

Kenny First Baton Rouge Lawyer to Receive National Bar Award

Taylor Porter Partner **Erin Sayes Kenny** has become the first Baton Rouge lawyer to receive the honor of “On the Rise – Top 40 Young Lawyers,” bestowed by the ABA Young Lawyers Division. The distinction provides national recognition for ABA young lawyer members who exemplify a broad range of high achievement, vision, leadership and legal and community service. The 2019 “On the Rise” honorees will be recognized at the ABA YLD’s Awards Breakfast, scheduled for Saturday, Aug. 10, 2019, at the San Francisco Marriott Marquis. A selection committee was comprised of practicing attorneys and selections were based on the reputation of the nominator, the professional relationship between the nominator and the nominee and the nominator’s firsthand knowledge of the nominee’s experience, skill and character.

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On the Rise - Top 40 Young Lawyers Award



Taylor Porter Adds Three Attorneys *Corporate; Tax and Estate Practices Strengthened*

Taylor Porter welcomes Special Counsel **Jess Frey** and **Justin Mannino**, and Associate **Ryan Gonzales**.

Jess is a corporate and transactions attorney formerly with Phelps Dunbar. Justin, formerly with Lukinovich, is an estate planning and tax attorney, and Ryan, a certified public accountant, is a former tax associate of the national tax practice of Ernst & Young in New York.




Frey Mannino Gonzales

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COMMUNITY CORNER
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Taylor Porter Adds Litigation Support and eDiscovery Manager

Taylor Porter is pleased to announce the expansion of its in-house client services in eDiscovery and Litigation Support with the hiring of **Judy Madere** as the Firm's Litigation Support and eDiscovery Manager. Judy, a Louisiana native, has more than 20 years of legal experience in assisting clients with eDiscovery, Relativity, and litigation and trial support. Judy is a Certified eDiscovery Specialist (CEDS) and Certified Litigation Support Project Manager, and holds various litigation technology certifications.

eDiscovery is electronic discovery that includes, but is not limited to, emails, electronic documents, databases, and mobile devices relating to a production request in litigation. Litigation Support assists firms, attorneys and

clients in managing the electronically stored information (ESI) in litigation matters.

"When challenged with electronic data, it is important to have someone familiar with the EDRM (Electronic Discovery Reference Model) representing all discovery efforts required from identification, collections, document review, productions, and electronic trial presentation," Madere said. We can assist by providing a better understanding of the technology and how to make effective use of it in a client's case. The goal is for a more efficient and cost-effective performance of discovery."



- Kenny ABA Young Lawyers Honor CONT. FROM PAGE 1 -

Erin was nominated for the award by the Baton Rouge Bar Association. At the age of 32, Erin is a Partner, Recruiting Committee Co-Chair and key member of the Taylor Porter alcoholic beverage licensing and related enforcement issues practice. She represents national and local companies in the hospitality industry, including restaurants, hotels and retail stores, with an emphasis in alcoholic beverage licensing, compliance and enforcement issues. Erin also maintains a varied state and federal civil litigation and appellate practice, with an emphasis in commercial and tort litigation, including insurance defense and insurance coverage cases. Erin has been named by her peers among the *Louisiana Super Lawyers* "Rising Stars" and among the *Best Lawyers in America*.

An active member of the Baton Rouge community, Erin is the Chair-Elect of the Baton Rouge Bar Association Young Lawyers Section Council. Erin just completed a three-year term as a board member for the Louisiana Association of Defense Counsel and has been a member of the LADC Young Lawyers Committee since 2016. Through the Baton Rouge Bar Foundation Holiday Star Project, Erin participated as the firm's liaison to collect and distribute Christmas gifts for local children in need. Additionally, Erin has been a longtime board member of the Boys & Girls Club of Greater BR. Since 2011, she



Through her board tenure with the Boys & Girls Club of Greater Baton Rouge, Erin Sayes Kenny has helped the organization raise more than \$500,000 over the last eight years from the annual Steak & Stake fundraiser.

helped the Boys & Girls Club of Greater Baton Rouge raise more than \$500,000 through its annual Steak & Stake fundraiser, impacting the lives of the more than 1,200 youth the Club serves annually across the greater Baton Rouge area. Erin earned her J.D. from LSU Paul M. Hebert Law Center, and she received her B.A. in Mass Communication and a minor in Political Science from LSU.

Lambert's Tenure as President Leads Baton Rouge Bar into 90th Anniversary

Taylor Porter Partner **Amy Lambert** is midway through her tenure as 2019 President of the Baton Rouge Bar Association. She is leading the legal professional organization into the milestone of the 90th Anniversary of one of the largest voluntary bar associations in the State of Louisiana with more than 2,500 lawyers.



A special event to celebrate this milestone will be held on Aug. 16 at the City Club of Baton Rouge, and Amy has worked with BRBA staff and officers on various events throughout the year to recognize the theme she set forth in January at her presidency installation — a yearlong celebration of what it means to be a Baton Rouge lawyer. “The 90th anniversary of any association — especially a voluntary legal association of individuals whose core values of civility with one another and service to the community have been unwavering throughout its existence — is something that deserves celebration not just one day but all year long,” Lambert said. “We will take time this year to celebrate our accomplishments of the past, strive to make our association relevant for the present, and finally take the time to prepare our association for the future.”

In April, the BRBA held its annual Bench Bar Conference in Point Clear, Alabama, with the theme of “Uniquely Louisiana,” celebrating the state’s particular culture of treating each other with respect and professionalism. The conference brings together attorneys and judges for 12.5 hours of CLE seminars and various social events throughout the three days. May was BRBA Member Appreciation Month offering firms and attorneys CLE seminars, headshots and logo designs. Along with the 90th Anniversary Celebration in August, this Fall will feature the annual Belly Up with the Bar in September and the end-of-the-year “CLE By The Hour” event in December.

About Amy Lambert: Since 1997, Amy’s practice has centered on litigation in both state and federal trial and appellate courts. Amy represents physicians, hospitals, clinics, and nursing homes in malpractice suits as well as tort and commercial claims. Amy serves as the co-chair of Taylor Porter’s professional liability, insurance, casualty, product liability and personal injury litigation practices, and co-chair of the Firm’s Associates Committee. Amy is a LSU Law Center Hall of Fame member; was recognized as *Baton Rouge Business Report’s* “Top Forty Under 40”; and has been selected for *The Best Lawyers in America®* in Commercial Litigation since 2010. Amy is a member of the Board of Governors for Theatre Baton Rouge. Amy has served in BRBA officer roles throughout the last 10 years, including as president-elect, treasurer, secretary, and former chair of the Young Lawyers Section Council. Amy earned her B.A. and J.D. from LSU.



In January 2019, Amy Lambert was sworn in as the President of the Baton Rouge Bar Association at the U.S. District Court for the Middle District of Louisiana. Chief Judge Shelly Dick is pictured above.

History of Taylor Porter’s BRBA Presidents

Amy Lambert becomes the 14th Taylor Porter attorney to serve as President of the Baton Rouge Bar Association. B. B. Taylor was president of the BRBA from 1931-1932, and C. Vernon Porter, Jr. served from 1932-1933. Together, Taylor and Porter founded Taylor, Porter, Brooks & Phillips L.L.P. in 1912. The complete list of Taylor Porter attorneys who have served as BRBA Presidents include:

- Benjamin B. Taylor (1931)
- C. Vernon Porter (1932)
- Laurance W. Brooks (1950)
- Charles W. Phillips (1961)
- B. B. Taylor, Jr. (1967)
- Frank W. Middleton, Jr. (1974)
- Gerald L. Walter, Jr. (1977)
- W. Shelby McKenzie (1983)
- Cyrus J. Greco (1991)
- Eugene R. Groves (1997)
- Gregory E. Bodin (2005)
- Preston J. Castille, Jr. (2011)
- Michael S. Walsh (2013)
- Amy C. Lambert (2019)

- NEW ATTORNEYS: Frey, Mannino, Gonzales

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Practicing law since 2001, **Jess Frey** practices in the areas of contracts, corporate transactions, business, real estate and finance, focusing on transactions ranging from acquisitions, divestitures and mergers to general contract matters, formation for large and small companies and governance.



Jess represents individuals, start-ups, small businesses and public companies (including master limited partnerships) in various industries, including chemical plants, construction companies, real estate investors and developers, management, oil and gas companies, waste management companies, doctors and insurance companies, assisting with their growth, planning and day-to-day operations. His background in chemical engineering gives him an understanding of the business challenges that chemical plants face and assists him in formulating creative solutions for his clients. Jess's clients also include banking or lending institutions and borrowers in financing transactions; private placements of equity and debt; drafting and negotiating contracts, such as service agreements, supply agreements, purchase order terms and conditions, construction contracts, purchase agreements, acts of sale, leases, servitude agreements, loan documents, mortgages, employment, operating, joint venture, management agreements and pipeline contracts.

Jess is admitted to practice in both Louisiana and Texas. He received his J.D. from the University of Mississippi School of Law in 2001, and he earned his bachelor of science degree in chemical engineering from LSU in 1998.

Justin Mannino represents individuals and businesses in the areas of federal, state and local taxation; multigenerational estate planning; business and corporate governance and ownership matters; successions; and trusts.

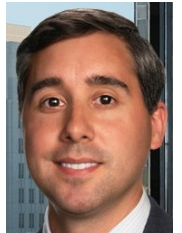


Justin frequently presents at CLE seminars on the topics of estate planning, successions and federal taxation. He is a member of the Baton Rouge Estate and Business Planning Council. Justin has been a member of the LSBA Ethics Committee since 2017.

Justin received his J.D./D.C.L. *cum laude* from LSU Paul M. Hebert Law Center, in 2013. After LSU Law, Justin continued his legal education at the University of Florida Levin College of Law, where he graduated with a Master of Laws (LL.M.) in Taxation in 2014. He received a bachelor of science in accounting in 2010 from the E.J. Ourso College of Business at LSU.

A Baton Rouge native, Justin is a 2006 graduate of Catholic High School, Baton Rouge. In the community, he serves on the Board of Directors for the Catholic High School Alumni Association. Justin also chairs the worship committee for St. Aloysius Catholic Church in Baton Rouge.

Ryan Gonzales assists clients with the tax implications of transactions, such as mergers, acquisitions, disposals, and restructurings, and he advises clients on tax planning and compliance at the federal, state and local levels with respect to various taxes including business and individual income tax, franchise tax, excise tax, ad valorem tax, sales and use tax, payroll tax and transfer tax. His practice includes drafting transaction documents and representing clients in controversies with various taxing authorities.



Ryan previously served as a law clerk for the U.S. Senate Committee on Finance in Washington, DC. In that role, he researched tax laws and drafted legal memoranda to assist senior tax counsel in drafting proposed tax legislation, and accompanied tax counsel to committee hearings and meetings with taxpayers, lobbyists and members of Congress. He was also an extern in the corporate, securities, and tax practice of the Washington, DC office of Miles & Stockbridge P.C. Before attending law school, Gonzales was an accountant with the New Orleans office of Ernst & Young.

Ryan received his Master of Laws in Taxation in 2016 from Georgetown University Law Center, and he earned his J.D. in 2015 from Loyola University New Orleans College of Law. Ryan earned his master of accounting and bachelor of science in management (finance), *cum laude*, in 2009, from Tulane University.

MEDICAL MALPRACTICE: Recredentialing Claims Uncapped



By Adam Thames
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In October 2016, the La. Supreme Court reversed course in the landmark decision of *Billeaudeau v. Opelousas Gen. Hosp. Auth.*, 2016-0846 (La. 10/19/16), finding claims of negligent credentialing to fall under general negligence provisions of Louisiana law and thus specifically outside the monetary damages cap imposed by the Louisiana Medical Malpractice Act (“LMMA”).

Recently, the Louisiana Third Circuit Court of Appeals extended *Billeaudeau’s* reach by finding claims of “negligent recredentialing” also fall outside the scope of protections afforded by the LMMA. In *Thomas v. Regional Health System of Acadiana, LLC*, et. al, 18-215 (La. App. 3 Cir. 2/27/19), the trial court ruled that a patient’s claims against a hospital for negligent recredentialing of a physician fell under the LMMA (and were thus capped) because it was akin to the hospital’s ongoing supervision of a physician and closely related to treatment. In reversing the trial court’s decision, the Third Circuit primarily

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STATUS OF SPORTS GAMBLING IN LOUISIANA ONE YEAR AFTER *MURPHY V. NCAA*

By Trey Tumminello
Associate, Taylor Porter
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More than ever, sports gambling has come to infiltrate the way sports are discussed and experienced in our country. Where once Jimmy the Greek would predict the score of a game to subtly indicate how he would bet it, now commentators on ESPN openly discuss betting lines on games. SportsCenter with Scott Van Pelt has a regular segment on “Bad Beats” for “unlucky” gambling losses. Technology and easy access to internet-based gambling sites have made sports gambling more common and easily available. Even smaller scale betting, such as NCAA Tournament pools and fantasy sports, have become mainstream. Despite this increased popularity and prevalence, sports gambling has long been illegal in the vast majority of the United States.

In 2018, the United States Supreme Court took the first steps in legalizing sports gambling, striking down the federal statute that prohibited states (except Nevada) from legalizing and regulating sports gambling. The result has been a hodgepodge of state and local responses from outright legalization of all sports gambling, including online gambling, to allowing existing gambling operators (e.g., casinos and horse tracks) to offer sports betting.

As background, in 1992 Congress passed the Professional and Amateur Sports Protection Act (“PASPA”). PASPA made it unlawful for any State to sponsor, operate, advertise, promote, license, or authorize by law or compact ... a lottery, sweepstakes, or other betting or gambling, or wagering scheme based on” ... competitive sporting events. PASPA included a “grandfather” provision to allow for Nevada to continue its current gambling and allowed for New Jersey to legalize sports gambling within one year of the passage of the act. New Jersey did not do so.

By 2011, New Jersey’s voters and legislators had changed their minds.

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AWARDS AND HONORS

Five Ranked by *Chambers USA* Among 2019 “Leaders in their Field”

Taylor Porter has five attorneys ranked as “Leaders in Their Field” in the *Chambers USA* 2019 Directory, which surveys clients and other law firms to rank attorneys globally since 1990. The annual guide of the best law firms and lawyers in business evaluates and ranks attorneys and firms nationally and by state through interviews with firm clients and peer attorneys.

Taylor Porter’s honorees include: **Mike Crawford** (Bankruptcy and Restructuring); **Anne Crochet** (Environmental Law); **Skip Philips** (Commercial Litigation); **Pat Seiter** (Healthcare Law); and **Fred Tulley** (Securities Litigation). Taylor Porter’s environmental practice team leader Anne Crochet and healthcare practice team leader Pat Seiter were both ranked in the top tier, Band 1, individually in Louisiana in the Chambers 2019 rankings. Lawyers are ranked in bands from 1-6, with 1 being the best. In addition to the rankings, the Chambers annual guide includes research findings by peer attorneys and clients about the recognized attorneys. The following are highlights from Taylor Porter’s attorneys’ inclusions:

Environmental Law

“Anne Crochet has an abundance of experience in regulatory compliance, permitting and enforcement action defense. She is also highlighted

for her strong environmental litigation practice. She represents energy industry participants, manufacturers and waste management companies.” ... “Respected firm with extensive environmental law expertise, acting for a range of energy, waste management and industrial companies. Advises clients on legislative and regulatory developments in the area.”

Healthcare Law

“Described as “an A-list lawyer,” Pat Seiter is considered by market observers to have “a deep appreciation and understanding of university hospital systems.” He deftly handles transactional work as well as compliance with state and federal regulations.”

Bankruptcy/Restructuring

“Taylor Porter’s Mike Crawford concentrates his practice on bankrupt-

cy litigation pertaining to a wide array of industry sectors, including oil and gas, energy, healthcare and entertainment. Sources consider him to be “a smart guy and good lawyer.”

Commercial Litigation

“Very good trial lawyer - Taylor Porter’s Skip Philips is highlighted for his abilities in defending companies in product liability disputes, banking litigation and insurance coverage matters. He is also adept at handling issues pertaining to corporate law.”

Securities Litigation

“Peers have tremendous respect for Taylor Porter’s Fred Tulley and his broad litigation-focused practice. He has extensive experience in commercial litigation disputes, being especially adept at handling construction disputes and antitrust matters.”

AWARDS AND HONORS

Taylor Porter's Groves Lowe Honored with Awards from LSU, U-High, Junior League

Taylor Porter Partner **Amy Groves Lowe** has enjoyed several professional and community honors and recognitions thus far in 2019, including an "Alumni of Distinction" award from the Louisiana State University College of Human & Sciences Education; the 2019 "Sustaining Member of the Year" award from the Junior League of Baton Rouge; and an induction this coming Fall into the U-High "Alumni Hall of Distinction."

In March, at a special dinner and awards ceremony at the Lod Cook Conference Center, the LSU CHSE recognized Amy as an outstanding alumnae who has made significant contributions to the school and the extended community.

In May, Amy was honored with the Junior League top award at a luncheon ceremony at Juban's Restaurant, recognizing her for contributions to the organization, and professional and community accomplishments within Baton Rouge. Amy formerly served as president of the Junior League of Baton Rouge, completed four terms on the Board and served as sustaining advisor.

This Fall, Amy will be inducted into the University High Alumni Hall of Distinction as part of the Fall 2019 Class. The distinguished alumni recognition event will take place on Saturday, August 17, 2019. Amy was selected by a panel of six alumni judges representing five decades of U-High graduates. Amy joins Taylor Porter attorneys **Brett Furr** (U-High '79) and **Shelby McKenzie** (U-High '57) as members of the U-High Alumni Hall of Distinction. Amy volunteers as the Cub Club President at University Laboratory School and a board



(TOP) Pictured from left: LSU CHSE Interim Dean Roland Mitchell, Amy Groves Lowe, Dr. Amy Westbrook, and Mila Sexton — at LSU Alumni Association.
(BOTTOM LEFT) Amy Groves Lowe, middle, is pictured with Junior League of Baton Rouge President Zelma Frederick (left), and Incoming President Namisha Patel-Vasanji (right).



member of the University Lab School Foundation.

Practicing law since 1997, Amy has a litigation practice in various areas of law, including insurance defense, labor and employment, education law, administrative law, appellate practice, and church property law. She has been selected for inclusion in *Best Lawyers in America* (peer-voted) in two areas: Education Law and Litigation – Insurance. In addition to her litigation experience, she has a Master of Arts in Psychology (LSU, 1994). Amy has combined her expertise in these two areas by being frequently utilized as a



in jury selection, pre-trial research, and serving as a litigation consultant in expert and lay witness preparation. She has conducted seminars on jury selection and been published on the subject. Amy is a former honoree of *Baton Rouge Business Report's* "Top Forty Under 40." She received her J.D. in 1997 from LSU Paul M. Hebert Law Center, and she was formerly admitted into LSU Law's Hall of Fame.

- Sports Gambling Fails in Louisiana CONT. FROM PAGE 5

Beginning in that year, New Jersey's legislature took a series of steps toward an attempt to legalize sports gambling in the state. After an initial attempt in 2012 to legalize sports gambling by amending the state constitution failed in the Third Circuit, the New Jersey Legislature enacted a law permitting sports gambling at horse tracks and casinos in the State. The NCAA and five professional sports leagues opposed the attempt and filed to enjoin the New Jersey law, claiming PASPA precluded New Jersey's efforts. On May 14, 2018, the United States Supreme Court rendered its opinion in *Murphy v. National Collegiate Athletic Assn.*, et al, siding with New Jersey in finding PASPA unconstitutional. Justice Alito, writing for the majority, found that PASPA violated the "anti-commandeering" principal, under which Congress cannot "commandeer the legislative process of the States by directly compelling them to enact and enforce a federal regulatory program." According to the Supreme Court, there is no material difference between forcing a state to enact a regulatory program and prohibiting the state from doing so. Thus, by prohibiting the States from regulating sports gambling, PASPA unconstitutionally commandeered the state legislature in enforcing a federal prohibition.

The court held that no provision of PASPA was severable from its commandeering provisions. Both a concurring opinion by Justice Thomas and the dissenting opinion by Justice Ginsberg, joined by Justices Breyer and Sotomayor, focused on the extent to which certain provisions were severable under PASPA. Justice Thomas's concurrence questioned the entirety of the Court's current severability doctrine. Meanwhile, Justice Ginsberg's dissent argued that aspects of PASPA were severable. Certain provisions of the statute prohibited individuals from "sponsor[ing], operat[ing], advertis[ing], or promot[ing]" sports gambling schemes "pursuant to the law ... of a governmental entity." According to Justice Ginsberg, this prohibition on individuals could have survived without violating anti-commandeering principles. Once the Supreme Court's opinion was released, conventional wisdom held sports gambling was now legal in the United States. In actuality, the Supreme Court's opinion merely opened up the opportunity for the States to legalize, regulate, and license sports gambling. In the year since *Murphy*, almost every state has had a bill introduced in the legislature or a constitutional amendment proposed to legalize and regulate sports gambling. In addition to Nevada, sports betting is now legal in New Jersey, Mississippi, Delaware, West Virginia, Pennsylvania, and Rhode Island. Voters in Arkansas voted to legalize sports betting as well, though the infrastructure for regulating and licensing sports betting establishments is still in progress. Whether or not legalized sports betting results in a windfall for state revenues is currently unclear. In New Jersey, which allows bettors to place bets from their mobile devices, the state brought in approximately \$1.8 million per month between July 2018 and February 2019. Meanwhile, in Mississippi, where sports bets can only be made at casinos, actual tax revenue has been approximately half of what lawmakers projected. In the past year, Louisiana made a first overture toward the potential legalization of sports gambling.

Up until 2018, Louisiana law prohibited playing fantasy

sports for money. This prevented pay-to-play daily fantasy sites like DraftKings and FanDuel from offering their product to Louisiana residents. While this prohibition was not based upon the PAPSA (most states did not consider fantasy sports, including daily fantasy sports, to be sports gambling even pre-*Murphy*), the *Murphy* decision provided an impetus for the Louisiana Legislature to address this issue.

In 2018, in what was viewed as the canary in the coal mine, voters of each parish in Louisiana voted on whether or not to approve legalizing fantasy sports in their respective parishes. The voters in 47 out of 64 parishes voted in favor of legalizing fantasy sports. Fantasy sports, including Daily Fantasy Sports online sites like DraftKings and FanDuel, will only be available in those 47 parishes. Three bills were introduced in the La. Legislature to determine how the state will ultimately regulate and tax legalized fantasy sports. However that the regulation is ultimately handled, the support of legalizing fantasy sports was seen a signal that there is also public support for legalized sports gambling. Sen. Danny Martiny – R. Metairie, introduced SB 153 during the 2019 Legislative Session. As with the prior initiative on fantasy sports, the bill would not have legalized sports betting in Louisiana. Rather, it would have created a ballot initiative whereby voters in situs parishes for casinos and horse racing tracks could have voted to allow those already licensed entities to provide sports betting. The casinos and horse racing tracks would have been able to apply for licenses through the Louisiana Gaming Control Board. Like with fantasy sports, a tax rate and license fee would eventually be determined through subsequent legislation. The bill would not have allowed for online sports gambling in Louisiana. Specifically, the bill stated that "[e]lectronic sports wagers shall be placed in the gaming area of the riverboat, eligible facility, or official gaming establishment as determined by the board." Additionally, the bill would not have permitted sports gambling at any facilities not already licensed as a casino or horse racing track.

However, in the 2019 Legislative Session, the Louisiana legislature failed to pass SB 153 or any bill directed to the regulation of fantasy sports in Louisiana, despite the voters of 47 parishes in favor of legalizing fantasy sports. After the Louisiana House rejected SB 153, the Senate amended the House's bills, House Bills 459 and 600, taxing and regulating fantasy sports. After the House rejected the amended fantasy sports bills, the bills went to a conference committee, which included Martiny. Ultimately, the conference committee, with less than hour left in the legislative session, agreed to fantasy sports bills that omitted legalized sports betting. The House approved the bills, but Martiny, who has reached his term limit in the Louisiana Senate, filibustered on the Senate floor for long enough to prevent a vote on the fantasy sports bills. Explaining his decision to block a measure approved by 47 parishes just last year, Martiny stated "Unfortunately, there's another side of this building that doesn't play by the rules ... I don't like the way I was treated." Thus, the Louisiana Legislature ended the 2019 Legislative Session having failed to enact any legislation on either fantasy sports or sports betting. Because tax legislation may only be introduced in odd numbered years, the Legislature cannot attempt to legalize fantasy sports in a regular session again until 2021.

AROUND THE FIRM

15 Students from Five Law Schools Participate in Taylor Porter Summer Law Clerk Program

Taylor Porter hosted 15 students from five law schools for two six-week sessions of its 2019 summer law clerk program in which under the guidance of practicing Taylor Porter attorneys and mentors, law clerks gain hands-on experience and interaction that reflect real life as a lawyer.

The work ranges from case research to legal writing to shadowing attorneys at depositions, hearings, and oral arguments, and speaking with both Taylor Porter partners and associates one-on-one and learning about their personal experiences. Law clerks also teamed up with staff members for volunteer days at the Greater Baton Rouge Food Bank to emphasize the strong commitment to community service at Taylor Porter.

First session: Representing Southern University Law Center, LSU Paul M. Hebert Law Center, Tulane University School of Law, William & Mary Law School, and Northwestern Pritzker School of Law, Taylor Porter law clerks included: Darryl Cage (SULC 1L), Beverly Perkins (LSU 2L), Braxton Duhon (LSU 1L), Zach Lester (LSU 1L), Patrick Riley (LSU 1L), Connor Rabalais (Tulane 1L), Eleanor Gilbert (William & Mary 1L) and Emilio Figueroa (Northwestern 2L).

Second session: Representing Southern University Law Center included Stacy Porche (2L) and David Bayard (1L); and representing LSU Paul M. Hebert Law Center were Anne Boudreaux (1L), Elyce



First Session pictured from left: Zach Lester (LSU 1L); Emilio Figueroa (Northwestern 2L); Patrick Riley (LSU 1L); Connor Rabalais (Tulane 1L); Eleanor Gilbert (William & Mary 1L); Braxton Duhon (LSU 1L); Beverly Perkins (LSU 2L); and Darryl Cage (SULC 1L)



Second Session pictured from left: Eric Morvant (LSU 1L); David Bayard (SULC 1L); Stacy Porche (SULC 2L); Anne Boudreaux (LSU 1L); Elyce Ieyoub (LSU 1L); Camille Schwaner (LSU 1L); and Andrew Jarreau (LSU 1L)

Ieyoub (1L), Andrew Jarreau (1L), Eric Morvant (1L) and Camille Schwaner (1L).

Taylor Porter attorney mentors for our 2019 law clerks included: Kiki Bergeron, Katia Bowman, Leah Cook, Mike Crawford, Caroline Darwin, Dick Easterling, Tom Easterly, Ryan French, Lauren

Hadden, Eddie Hughes, Amy Lambert, Blue Loupe, Coulter McMahan, Ashley Meredith, John Milazzo, Ne'Shira Millender, Barrye Miyagi, Jonathan Moore, John Murrill, John Parker, Colin Peak, Tim Poché, Savannah Smith, Adam Thames, Robin Toups, Trey Tumminello, Mike Walsh and Sarah White.

- Thames: Medical Malpractice CONT. FROM PAGE 5 -

emphasized, as did the Supreme Court in *Billeaudeau*, that attempts by the Louisiana Legislature to include credentialing in the list of claims to be covered under the LMMA had repeatedly failed. The appellate court was also not persuaded by the argument that recredentialing of a physician was similar to ongoing supervision by the provider or any different at all from the initial credentialing process analyzed in *Billeaudeau*. Thus, the Third Circuit held that a patient's claims for negligent recredentialing against the hospital could proceed, uncapped, under Louisiana's general negligence provisions as opposed to the LMMA.

It is unlikely the Supreme Court will exercise its discretion to hear the *Thomas* case and even more unlikely that it will reverse the Third Circuit's ruling. Without legislative action to amend the LMMA to include terms like hiring, retention, credentialing, and recredentialing within the definition of malpractice, uncapped credentialing claims will continue to be cause for concern for health care providers. In light of *Billeaudeau* and *Thomas*, it is critical for all health care providers to ensure that only qualified physicians are credentialed, and now recredentialed, before they are allowed to treat patients in their facilities.

Thomas v. Regional Health System of Acadiana, LLC

In *Thomas*, the plaintiff, Megan Thomas ("Mrs. Thomas"), contended that her infant daughter's pediatric cardiologist, Dr. Geeta Dalal, incorrectly interpreted multiple echocardiograms and failed to diagnose a life-threatening cardiac condition that had to later be corrected by a cardiac surgeon. Mrs. Thomas instituted a medical malpractice claim with the Louisiana Patient Compensation Fund against Dr. Dalal and the multiple hospitals where she was privileged and treated the infant. Mrs. Thomas also filed suit against the same parties in state court alleging liability under Louisiana's general negligence law; not the LMMA. As to the hospitals where the infant was treated, Mrs. Thomas alleged that they were liable for her daughter's injuries because they "... negligently credentialed Dr. Dalal and negligently provided her with privileges to practice in [their] hospitals."

Dr. Dalal was initially credentialed, granted clinical privileges, and appointed to the medical staff in 1987. She was recredentialed every two years, including peer review of her patient care, on an ongoing basis, through 2011 until she reached 65, and then yearly recredentialed through her retirement in 2017. The hospitals seized on these facts and argued to the trial court that the Supreme Court's holding in *Billeaudeau* only applied to claims for initial credentialing of a physician and not to recredentialing. The trial court agreed,

finding that the recredentialing process was essentially akin to the hospitals' "supervision" of Dr. Dalal. Because the LMMA defines malpractice to include claims related to the "training or supervision of health care providers" the trial court found Mrs. Thomas's recredentialing claims sounded in malpractice under the LMMA, not general negligence. The state court claims for negligent recredentialing were dismissed as premature prior to being reviewed by the Medical Review Panel. The Court further found that recredentialing was not "treatment related" and did not involve ongoing supervision or training of Dr. Dalal by the hospital. The following passage from the court's opinion is particularly pertinent to the Third Circuit's decision to extend the scope of *Billeaudeau*:

"Credentialing is credentialing, whether it was done one time or multiple times, and it applies to both the initial credentialing process and recredentialing process. Just as a physician's prior performance, including past claims for malpractice, are considered in the initial credentialing decision, they will also affect the subsequent credentialing decisions. That does not equate the credentialing or recredentialing process to a supervisory function. It continues to encompass the evaluation of the physician's personal, educational, and skills background in determining whether a physician should be allowed to care for patients within the walls of that particular hospital."

Historical Perspective of La. Medical Malpractice Act

Under the LMMA, the amount of money a patient can recover due to the negligence of his or her health care provider is capped as long as the injury arises out of medical treatment. For decades, courts across Louisiana considered claims against health care providers for "negligent credentialing" to be medical malpractice and thus capped under the LMMA. *Billeaudeau* and *Thomas* are stark changes in the law that should be recognized by health care providers charged with credentialing physicians and physicians who sit on credentialing committees.

About Adam Thames: Adam Thames is a Partner at Taylor Porter and a member of the Firm's Healthcare Practice Team. He devotes a significant portion of his practice to representing physicians, hospitals, dialysis clinics, nurses, and other healthcare providers in medical malpractice and other professional liability claims. Adam also has extensive experience litigating class action, products liability, personal injury, and insurance defense claims. He is ranked by his peers among the Louisiana Super Lawyers' "Rising Stars."

The Taylor RePorter

LEGAL BLOG

<http://www.taylorporter.com/blog/>

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In-House Counsel CLE Seminar Tackles Complex Legal Challenges

Taylor Porter presented a CLE Seminar, “Complex Legal & Regulatory Challenges Facing In-House Counsel,” in which attorneys covered the challenging issues that are confronting in-house legal departments. The CLE was hosted in the Firm’s Founders Room on Feb. 20. In front of close to 50 in-house counsel from companies across Louisiana and Texas, Taylor Porter attorneys covered practice areas and issues ranging from Data Security, and Construction Law to Insurance, Environmental to Ethics, and Labor and Employment to Medicare Compliance. The seminar was approved for seven hours of CLE credit by both the Louisiana State Bar Association and State Bar of Texas.

Taylor Porter’s presentations and speakers for the CLE seminar included:

Data Security and Breach Response Strategies: **Marc Whitfield, John Milazzo and Damian Burdette**

Environmental Legal Strategies for Acquisitions and Developments: **Anne Crochet, Tim Poché and Tommy Gildersleeve**

Construction Contracts - Important Terms and Provisions: **David Shelby and Kiki Bergeron**

Ethics: Wait, I’m Not Really Your Lawyer: **Mike Walsh**

Indemnity, Insurance and Exposure in Personal Injury Claims: **John Stone Campbell III, Adam Thames and Ne’Shira Millender**

Problems, Pitfalls and Legal Issues Associated with Social Media; When Can an Employer Make Unilateral Changes?; And the Latest on Independent Contractor Status: **Lenore Feeney and David Shelby**

Cutting Through the Red Tape: A Discussion Regarding Practical Solutions to the Medicare Secondary Payer Act and the Importance of a Medicare Compliance Policy: **Barrye Miyagi and Lauren Hadden**



Pictured clockwise second row from top left: Tommy Gildersleeve, John Milazzo, Mike Walsh, Damian Burdette, John Stone Campbell III, Lauren Hadden, Lenore Feeney and David Shelby, and Tim Poché, Tommy Gildersleeve and Anne Crochet.

Fair Debt Collection Practices Act: Breakdown of Obligations and Best Practices

Taylor Porter attorneys **Skip Philips** and **Coulter McMahan** recently presented to a client on the Fair Debt Collection Practices Act (“FDCPA”), discussing the obligations of both creditors and debt collectors pursuant to the FDCPA and Louisiana’s related statute, applications to businesses, and recommended best practices.

The Fair Debt Collections Practices Act (“FDCPA”), 15 U.S.C. §§ 1692-1692p, was enacted on September 20, 1977. The purpose of the FDCPA was to eliminate certain abusive, deceptive, and unfair debt collection practices. The debts covered under the FDCPA are credit card debt, auto loans, medical bills, student loans, mortgage, and other household debts. However, business debts are not covered.

A “creditor” is any person who offers or extends credit creating a debt or to whom a debt is owed. A “debt collector” is any person who uses letters, phone calls, emails, text messages, social media in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. The FDCPA also extends coverage to “any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts.”

Application to Businesses

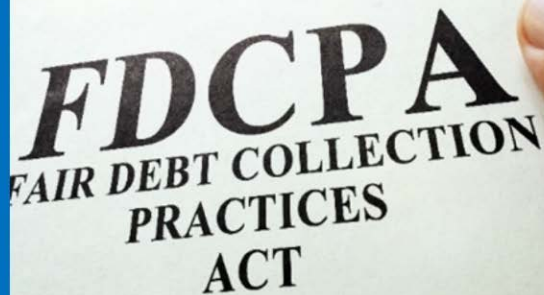
Creditors who collect in their own name and whose principal business is not debt collection are not subject to the FDCPA. However, if a business hires an attorney or collection company to collect the debt, then that attorney or company would be subject to the requirements of the FDCPA. Debt collectors can call you, or send letters, emails, or text messages to



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collect a debt. However, a debt collector must send you a written “validation notice” within five days of first contacting you. The notice must say:

- how much money you owe;
- the name of the creditor you owe it to; and
- what to do if you do not think it is your debt.

If a debtor disputes that he owes the debt, he can send the debt collector a letter stating he does not owe any or all of the money, or asking for a verification of the debt. If debtor sends the letter within 30 days of getting the validation notice, the debt collector has to send you written verification of the debt, like a copy of a bill for the amount you owe, before it can start trying to collect the debt again. Debt collectors cannot contact you at inconvenient times or places. For example, they cannot contact you before 8:00 a.m. or after 9:00 p.m.,

unless you agree to it. Debt collectors also cannot contact you at work if they are told you are not allowed to get calls there. Debtors can prevent a debt collector from contacting him, at any time, by sending a letter by mail requesting the debt collector cease all contact. A debt collector generally cannot discuss your debt with anyone but you or your spouse.

Debt Collector Obligations in General

If an attorney is representing you, the debt collector has to contact the attorney. Debt collectors cannot harass you, threaten you, or engage in unfair practices. Debtors can sue a debt collector in state or federal court within one year of the date the FDCPA was violated. In order to succeed on a claim, the debt collector must show:

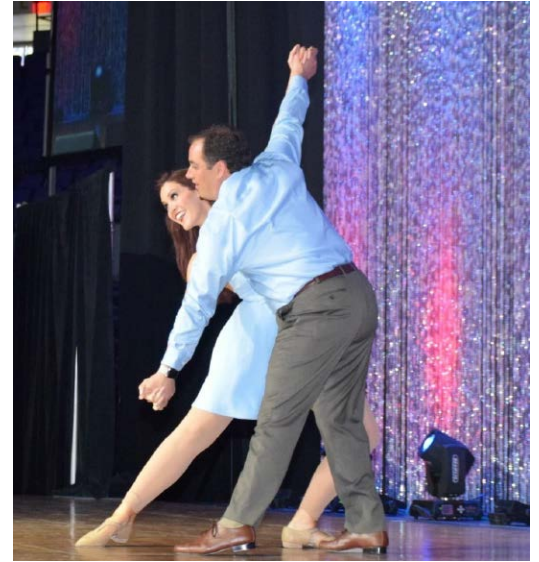
1. He has been the object of collection activity arising from a consumer debt;

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COMMUNITY CORNER

Fan's Choice Award - Employee Showcases Dancing Talent at Big Buddy Fundraiser

Taylor Porter employee and professional dancer **Joanna Chustz**, a software support specialist in the Firm's IT department, performed at the 13th Annual "Dancing for Big Buddy" fundraiser, held April 27 at the Pete Maravich Assembly Center. The annual event raises funds for the Big Buddy Program. This was the second year in a row Joanna performed at the event. Modeled after the hit ABC TV show, the fundraiser showcases community leaders and prominent citizens as they transform into star dancers to present live ballroom performances with their professional dance partners. This year, Joanna teamed up with Branden Barker, of Barker Property Management, and the two won the "Fan's Choice" award for their performance. Joanna has been a feature dancer in numerous productions, and transitioned to a professional dancer seven years ago. Big Buddy provides programming for youth on resiliency against poverty, crime and academic failure.



Crawford Elected to Food Bank Board

Mike Crawford has been elected to the Greater Baton Rouge Food Bank Board of Directors. The local Food Bank has 120 agencies and serves the 11 parishes that surround and include East Baton Rouge. Mike, a Partner, practices bankruptcy law, corporate reorganizations, bankruptcy mediation, and commercial litigation.



Loupe Completes Leadership Academy

Blue Loupe graduated from the 2019 Spring Executive Class of the *Baton Rouge Business Report* Leadership Academy. The Academy is for advancing professionals and entrepreneurs offering personal development, professional growth, leadership exposure and insight from guest CEO speakers. Blue practices primarily in commercial transactions. He is ranked among *Louisiana Super Lawyers Rising Stars* in Corporate Law.



Taylor Porter Works its "Klingon" at the 2019 Pennington Trivia Fundraiser

Sporting a Star Trek costume theme, the Taylor Porter trivia team participated in the 2019 "The Answer" Trivia Game Fundraiser supporting Pennington Biomedical Research Foundation and the critical research being done by the center on chronic diseases. The fundraiser was held April 12 at the Renaissance Hotel in Baton Rouge. The center's research covers a wide array of chronic diseases such as dementia, obesity, diabetes, cancer, and more. With gifts from individuals, foundations and businesses, the exploration of new ideas, innovative techniques and powerful technologies will be accelerated. Pictured bottom row from left: Ashley Meredith, Caroline Darwin, Nancy Dougherty, Kellie Barton, Lauren Hadden and Cynthia Lunceford. Pictured top row from left: Lloyd Lunceford, Ryan French, Mitchell Meredith, Cary Dougherty, Colleen Philips, Skip Philips, Bob Barton, Leah Cook, Trey Cook and Will Hadden.

COMMUNITY CORNER

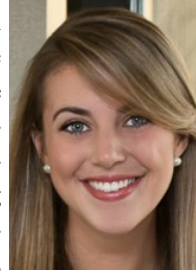
Hester Appointed to Louisiana State Law Institute Successions Committee

Mary Hester has been appointed to the Louisiana State Law Institute's Successions and Donations Committee. Mary has been a longtime council member of the LSLI, and formerly served on the Council's Conditional Charitable Donations Committee, the UPMIFA Committee, and the Charitable Trust Law Revision Subcommittee.



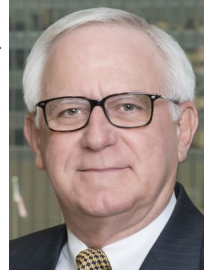
Meredith Elected to Board of Juvenile Diabetes Research Foundation La. Chapter

Ashley Meredith has been elected to the board of the Juvenile Diabetes Research Foundation Louisiana Chapter. JDRF is the leading global organization funding type 1 diabetes (T1D) research. Ashley practices in a wide array of areas including commercial transactions, banking, commercial litigation, healthcare, and environmental law.



Philips Elected Treasurer of Louisiana Bar Foundation - Civil Legal Aid Organization

Skip Philips has been elected treasurer of the Louisiana Bar Foundation, a state funder supporting non-profits that provide civil legal representation to the indigent, law-related education to the public, and administration of justice projects. Since 1989, the LBF has distributed more than \$80 million to non-profits to meet this goal.



- Fair Debt Collection Practices CONT. FROM PAGE 12 -

2. Defendant is a debt collector defined by the FDCPA; and
3. Defendant engaged in an act or omission prohibited by the FDCPA.

Creditor Obligations in Louisiana

Louisiana has not enacted a separate State law that is substantially different from the FDCPA. However, the Louisiana Fair Debt Collection Statute, La. R.S. 9:3562, is more detailed as to creditors. La. R.S. 9:3562 provides that a creditor "shall not contact any person other than an extender of credit or credit reporting agency who is not living, residing, or present in the household of the debtor regarding the debtor's obligation to pay a debt." The statute prohibits creditors from communicating with third-parties about a debtor's obligation. Therefore, if there is no evidence that the creditor communicated with a third-party, then debtor's claim fails. If the debtor has defaulted on his promise to pay, and if he has given specific notice in writing by registered or certified mail, instructing the creditor to cease further contacts regarding the debt,

the creditor must limit mail contacts to one notice per month so long as the notice is not designed to threaten action not otherwise permitted by law. If the debtor has instructed the creditor to cease further contact, the creditor may make a maximum of four personal contacts with the debtor for the purpose of settling the obligation provided such contacts are not designed to threaten action not otherwise permitted by law. There are no Louisiana decisions on what constitutes a personal contact. Therefore, out of an abundance of caution, the personal contacts should be limited to mail.

Collecting on a Debt

Submit documentation to an attorney substantiating the genuineness of the claim in order to calculate the precise amount due. Ensure creditor does not accept payment from or conduct discussions with debtor, because discussions might create an acceptance of less than the amount due in accord and satisfaction. The third step is to locate the debtor and, where applicable, to make a proper demand satisfying the

requirements for an award of attorney's fees to the creditor if suit is required.

Recommended Best Practices

Creditors, collecting on their own debt, should be aware of the Louisiana Fair Debt Collection Statute and strictly comply with the statute. If a parent company is collecting on behalf of one of its subsidiaries, it should detail its relationship with the subsidiary and state that it is the creditor, if that is in fact the case. This avoids the allegation that a creditor is using a name other than its own that would indicate a third person is collecting or attempting to collect such debts. Out of an abundance of caution, businesses should ensure that its third party vendor has written policies and procedures that require employees to act in accordance with the requirements of the FDCPA. A creditor collecting on its own behalf does not have a duty to respond to a debtor's demand letter that mistakenly identifies the creditor as a debt collector. However, it would be prudent to draft a form letter to the debtor acknowledging receipt of the letter.

Project CEO: Cristo Rey Student Workers Share School Year Highlights at Taylor Porter



*Taylor Porter is a corporate partner of the Cristo Rey Baton Rouge Franciscan High School work study program. In conjunction with the school year's end to the program, our law firm hosted four Taylor Porter Cristo Rey student workers in a "Project CEO" presentation, in which the students presented a PowerPoint on the skills they learned and the jobs they did throughout the school year. Cristo Rey Baton Rouge Franciscan High School is a private, Catholic school that is part of a national network of 32 schools. Taylor Porter Partner **Skip Philips** serves on the Cristo Rey Board and also chairs the Corporate Work Study Program Board.*

Barton Elected to Board of Manship Theatre

Managing Partner **Bob Barton** has been elected to the board of directors of Manship Theatre, which provides music, film, theatre, arts, and dance, within in a 325-seat auditorium. Board members establish policies for operation of the venue, and ensure and support sound management of the organization within the community.



Castille Elected to BRAF Board of Directors

Partner and Executive Committee Member **Preston Castille** was elected to the board of the Baton Rouge Area Foundation (BRAF), a community foundation and non-profit dedicated to enhancing the quality of life in Louisiana's capital region. Since 1964, BRAF has issued grants totaling more than \$200 million, and served more than 600 fund donors. Preston is Immediate Past Chairman of the Board of Directors of New Schools for Baton Rouge and Chairman of the Board for Helix Community Schools. He is also Vice Chairman of the Board of Directors for the Center for Planning Excellence (CPEX).



"Finding Cures. Saving Children." Taylor Porter Participates in St. Jude Home Giveaway Signing



Taylor Porter attorneys, from left, **Kiki Bergeron**, **Vicki Crochet**, and **Lauren Hadden** participated in the St. Jude Children's Research Hospital - Louisiana Dream Home Floor Signing Event held on April 17. Sponsors helped sign and dedicate the floor for the Dream Home Giveaway. Proceeds benefit the St. Jude's organization.



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Founded more than 100 years ago in 1912 in Baton Rouge, Taylor Porter is Louisiana's Law Firm® and one of the oldest, largest and most respected law firms in Louisiana, representing a diverse range of local, regional, national and international clients in the most complex transactions and litigation, across a variety of industries.

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