makes a left turn from a lane other than the normal left turn lined in front of a vehicle in the left lane, without making sure that lane is clear, his (Sims) negligence is so apparent as not to require discussion. Sims was attempting his turn from the middle lane because he needed plenty of room in which to turn this large tractor-trailer. The court ruled that Sims was solely negligent for the accident. Moreover, under the jurisprudence, a greater burden of care is required for the motorist changing lanes than is demanded of a driver proceeding at a lawful rate on a straight line in a marked lane. *Averno v. Industrial Fabrication and Marine Service, Inc.*, 562 So. 2d 1157, 1161 (la. App. 4 Cir. 1990). Under the jurisprudence, when there is a change of lanes by a motorist immediately preceding an accident, the burden of proof is on the motorist changing lanes to show that it was first ascertained that the movement could be made safely. *Barrociere v. Baptiste*, 99-1800. p. 4 (La. App. 4th Cir. 2/2/2000), 752 So. 2d 324, 327; *Graham v. Edwards*, 614 So. 2d 811, 816 (La. App. 2 Cir. 1993), writ denied 619 So. 2d 547 (La. 1993).

According to *Camatos v. Aetna Cas. & Sur. Co.*, 428 So 2d 1320 (La Court of Appeals, 3rd Circuit (1983), the Court of Appeals affirmed that the sole cause of the accident was the obstruction of the highway by a tractor trailer. In *Prull v. Nale*, 46 So. 3d 780 (La. Court of Appeals, 2nd Circuit 2010), the Court of Appeals affirmed the lower court ruling that the tractor trailer driver (Nale) was 100% at fault and noted:

The turning maneuver violated state law which required that Defendant Nale make sure before the left turning that he could safely turn La. R. S. 32:104. Nale's began a left turn from the middle lane. Nale was ticketed for making an improper turn. Under this Statute, Nale was under a duty to refrain from making an left turn until such movement could be made with reasonable safety. Judicial interpretation of La. R. S. 32 a104 (A) have made it clear that a left-turning motorist has a strong duty of care. *Bruce v. State Farm Ins., Co.*, 37, 704 (La App. 2d Cir. 10/29/03), 859 So. 2d 296. The duty includes properly signaling an intention to turn left and keeping a proper lookout for both oncoming and overtaking traffic in order to ascertain that the left turn can be made with reasonable safety. *Id. Agency Rent A Car v. Hamm*, 401 So. 2d 1259 (La. App. 1st Cir 1981)

The jurisprudence has recognized that commercial truck drivers are required to undergo testing and licensure which involve attending a special school designed to teach the mechanics and attendant hazards of operating large rigs. *Davis. V. Winn*, 02-3102 (La. 7/02/03) 851 So. 2d 1119. Base upon that premise, our courts have recognized that a professional truck driver is a superior actor in the eyes of the law. *Id*

8.

The sole and proximate cause of the above referenced accident was the negligence and fault of the defendant, TRAVIS JAMES, which is attributed to but not limited to the following nonexclusive particulars:

- a) Failure to see what he should have seen;
- b) Failure to keep a good and careful lookout;
- c) Failure to maintain reasonable and proper control of the vehicle which they were operating;
- d) Driving at a speed greater than reasonable and prudent under the circumstances;
- e) Operating his vehicle in a careless and reckless manner without regard for the safety of others;
- f) Any and all other acts of negligence which may be proven at the trial of this matter.

9.

As a result of the occurrence sued upon, plaintiffs sustained the following severe injuries:

Past, present, and future physical pain and suffering;

Past, present, and future mental anguish;

Past, present, and future medical expenses; and

Loss wages and or loss of earning capacity.

CAUSE OF ACTION NUMBER 2

10.

Plaintiffs reiterates adopts, incorporate and reavers by reference herein Paragraphs 1 through 9 of his petition as if set forth in full. Plaintiffs assert that as insureds of Progressive, they are being treated differently as compared to

another insured of Progressive --TRAVIS JAMES regarding the payment of benefits under Progressive insurance policy issued to defendant --TRAVIS JAMES; that Defendant--Progressive breached the obligation of paying plaintiffs' medical bills owed to plaintiff [REDACTED] and LARRY TAYLOR under the contract of insurance issued to TRAVIS JAMES, by breaching the warranty of good faith and fair dealing, by tendering the policy limits under LARRY TAYLOR'S contract of insurance with Progressive, but not tendering the policy limits of TRAVIS JAMES contract of insurance with Progressive. Plaintiff was entitled to immediate payment under Progressive contract of insurance issued to Travis James.

11.

Progressive Insurance liability policy:

Part 1— Liability to Others in the policy provides:

We will pay, on behalf of an insured, damages other than punitive or exemplary damages, for which an insured is legally liable because of bodily injury and property damage caused by accident.

According to Progressive's website, Progressive Commercial Bodily Injury Liability Insurance , it says:

"If you cause an accident that injures other people, you Bodily Injury Liability insurance will pay the amount you are **legally obligated** to pay for those injuries and related costs, which can include:

Hospital and medical bills	Loss earnings
Rehabilitation	Pain and suffering
Long term nursing care	Other damages
Funeral expenses	

12.

Under Louisiana law, the terms of an insurance policy are to construed according to the general rules of contracts construction². As with contracts generally, a provision in an insurance policy is ambiguous when it is reasonably susceptible to more than one reading. Under those circumstances, any ambiguity in terms of an insurance policy must be construed against the insurer and in favor of coverage and the insured. The policy language is clear and not ambiguous. It is undisputed that Mr. James is an insured under Progressive liability policy issued to Mr. James. Progressive will (shall) pay damages that Mr. James is legally liable cause by accident.

Moreover, Article 1983 of the Louisiana Civil Code provides that:

Contracts must be performed in good faith.

Article 1997 of the Louisiana Civil Code provides that:

An obligor in bad faith is liable for all the damages foreseeable or not, that are a direct consequence of his failure to perform.

13.

The facts and Louisiana law emphatically indicated by a preponderance of the

2. LOUISIANA LAWS ON INSURANCE CONTRACTS

An insurance policy is an aleatory (depending on chance) contract subject to the same basic interpretation rules of any other contract set forth in the Louisiana Code. Civil Code Article 1912.

The interpretation of an insurance contract is nothing more than a determination of the common intent of the parties. La. Civ. Code Art. 2045 *Magnon v. Collins*, (La. 7/7/99) 739 So.2d 191. The Louisiana Civil Code established two primary sources of Law in Louisiana legislation and custom. *Diamond Service v. Benoit*, 780 So. 2d 369 (La 2000)

Word and phrase use in an insurance policy are to be construed using their plain, ordinary prevailing meaning. Art 2047. See: *Ledbetter v. Concord Gen. Corp.*, 95-0809 p3 (La. 1/06/96), 665 So.2d 1166, 1169

An insurance contract, should not be interpreted in an unreasonable or strained manner under the guise of contractual interpretation . . . to restrict its provisions beyond what is reasonably contemplated by unambiguous terms or achieve an absurd conclusion. *Reynolds v. Select Properties, Ltd.*, 93-1480 . P 3 (La. 4/11/94), 634 So. 2d 1180, 1183. The rules construction do not authorize a perversion of the words . . .

The Civil Code is clear that if a contract does not lead to absurd consequences it will be enforced as written. Art. 2046.

When absurd results are possible from such a reading, however the contract is ambiguous, and the courts must construe the provision in a manner consistent with the nature of the contract equity, usages, the conduct of the parties before and after the formation of the contract . . . Art. 2053.

evidence³ that defendant --Mr. James is legally liable for the accident. Plaintiffs proved by a preponderance of the evidence that Mr. James was negligent and legally liable for the automobile accident sued upon, and thus, according to the contract, Progressive shall pay all damages to Plaintiff --[REDACTED] Mr. Taylor and Mr. [REDACTED] are insureds of Progressive Insurance Co. and third-party beneficiaries of Mr. James' policy/contract and therefore, are entitled to immediate payment under the policy.

14.

Progressive stands to lose more under Mr. James' liability policy-- if Mr. James is found 100% at fault for the accident. The limits on Mr. James' policy is for more than that of Mr. Taylor's policy with Progressive. Progressive is delaying and denying claims and preventing payment to [REDACTED]'s by contributing to the failure of the consideration of the obligor's (Progressive) obligation under contract. Deviating from the normal standard, best claims practice, and good faith and fair dealing in adjusting claims gives rise to discriminatory⁴ intent of protecting the \$1, 000,000.00 liability policy as opposed or compared to a 15/30

3 PREPONDERANCE OF THE EVIDENCE

Article 302 of the Louisiana Code of Evidence as follows:

The burden of a party to establish a requisite degree of belief in the mind of the trier of fact as to the existence or non existence of a fact. Depending on the circumstance, the degree of belief may be by a preponderance of the evidence . . . According to *Miller v. Leonard*, 588 So 2d 79,81 (La. 1991), and *Wills v. Lebel*, 581 So. 2d 1048 (La. 1st Cir. 1991) writ granted 583 So. 2d 484 (1991), and *Lasha v. Olin Corp.* 625 So. 2d 1002, 1005 (La. 1993), "Proof by a preponderance of the evidence requires that the evidence taken as a whole, shows that the fact sought to be proven is more probable than not." Proof by direct or circumstantial evidence is sufficient to constitute a preponderance when the entirety of the evidence establishes the fact or causation sought to be proved is more likely (probable) than not.

4 DISCRIMINATION AGAINST THE INSURED

LA-R.S. 22:1963 provides that:

"No person shall engage in this state in any trade practice which is defined in this Part to be an unfair method of competition or an unfair and deceptive act or practice in the conduct of the business of insurance."

LA-R.S. 22:1964 subsection 14 provides that:

"The following are declared to be unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

7 c. Violating the provision of R. S. 22:34

La-R. S. 22:34 Discrimination prohibited

No insurer shall make or permit any unfair discrimination in favor of particular individuals or persons or between insureds . . . or expense elements, in terms or conditions of any insurance contract, or in the rate or amount of the premium charged thereof, or in the benefits payable, or any other rights or privileges accruing thereupon.

liability policy. Progressive is taking the stand that Mr. James is much more believable than the independent witness and treating Mr. James better than Mr.

Progressive has employed an accident reconstruction expert and a bio mechanical expert (conservative in favor of the insurance company) on behalf of Mr. James. However, Progressive is not giving same consideration of benefit to Mr. Taylor and Mr. Progressive is denying the claim and is force it's insured to file suit. Plaintiffs want Progressive to provide money to pay an Accident Reconstruction expert and Bio-Mechanical expert for his benefit as well, like Progressive Inc. retained Accident Reconstruction expert and Bio-Mechanical expert for Mr. James.

14.

To bolster Plaintiff's argument of being treated differently or less favorable, it has been 60-days since the accident and Progressive has not paid plaintiff --Mr. Taylor's property damage claim. Progressive has a duty to pay the property damage and is in violation of the law⁵ in adjusting PD claims.

15.

Plaintiff --Mr. Taylor is entitled to and seeks 50% of the damages plus the damages to his vehicle plus attorneys fees.

⁵ LA-R.S. 22:1892 provides that: (In pertinent part)

(1) All insurers issuing any type of contract, shall pay the amount of any claim due to any insured within thirty days (30) after receipt of satisfactory proof of loss from the insured or any party in interest.

R.S. 22:1892 permits 50 percent penalties and attorney's fees against insurance companies for failure to pay claim within 30 days of receipt of satisfactory proof of loss.

It is well settled that a "Satisfactory Proof of Loss" is only that which is "sufficient to fully apprise the insurer of the insured's claim." *McDill*, 475 So. 2d at 1089. See also *Hart v. Allstate Ins. Co.*, 437 So. 2d 823, 828 (La. 1983). In addition, with regard to the form of a proof of loss, the court has stated that proof of loss is a flexible requirement to advise an insurer of the facts of the claim, and that "it need not be in any formal style," *Sevier v. U. S. Fid. & Guar. Co.*, 497 So. 2d 1380 (La. 1986).

16.

Moreover, the claim under defendant--Mr. James' policy has been transferred to three different Progressive claims representative Jay Toody, Casey Hirsch, and now Luci Page. On June 19, 2017, Progressive's claims representative Jay Toddy acknowledged undersigned's June 16, 2017, letter of representation of Larry Taylor Jr. and [REDACTED]. On June 21, 2017, received pictures of plaintiff -- [REDACTED] permanent scars to his face, the cast on his leg and a cast on his arm, along with a demand for the policy limits of defendant-Travis James' policy. On June 22, 2017, the claim for property damage and bodily injury was transferred to Progressive Claims Representative Casey Hirsch. Ms. Casey acknowledge receiving pictures of plaintiff-- Larry Taylor's vehicle and the location of Mr. Taylor's vehicle. On June 22, 2017, defendant--Progressive set up an assignment for a field adjustor to inspect Mr. Taylor's vehicle. Defendant --Progressive was informed that plaintiff -- Taylor was insured by Progressive as well. On July 5, 2017, Progressive acknowledge receiving Mr. Taylor's affidavit. On July 6, 2017, defendant --Progressive acknowledge receiving plaintiff-- Larry Taylor's proof of insurance with Progressive. Progressive acknowledged that these claims involved **double-dual insureds**. On July 10, 2017, Progressive acknowledged received a copy of Mr. Dominic Green's statement(independent witness). On July 13, 2017, Progressive acknowledged receiving [REDACTED]'S medical records from University Medical Center and medical bill from Children's Hospital in the amount of \$ 65,225.38. On July 24, 2017, Progressive, through defendant --President and CEO--Tricia Griffith, received medical bills on behalf of plaintiff -- [REDACTED] in the amount of \$ 65,225.38 and \$ 49, 011.01 totaling \$ 114,236.49. On July 26, 2017, Progressive tendered the policy limits for the medical bills under Mr.

Taylor's contract of insurance (claim # 172 835 737) with Progressive, but failed to tender the policy limits for the medical bills under Mr. James' contract of insurance with Progressive. (claim # 172 131 843). Defendants treated [REDACTED] differently (discriminated against) and breach the obligation to pay at least the medical bills within 30- days of receiving the medical bills.

17.

Here, defendant--President and CEO Tricia Griffin of Progressive knew of the existence of a contract between plaintiff-[REDACTED] and plaintiff LARRY TAYLOR and defendant--Progressive Northern Insurance Co and Mr. James' insurance contract, that there was an inducement to save Progressive money *by make the rendition of the contract's performance impossible or more burdensome*, there were no justification in not believe the independent witness; no justification to breach of the contract or to make it difficult of the contract's performance brought about by the corporate officer(s).

18.

Plaintiff seeks damages for failure to perform the contract and penalties and attorneys fees under La. R. S. 22:1892

CAUSE OF ACTION NUMBER 3

19.

Plaintiff reiterates adopts, incorporate and reavers by reference herein Paragraphs 1 through 19 of his petition as if set forth in full.

20.

Defendant--Progressive breached the obligation and contract issued to Mr. James. The essential elements of a breach of contract claim are (1) the obligor's undertaking an obligation to perform, (2) the obligor failed to perform the obligation (the breach) and (3) the failure to perform resulted in damages to the

obligee. *Jackson Joint Venture v. World Constr. Co., Inc.*, 499 So.2d 426, 427 (La. App. 4th Cir. 1986) *Herculers Machinery Corp., v. McElwee Bros., Inc.*, 2002 WL 310015598 (E. D. La 9/2/02) In Civil law terminology that view could be expressed by saying that an obligee, especially one who is also an obligor of a reciprocal obligation⁶, should not only abstain from contributing to the failure of the cause of his obligor's obligation, but must do as much as he can to allow that cause to remain, if possible, intact during the life of the contract. Saul Litvinoff, *Good Faith* 71 *Tul. L Rev.* 1645, 1665-66 (June 1997) An obligor is liable for damages caused by his failure to perform a conventional obligation La. Civil Code Art 1994.

21.

Plaintiff- [REDACTED] avers that defendants had a duty of good faith in its dealing with plaintiff, had a duty to perform as per the obligation for defendants wrongful acts , and thus defendants are liable for the delay in the performance of the obligation to pay plaintiff's medical bills and bodily injury claim. This obligation is to pay the debt owed to plaintiff. Plaintiff is entitled to prompt and fair payment of his bodily injury claim in particular for his medical bills of over \$ 114236.49.

6. LOUISIANA LAWS ON OBLIGATION

Articles 1756 through 1759 and Articles 2315 -2325 of Louisiana Civil Code. Article 2315 provides that every act, whatever of man, that causes damage to another obliges him by whose fault it happened to repair it. Article 2316 provides that every person is responsible for the damage he occasions not merely by his act, but by his negligence, his imprudence, or his want of skill. Article 2317 provides that we are responsible, not only for the damage occasioned by our own act, but for that which is caused by the act of persons for whom we are answerable, or of the things which we have in our custody.

Article 1756 of the Louisiana Civil Code provides that an obligation is a legal relationship whereby a person, called the obligor, is bound to render a performance in favor of another, called the obligee.

Article 1757 of the Louisiana Civil Code provides that obligations arise... directly from the law..., in instances such as wrongful acts,and other acts or facts.

Article 1758 of the Louisiana Civil Code provides that obligation may give the obligee the right to enforce the performance that the obligor is bound to render, (2) enforce performance by causing it to be rendered by another at the obligor's expense; (3) recover damages for the obligor's failure to perform, or his defective or delayed performance.

Article 1759 of the Louisiana Civil Code provides that "good faith" shall govern the conduct of the obligor and the obligee in whatever pertains to the obligation.

22.

Plaintiff [REDACTED] suffered multiple injuries including but not limited to permanent scarring to his face, fractured hip, and arm, neck and back injuries. Plaintiff--LARRY TAYLOR JR. sustained property damages and multiple injuries including by not limited to head injury(s), broken ribs, neck and back injuries.

23.

On June 21, 2017, plaintiffs made serious demands for the policy limits under Mr. James' contract of insurance with Progressive (\$ 1,000,000.00) and to justify his request he cited *Gordon v. Levet*, 96-600 (La. App. 5 Cir. 1/15/97), 688 So. 2d 57, in which the court of appeal affirmed the lower courts award of \$ 3,000,000.00 for general damages for multiple injury case. [REDACTED]'s claim for bodily injury was denied. Again, on July 24, 2017, defendants Progressive Corp. received [REDACTED]'S medical bills in the amount of \$ 114,236.49, received the statement from an independent witness stating that Mr. James was at fault for the accident, and received his serious demand for the policy limits of defendant--TRAVIS JAMES's insurance contract with defendant --Progressive, but his demand was denied. Progressive also acknowledge that it received plaintiff LARRY TAYLOR's property damage estimate, medical bills, and a demand letter for general damages, but Progressive denied his demand for payment of Larry Taylor's property damage and bodily injury claims.

24.

Plaintiff [REDACTED] is entitled to damages for defendants' failure to pay the damages (General and Special) plaintiff is legally entitled to receive and therefore, seeks damages for the failure to perform on Progressive obligation to pay his medical bills -- later to be determined.

CAUSE NO. ACTION NUMBER 4

25.

Plaintiff reiterates adopts, incorporate and reavers by reference herein Paragraphs 1 through 25 of his petition as if set forth in full.

26.

Plaintiffs state that they are insureds of Progressive Corporation and third party beneficiary of the contracts of insurance between Progressive and Travis James; and is entitled to prompt payment as a third party beneficiary of the policy/contract between Progressive and Travis James.

27.

Plaintiffs are [REDACTED] and Larry Taylor Jr. are not only Progressive's insureds, but are third-party-beneficiary⁷ of the contract of insurance between Mr. James and Progressive. Mr. Taylor and Mr. [REDACTED] has an enforceable right to be compensated. Denying or delaying the payment of obligation when it is clear

7. **INSURED/THIRD PARTY BENEFICIARY TO THE POLICY
TORTIOUS INTERFERENCE
OF THE CONTRACT OF INSURANCE**

It is conceded that the Louisiana Motor Vehicle Safety Responsibility Law (Nebraska Safety Responsibility Laws as well) provides that liability policies are issued "for the benefit of all injured persons" The definition of a third party beneficiary is a individual who has a legally enforceable right to receive all benefits allocated to him or her under the insurance policy even though this person was not an original party to the insurance policy contract. According to 4 Arthur L. Corbin *Corbin Contracts Sections 776 and 777* (one vol. Ed 1952, 1957), a third party beneficiary, who is not a promisee and who gave no consideration has an enforceable right by reason of a contract made by two others if . . . the promise performance will be pecuniary benefits to him and he contract is expressed as to give the promisor reason to know that such a benefit is contemplated by the promisee as one of the motivating cause of him making the contract. A person claiming to be a third party beneficiary has the burden of showing that the parties to a contract intended to benefit a third party individual or as a member of a class of beneficiaries.

It is conceded that a liability insurance contract is a contract of indemnity and because of the financial responsibility act and public law policy, the court has concluded that a third party has a right to recover only because the presence of the financial responsibility laws of Louisiana. According to *Litton v. Ford Motor Co.*, 554 So. 2d 99 (La. Ct. App. 2d Cir. 1989), writ denied, 559 So. 2d 13543 (La. 1990), The general public as a class is a third party beneficiary of liability insurance coverage, regardless if the coverage is provided through as insurance policy or on a self insured basis. See: *Tapla v. Ham*, 480 So. 2d 855 (La. App. 2d cir 1985) writ denied 484 So. 2d 138 (La. 1986), *Ashline v. Simon*, 466 So. 2d 622 (La. App. 5th Cir. 1985), writ denied 472 So. 2d 28 (La. 1986).

Nonetheless, Article 1978 of the Louisiana Civil Code provides that:

A contracting party may stipulate a benefit for a third person called a third party beneficiary.

Article 1981 of the Louisiana Civil Code provides that:

The stipulation gives the third party beneficiary the right to demand performance from the promisor.

that defendants were negligent and breached of implied warranty, good faith and tortious interference of a contract.⁸

28.

Any effort by the promisor or the promisee to rescind or modify the contract at that point are void. Indeed, if the promisee changes his mind and offered to pay less than the policy provides, the third party beneficiary could sue the promisee for *tortious interference* with the third party beneficiary contract rights. Any interference with the payment of the obligation, is tortious interference with the insurance contract.

29.

Plaintiffs seek damages for tortious interference with the contract of insurance defendant Progressive issued to defendant Travis James.

30.

Plaintiffs --Mr. Taylor and Mr. [REDACTED] are not only entitled to general and special damage, but may recover damages for defendants' failure to perform or defective performance in compensating Mr. Taylor and Mr. [REDACTED], and for breach of good faith in the obligation/contract owed to Mr. Taylor and Mr. [REDACTED]

8 TORTUOUS INTERFERENCE OF A CONTRACT OF INSURANCE

According to Louisiana law on Tortious Interference of a Contract, it is the basic policy of our law that every act whatever of man that causes damages to another obliges him by whose fault it happened to repair it. La. Civ. Code art. 2315. The framers conceived of fault as a breach of a preexisting obligation for which the law orders reparation, when it causes damage to another, and they left it to the court to determine each case the existence of an anterior obligation which would make an act constitute fault. 2 M. Planiol Treatise on Civil Law, Part 1, Section 863 -865 (1959) *Plire v. Opelousas General Hospital*, 530 So 2d 1151 (La 1989).

The element in proving Tortious Interference with a contract is: (1) the existence of a contract or a legal protected interest between the plaintiff and the corporation; (2) the corporation officer's knowledge of the contract (3) the officers' intentional (Pattern) inducement or causation of the corporation to breach the contract or his intentional rendition of its performance impossible or more burdensome (4) absence of justification on the part of the officer; (5) causation of damages to the plaintiff by the breach of contract or difficulty of its performance brought about by the officer.

31.

Defendants-- Progressive breached its affirmative duty to fairly and promptly settle claims⁸ Here, Progressive is failing to perform its obligation to Mr. Taylor and Mr. [REDACTED] because it is attempting to prevent the payment of the obligation of the liability policy limit of Mr. James' policy because of the amount.

32.

Defendant--Progressive breached the language of its insurance contract, it misrepresented the facts and insurance policy provisions, thus, Mr. Taylor and Mr. [REDACTED] are entitled to and seek two times the damages plus general and special damages.

CAUSE OF ACTION NUMBER 4

Plaintiff reiterates adopts, incorporate and reavers by reference herein Paragraphs 1 through 33 of his petition as if set forth in full.

33.

Plaintiff is a consumer or person protected under the Louisiana Unfair and Deceptive Trade Practice Act.

8. PROGRESSIVE OWES AN AFFIRMATIVE DUTY TO FAIRLY AND PROMPTLY SETTLE CLAIMS

LSA R.S. 22:1973 imposes an affirmative duty to fairly and promptly settle claims. If an insurer fails to promptly settle claims, the claimant shall be awarded penalties assessed against the insurer in an amount not to exceed two times the damages sustained or five thousand, whichever is greater.

LSA R.S. 22:1973 provides that:

- A. an insurer including but not limited to a foreign line and surplus line insurer owes to its insured a duty of good faith and fair dealing. The insurer has an affirmative duty to adjust claims fairly and promptly and to make reasonable efforts to settle claims with the insured or the claimant, or both. Any insurer who breaches these duties shall be liable for any damages sustained as a result of the breach.
- B. Any one of the following acts, if knowingly committed or performed by an insurer, constitutes a breach of the insurer's duties imposed in Subsection A:
 - (1) Misrepresenting pertinent facts or insurance policy provisions relating to any coverage at issue
- C. In addition to any general or special damages to which a claimant or insured is entitled for breach of the imposed duty, the claimant may be awarded penalties assessed against insured in an amount not to exceed two times the damages sustained or five thousand dollars, whichever is greater.

34.

Defendants violated the Louisiana Unfair and Deceptive Trade Practice Statute because defendants violated the laws on obligation by failing to pay damages that plaintiff sustained as a result of defendants negligence under the Louisiana Civil Code Articles 1756 through 1759.

35.

The defendants practice of delaying or refusing to pay plaintiffs for damages they sustained for defendants wrongful acts is an unfair practice because it offends the established public policy and because it is oppressive to plaintiff.

36.

Plaintiff seeks damages from defendants because of defendants acts or failure to act. Defendants caused serious infliction of emotional distress on plaintiff by committing unfair and deceptive practice. Because of Defendants acts, plaintiff is entitled to recover treble damages under the Louisiana Unfair and Deceptive Trade Practice Act.⁹

CAUSE OF ACTION NUMBER 6

37.

Plaintiff reiterates adopts, incorporate and reavers by reference herein Paragraphs 1 through 37 of his petition as if set forth in full.

9. UNFAIR AND DECEPTIVE TRADE PRACTICES UNDER

LA. R. S. 51:1401 ET SEQ.

La. R. S. 51:1402 defines consumer interest means those acts, practices, or methods that affect the economic welfare of a consumer trade or commerce means . . . any trade or commerce directly or indirectly affecting the people of the state.

A practice is considered unfair under the Unfair Trade Practices and Consumer Protection Law when it offends established public policy and when the practice is unethical, oppressive unscrupulous, or substantially injurious to consumers. . . *Restivo v. Hanger Prosthetics and Orthotics, Inc.*, 483 F. Supp 2d 521, (E.D. La 2007) *Brown v. Romero*, 922 So. 2d 742 2005-1016 (la. App. 3rd Cir. 2/1/06) writ denied 927 So. 2d 315 2006-0480 (La. 5/3/06.)

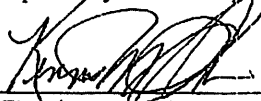
A trade practice is deceptive under La. UTPA when it amounts to mis-representative. *Able Security and Patrol, LLC, v Louisiana*, (ED La. 2008 569 F. Supp 2d 617. La. R. S. 51:1409 provides that "if the court finds the unfair or deceptive practice was knowingly used after being put on notice by the attorney general, the court shall award three times the actual damages sustained plus attorneys fees.


38.

In the alternative, plaintiff seeks damages under the doctrine of Res Ipsa Loquitur and assert that the negligence of plaintiff--TRAVIS JAMES and the breach of duty of good faith and tortious interference of a contract by defendant PROGRESSIVE CORP and its subdivisions "speaks for its self." Plaintiff asserts that the defendant's vehicle was under the exclusive control of TRAVIS JAMES; the injuries would not have occurred but for negligence of defendant--TRAVIS JAMES in some form, and (3) the circumstances attending the accident are peculiarly within PROGRESSIVE AND TRAVIS JAMES' knowledge. Thus, the doctrine of Res Ipsa Loquitur applies and defendant--TRAVIS JAMES is negligent under Res Ipsa loquitur and defendant PROGRESSIVE is liable for the damages sustained by the plaintiff under the doctrine of Res Ipsa Loquitur.

WHEREFORE, petitioners, pray that the defendants, be cited and served with a certified copy of this petition and that after due proceedings had, there be judgment in favor of petitioners, and against defendants, jointly, severally and/or in solido for an amount to be determined by this Honorable Court, plus interest from date of judicial demand, until paid, and for all court costs. Petitioners further pray for all other general and equitable relief and pray that the court rules that defendants breached their duty to effectuate settlement negotiation. Petitioners further reserve the right and pray for a trial by jury.

Respectfully Submitted,


KENNETH M. PLAISANCE # 19738
Attorney for Plaintiffs
5626 Elysian Fields Avenue .
New Orleans, La. 70122
(504) 905-1888

A TRUE COPY

CLERK OF DISTRICT COURT
PARISH OF ORLEANS
STATE OF LA

PLEASE SERVE:

PROGRESSIVE INSURANCE COMPANIES through the
Louisiana Secretary of State
Tom Schedler
8585 Archives Ave
Baton Rouge, Louisiana 70809

**TRICIA GRIFFITH PRESIDENT AND CHIEF EXECUTIVE
OFFICER OF THE PROGRESSIVE CORPORATION
AND PROGRESSIVE INSURANCE COMPANY**
through the
Louisiana Secretary of State
Tom Schedler
8585 Archives Ave
Baton Rouge, Louisiana 70809

and

TRAVIS JAMES 537 Steward Street, Cambell Nebraska 68932



**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

MELVIA HODGES

CIVIL ACTION

VERSUS

NO: 18-5889 c/w 18-5903

TRAVIS JAMES ET AL.

SECTION "H"

ORDER

Before the Court is a Motion to Determine Conflict-Free Status and Entitlement to Attorney's Fees filed by Plaintiff Melvia Hodges, Individually and as the Mother of her minor son, L.R. (Doc. 31). In her Motion, Plaintiff asks this Court to determine whether her former counsel, Kenneth Plaisance, was operating under a conflict of interest at the time of his representation and whether he should be entitled to a share of attorney's fees resulting from the settlement of Plaintiff's claims. Plaisance has not responded to this Motion.

This case arises out of an automobile accident during which Larry Taylor was driving and L.R. was riding as a passenger. The police report at the time of the accident placed fault for the accident on Taylor, and he tested positive for THC following the collision. Accordingly, it was clear from the outset that

there was a possibility that Taylor was at least partially liable for the injuries sustained by L.R. in the accident.

Despite this, Plaisance agreed to provide representation to Plaintiff, individually and on behalf of L.R., as well as Taylor. Louisiana Rule of Professional Conduct 1.7 provides that:

[A] lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if . . . there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

Here, it is clear that Plaisance's ability to secure damages for L.R. against those who caused his injuries was limited by his loyalty to Taylor, a possible cause of L.R.'s injuries. There is no evidence that this conflict was waived by the parties. Accordingly, Plaisance was operating under a conflict of interest during his representation of both Plaintiff and Taylor. Because Plaisance received a fee from the settlement of Taylor's claims, he is not entitled to share in the fees from the settlement of Plaintiff's claims.

Accordingly;

IT IS ORDERED that Plaintiff's Motion is **GRANTED**. This Court has determined that Plaintiff's prior counsel had a conflict of interest under Rule 1.7 of the Louisiana Rules of Professional Conduct by representing both Plaintiff and Larry Taylor in connection with injuries they sustained in a motor vehicle collision and that he is ineligible to receive a share of the attorney's fees derived from Plaintiff's settlement in this matter.

New Orleans, Louisiana this 7th day of October, 2019.

A handwritten signature in black ink, appearing to read "Jane Triche Milazzo", written over a horizontal line.

JANE TRICHE MILAZZO
UNITED STATES DISTRICT JUDGE

AFFIDAVIT OF MICHAEL J. ECUYER



STATE OF LOUISIANA

PARISH OF ORLEANS

BEFORE ME, the undersigned Notary Public, in and for said Parish and State, personally appeared Michael J. Ecuyer, who after first being duly sworn, states as follows:

1. Michael J. Ecuyer is a person of the full age of majority and a licensed attorney in the State of Louisiana in good standing.
2. I am familiar with Kenneth Plaisance and regrettably had to file a Complaint against him with the Office of Disciplinary Counsel.
3. That Complaint was later heard by the Louisiana Attorney Disciplinary Board.
4. The Louisiana Attorney Disciplinary Board, Hearing Committee No. 9, was comprised of James B. Letten (Committee Chair), Colin Reingold (Lawyer Member), and Robert P. Ventura (Public Member).
5. I did not serve as a member of Mr. Plaisance's Hearing Committee, but rather was called as a witness at the hearing and presented testimony in the matter.
6. I served as the Chair of another Hearing Committee for the Louisiana Attorney Disciplinary Board from 2010 to 2015, and again from 2018 through 2023.
7. I have never served on a Disciplinary Hearing Committee with any of the three people who served on Mr. Plaisance's Hearing Committee.
8. Of the three members of Mr. Plaisance's Hearing Committee, I knew only James Letten, by reputation.

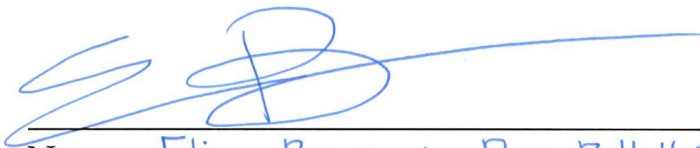
9. I took no role in the decision rendered by Mr. Plaisance's Hearing Committee.
10. I also take the opportunity to advise those persons reviewing this material that Mr. James Letten, the Chairman of Mr. Plaisance's Hearing Committee, is the former US Attorney for the Eastern District of Louisiana, and served in that role for many years under multiple administrations.

DATED: May 29, 2025



MICHAEL J. ECUYER

Sworn to and subscribed before me, this 29th day of May, 2025.



Name: Elise Benezech Bar Roll #39121

NOTARY PUBLIC, STATE OF LOUISIANA

MY COMMISSION EXPIRES AT DEATH