

LITIGATING AGAINST THE STATE FROM THE PLAINTIFF'S PERSPECTIVE

By: Robert E. Kleinpeter

**Baton Rouge, LA
December 9, 2004**

1. GENERAL CONSIDERATIONS WHEN LITIGATING AGAINST THE STATE

A. No Immunity For The State

Since 1974, people harmed by the state, a state agency, or a political subdivision can sue in tort and contract. This right, vested in the constitution, abolished the sovereign immunity contained in prior constitutions and jurisprudential decisions. But the state restricts the circumstances under which it can be sued.

The 1974 Constitution of the State of Louisiana, Article XII., Section 10 outlines the state's waiver of immunity and the limitations on suits against the state.

(A) No Immunity in Contract and Tort. Neither the state, a state agency, nor a political subdivision shall be immune from suit and liability in contract or for injury to person or property.

(B) Waiver in Other Suits. The legislature may authorize other suits against the state, a state agency, or a political subdivision. A measure authorizing suit shall waive immunity from suit and liability.

(C) Limitations; Procedure; Judgments. Notwithstanding Paragraph (A) or (B) or any other provision of this constitution, the legislature by law may limit or provide for the extent of liability of the state, a state agency, or a political subdivision in all cases, including the circumstances giving rise to liability and the kinds and amounts of recoverable damages. It shall provide a procedure for suits against the state, a state agency, or a political subdivision and provide for the effect of a judgment, but no public property or public funds shall be subject to seizure. The legislature may provide that such limitations, procedures, and effects of judgments shall be applicable to existing as well as future claims. No judgment against the state, a state agency, or a political subdivision shall be exigible, payable, or paid except from funds appropriated therefor by the legislature or by the political subdivision against which the judgment is rendered.

Thus, the legislature can "limit or provide for the extent of liability of the state . . . in all cases including the circumstances giving rise to liability and the kinds and amounts of recoverable damages."ⁱ And state property is immune to seizure. Judgments can only be paid from legislatively appropriated funds. This is reiterated in La. R.S. 13:5109.ⁱⁱ

As a practical matter, this means getting a state representative to pre-file a bill appropriating money to pay the judgment, even if it's the result of a settlement or compromise.

B. Jury Trial

A jury trial is available against the state, its agency, and any political subdivision

which allows for it by general ordinance or resolution.ⁱⁱⁱ

La. R.S. 13:5105 provides in pertinent part:

A. No suit against a political subdivision of the state shall be tried by jury. Except upon a demand for jury trial timely filed in accordance with law by the state or a state agency or the plaintiff in a lawsuit against the state or state agency, no suit against the state or a state agency shall be tried by jury.

B. Whenever a jury trial is demanded by the state, state agency, or the plaintiff in a lawsuit against the state or state agency, the party demanding the jury trial shall pay all costs of the jury trial, including the posting of a bond or cash deposit for costs in accordance with Code of Civil Procedure Articles 1733 through 1734.1.1, inclusive.

Thus, although the state doesn't pay for the jury bond, it may be ordered to pay for the jury as part of court costs after plaintiff successfully prosecutes the case.^{iv}

C. Legal Interest

Legal interest against the state is fixed as six percent per annum from the date service is requested following judicial demand until the judgment is signed by the trial judge, in accordance with Code of Civil Procedure Article 1911. After judgment, legal interest is the same as for everyone else.^v

D. General Damages Are Limited

The state limits general damages recovery against itself to five hundred thousand dollars. This general damages limitation applies to personal injury suits brought by the plaintiff or wrongful death representatives. Special damages are excepted.

La. R.S. 13:5106

B. (1) In all suits for personal injury to any one person, the total amount recoverable, including all derivative claims, exclusive of property damages, medical care and related benefits and loss of earnings, and loss of future earnings, as provided in this Section, shall not exceed five hundred thousand dollars.

(2) In all suits for wrongful death of any one person, the total amount recoverable, exclusive of property damages, medical care and related benefits and loss of earnings or loss of support, and loss of future support, as provided in this Section, shall not exceed five hundred thousand dollars.

Derivative claims include, but are not limited to, claims for survival or loss of consortium.^{vi} The five hundred thousand dollar cap is per plaintiff. *Lockett v. State*.^{vii}

Future medicals are subject to a reversionary trust, specially created for the state's benefit.^{viii} Upon the death of the claimant, funds remaining in the reversionary trust return to the state.

E. Article 2317 Liability Pursuant To La. R.S. 9:2800

The state's tort liability pursuant to Civil Code Article 2317 requires (1) care and custody; (2) actual or constructive notice (this equals facts which infer knowledge) and (3) reasonable opportunity to remedy the defect.^{ix} A violation of the rules and regulations promulgated by a public entity is not negligence per se.^x

F. Defense Based On Age Of Claim

An old statute says the state won't pay any claim or debt more than ten years after the event.^{xi} The statute is rarely invoked but occasionally is raised as a defense in older cases. It appears to be superseded by another statute.^{xii}

2. LITIGATING ROAD HAZARD SUITS

A. DOTD's Duty To Maintain Roads

The Department of Transportation and Development (DOTD), the state, and any political subdivision "has a duty to maintain, repair, construct, or reconstruct any public road, highway, bridge, or street, or any portion thereof, in a manner that is not unreasonably dangerous for a reasonably prudent driver."^{xiii}

DOTD's duty includes conformance with American Association of State Highway and Transportation Officials (AASHTO) safety standards current at the time of the construction. There is now no duty to upgrade old roads to newer standards. Non-compliance with AASHTO or other applicable standards is not negligence per se.^{xiv}

But, if the pre-1999 version of La. R.S. 48:35 applies to your case, DOTD is then statutorily required to maintain its existing highways to the prevailing minimum standards as set by AASHTO (formerly known as AASHO). Acts 1999, No. 1223, Section 2 (stating that the 1999 amendments were explicitly "intended to legislatively overrule that portion of *Aucoin v. State Through the Dept. of Transp. And Development*^{xv}, which imposes liability on the Department of Transportation and Development for failing to maintain and/or reconstruct an existing highway to modern standards").

B. DOTD's Duty To Maintain Shoulders

DOTD's duty specifically includes shoulders. *Petre v. State, through DOTD*;^{xvi} *Cormier v. Comeaux*;^{xvii} *Brown v. Louisiana Indemnity Company*;^{xviii} *Graves v. Page*.^{xix} DOTD's

duty to maintain safe shoulders encompasses the foreseeable risk that for any number of reasons, including simple inadvertence, inattentiveness, or outright negligence, a motorist might find himself traveling on, or partially on, the shoulder. *Petre*;^{xx} *Cormier*.^{xxi} As to the area off the shoulder, but within the right of way, DOTD owes a duty to maintain the land in such a condition that it does not present an unreasonable risk of harm to motorists using the adjacent roadway. *Cormier*^{xxii}. DOTD's duty specifically includes drainage ditches. *Petre*; *Aucoin v. State, through DOTD*;^{xxiii} *Turner v. La. Dept. of Highways* ^{xxiv}.

In *Aucoin*, the plaintiff swerved right to avoid hitting a dog, crossed the fog line onto a narrow shoulder approximately one foot wide, ran into a steeply sloped drainage ditch, and crashed into a tree on the back slope of the ditch located eight and a half feet from the edge of the fog line. The trial court found the site of the accident to be unreasonably dangerous because of a number of defects that were allowed to accumulate, including a "drop-off" shoulder, a nonrecoverable slope and limited horizontal clearance. The trial court found DOTD to be 15% at fault. The First Circuit and the Supreme Court affirmed. The Court pointed out that the ditch was supposed to have a slope of 3:1 but was actually twice as steep, and that even a 4:1 slope would have been nonrecoverable, i.e., would not have allowed a vehicle to return to the road once it entered the ditch. The Court also cited the narrowness of the shoulder as a factor contributing to the defective condition.

In *Petre*, the Supreme Court affirmed an allocation of 50% fault to DOTD where the plaintiff driver went off the road partly because of her own intoxication. The Court recognized that, once the plaintiff driver left the road, her intoxication was no longer a factor; rather, an overly narrow shoulder and a ditch slope varying between 4:1 and 3:1 was a substantial factor in causing her damages.^{xxv} The Court noted that "in spite of the fact that lane widening improved the road, the reduction in the shoulder width to a severe degree creates a different and independent risk that a motorist who travels onto or partially onto the shoulder for any reason, whether as a result of inattentiveness or negligence, will be unable to recover in time to avoid an accident," and that "DOTD's duty to maintain the road and shoulder encompasses the risk that a motorist may travel onto or partially onto the shoulder."^{xxvi} The Court specifically endorsed the application of the *Watson* factors as justifying 50% liability on the part of DOTD, since "although Ms. *Petre*'s intoxication or inadvertence caused her to drive off the road . . . it was the unreasonably dangerous shoulder and slope of the adjacent ditch that prevented her from reentering the road and which caused the vehicle to become airborne and overturn."^{xxvii}

C. DOTD's Duty To Maintain Ditches

It appears that the First Circuit has had difficulty reconciling itself to controlling Supreme Court jurisprudence on the subject of drainage ditches. In *Voelkel v. State*,^{xxviii} the First Circuit contradicted its own earlier holding in *Turner v. La. Dept. of Highways*^{xxix} that "it is a function of the Department to maintain and repair the public highways" and that "a drainage outlet, as an appurtenance necessary to the highway, is as much a part thereof as is the roadway" (though a narrow reading of *Voelkel* is simply that the state has no duty to keep the water in the drainage ditches free of contamination).^{xxx} Most

recently, in *Capone v. Ormet Corporation*,^{xxxix} one elected judge joined with two *pro tem* judges to hold by a 3-2 majority that the *jurisprudence constante* of our Supreme Court is wrong, and that DOTD has no duty to maintain drainage ditches in such a way as to not present an unreasonable risk of harm to motorists using the adjacent roadway. According to the *Capone* majority, “[i]t appears that recent decisions of the Louisiana Supreme Court have *jurisprudentially amended* La. R.S. 48:1(22) to provide that not only must the roadside ditch serve the purpose of draining the highway, but it also must not present an unreasonable risk of harm to motorists using the adjacent roadway.”^{xxxix} These decisions of the Supreme Court, according to the *Capone* majority, are misguided, since we all know ditches are very useful, and vehicles aren’t supposed to be driven into ditches, and DOTD has enough on its hands without having to worry about ditches not posing an unreasonable risk of harm to the occasional vehicle that goes off the road.^{xxxix} It is respectfully suggested the *Capone* majority is incorrect, and is in conflict with controlling law.

D. DOTD’s Breach Of Duty

Whether DOTD breached its duty will depend on the facts and circumstances of each individual case. *Cormier v. Comeaux*.^{xxxix} While failure to adhere to AASHTO (formerly AASHO) standards does not automatically give rise to liability, whether or not DOTD has conformed to those standards is a relevant factor in determining the ultimate issue of whether the roadway is unreasonably dangerous. *Petre*,^{xxxv} *Aucoin*,^{xxxvi} *Dennis v. The Finish Line, Inc.*^{xxxvii} Furthermore, according to the Second Circuit, “[f]ailure to meet AASHTO standards, when there are no impediments, constitutes a breach of the Department’s duty to the public. DOTD cannot ‘pick and choose’ when it will adhere to the minimum safety standards imposed by LSA-R.S. 48:35.” *Williams v. City of Monroe*.^{xxxviii}

E. Standard Of Review

Factual findings in a case against DOTD involving road hazards are reviewed pursuant to the manifest error standard. *Stobart v. State*,^{xxxix} *Rosell v. ESCO*.^{xl} Under the manifest error standard of review, an appellate court may not disturb the trial court’s findings of fact unless (1) the appellate court finds from the record that there is no reasonable factual basis for the trial court’s findings of fact, and (2) the findings of fact are clearly wrong. *Stobart*.^{xli} The issue to be resolved by an appellate court is not whether the trial court was right or wrong, but whether its conclusion was a reasonable one. *Id.* Even though an appellate court may feel its own evaluations and inferences are more reasonable than the trial court’s, reasonable evaluations of credibility and reasonable inferences of fact should not be disturbed upon review where conflict exists in the testimony. *Stobart*^{xlii}; *Rosell*.^{xliii} If the trial court’s findings are reasonable in the light of the record reviewed in its entirety, the appellate court may not reverse even though convinced it would have weighed the evidence differently. *Stobart*;^{xliiv} *Rosell*.^{xlv} When there are two permissible views of the evidence, the trial court’s choice between them can **never** be manifestly erroneous or clearly wrong. *Rosell*,^{xlvi} *Wilson v. St. Mary Community Action*.^{xlvii} And the trial court’s decision to accept the testimony of one expert over the conflicting testimony of another expert can **never** be manifestly erroneous. *Fontenette v. McDermott, Inc.*^{xlviii}

F. Cause-In-Fact

Frequently the road hazard is only one of two or more causative factors contributing to the accident sued upon. This requires the trier of fact to consider multiple causes in fact and allocate fault accordingly.

“Cause-in-fact” is generally a “but for” inquiry: if the plaintiff probably would not have sustained the injuries but for the defendant’s substandard conduct, such conduct is a cause-in-fact. *Roberts v. Benoit*.^{xlix} Expressed differently, conduct is a cause-in-fact of harm to another if it was a **substantial factor** in bringing about that harm. *Thomas v. Missouri Pacific Railroad Company*,¹ “To the extent that the defendant’s actions **had something to do with** the injury the plaintiff sustained, the test of a factual, causal relationship is met.” *Faucheaux v. Terrebone Consolidated Government*.^{li} There can be more than one cause-in-fact. The plaintiff need only show that a cause-in-fact is a substantial factor in causing the harm complained of. *Campbell v. DOTD*,^{lii} *Sinitiere v. Laverne*.^{liii} “The fact that more than one party can contribute to the harm is the reason for our comparative fault system.” *Campbell*.^{liv} “When multiple causes are present, defendant’s conduct is a cause in fact when it is a factor generating plaintiff’s harm.” *Rick v. State, DOTD*.^{lv} For example, in *Caruthers v. State, through DOTD*,^{lvi} the plaintiff was injured when his vehicle veered off the road and overturned in a ditch. There was 2 ½ to 3 feet of “usable shoulder” and a slope ranging from 3:1 to 2.4:1. DOTD attempted to argue it should be absolved of liability even if the shoulder and ditch were defective because the vehicle was out of control before encountering the defects. This reasoning was explicitly rejected. The court explained that, under a cause-in-fact analysis, it was irrelevant whether DOTD’s conduct was the “primary” cause of the accident, so long as its conduct contributed to causing the injuries sustained by the plaintiff.^{lvii} And in *Campbell v. DOTD*,^{lviii} the Supreme Court rejected DOTD’s argument that the lack of guardrails did not cause the driver to lose control of his vehicle and was therefore not a cause-in-fact, stating “the failure of [the driver] to maintain control of the vehicle does not relieve DOTD of its duty to keep the highway safe . . . [the driver’s] negligence set the course for an accident to happen, but the harm or injuries . . . were a direct result of the impact with the bridge abutment.”^{lix} Most recently, in *Petre v. State, through DOTD*,^{lx} discussed above, the Supreme Court affirmed an allocation of 50% fault to DOTD where the plaintiff driver ran off the road partly because of her own intoxication. The Court recognized that, once the plaintiff driver left the road, her intoxication was no longer a factor; rather, an overly narrow shoulder and a ditch slope varying between 4:1 and 3:1 was a substantial factor in causing her damages.^{lxi} The Court specifically endorsed the application of the *Watson* factors as justifying 50% liability on the part of DOTD, since “although Ms. Petre’s intoxication or inadvertence caused her to drive off the road . . . it was the unreasonably dangerous shoulder and slope of the adjacent ditch that prevented her from reentering the road and which caused the vehicle to become airborne and overturn.”^{lxii}

Whether the condition of a road is unreasonably dangerous is itself a question of fact and should only be reversed if it is manifestly erroneous or clearly wrong. *Petre v. State, through DOTD*.^{lxiii}

G. Federal Preemption

The DOTD has argued that the Federal Aid Highway Act (FAHA), 23 USC 101 et seq., together with applicable federal regulations, preempts a plaintiff's state tort law claims against DOTD. DOTD has contended that because (a) Louisiana received federal funds to construct the portion of highway where a subject accident occurred, (b) a federal agency had the authority to approve of the design and construction of a highway project, and (c) because FAHA contains some general safety provisions, federal law preempts Louisiana tort law in its entirety. There is a strong presumption against federal preemption of state law.^{lxiv} Preemption should not lie unless it is the "clear and manifest purpose of Congress."^{lxv} Also, it should be assumed that Congress does not normally intend to displace state law, absent "compelling evidence."^{lxvi} In the light of these strong presumptions against federal preemption, FAHA should be strictly construed against a finding of preemption. Moreover, it is well-established that a court interpreting a federal statute pertaining to a subject traditionally governed by state law should be even more reluctant to find preemption.^{lxvii} Regulating and assuring the safety of public roads within its borders is perhaps one of the most traditional subjects governed by state law. According to one court:

[I]t is clear nonetheless that the construction, maintenance and the regulation of highways have remained state functions. . . . Congress not acting, state regulation of intrastate carriers has been upheld regardless of its effect upon interstate commerce. With respect to the extent and nature of the local interest to be protected and the unavoidable effect upon interstate and intrastate commerce alike, regulations of the use of the highways are akin to local regulation of rivers, harbors, piers and docks, quarantine regulations, and game laws, which, Congress not acting, have been sustained even though they materially interfere with interstate commerce. . . . it seems clear from the acts of Congress and their accompanying legislative history that grants-in-aid under the federal highway program were and are designed to encourage states to construct their own highways

Mahler v. U.S.,^{lxviii} see also, *Delgadillo v. Elledge*.^{lxix}

In general, state law may be preempted if it actually conflicts with an express or implied federal declaration, or if the state law is in a field that is so pervasively controlled by federal law that no room is left for state rulemaking.^{lxx} First, the FAHA contains no express preemption provision. Second, DOTD can point to no case law or legislative history to support its theory that Congress implicitly intended to completely occupy the field of highway design, construction, signing and maintenance. Third, nothing suggests that the application of state tort law obstructs the purpose of FAHA in any way, a traditional test to determine whether state and federal law is in conflict.

Given these general principles of the preemption doctrine, and the respective roles of the federal and state governments, DOTD should not be successful in arguing that state tort law has been displaced by the FAHA.

H. 409 Privilege

Under 23 U.S.C. § 409, any "reports, surveys, schedules, lists, or data compiled or collected" for specified federal evaluation programs, or which are gathered for the purpose of a highway safety construction improvement project that "may be implemented utilizing Federal-aid highway funds", are privileged, not discoverable, and not admissible in state or federal court. This privilege has withstood constitutional challenge. *Pierce County v. Guillen*.^{lxxi}

Accident reports based on sources unconnected with DOTD have specifically been held discoverable. *Rivers v. Hill*;^{lxxii} *Fraley v. State, DOTD*;^{lxxiii} *Irion v. State, through DOTD*.^{lxxiv} Accident report forms are, by statute, prepared and supplied by the Department of Public Safety (DPS), not by DOTD; the completed reports are then, by statute, received and tabulated by DPS, not by DOTD. La. R.S. 32:398(I) and (J). As a practical matter, however, any attempt to obtain accident reports from DPS will be met with a refusal and with an objection and/or motion to quash based on a claim that the production of accident reports is "overly burdensome." The State invariably prevails.

The upshot is that whatever information and documentation you need must be obtained through your own efforts (private investigators, cooperative local officials, etc.).

- i 1974 Constitution of the State of Louisiana, Art. XII, Section 10 (C).
- ii La. R.S. 13:5109: Authority to compromise; judgment; notice of judgment; payments:
 - A. In any suit filed against the state of Louisiana, a state officer, a state agency, a local public official or a political subdivision, the defendant, or the proper representative thereof, upon the advice and with the concurrence of the attorney general, district attorney, parish attorney, city attorney, or other proper official, as the case may be, may compromise and settle the claims presented in any suit.
 - B.(1) If a judgment is rendered by a trial or appellate court or the supreme court against the state or a state agency in the amount of five hundred thousand dollars or more, and the attorney general is not an attorney of record in the suit, the clerk of the court shall also mail a notice of judgment to the attorney general, through the chief of the civil division, in accordance with the Code of Civil Procedure Articles 1913, 2166, or 2167, as appropriate.
 - 2. Any judgment rendered in any suit filed against the state, a state agency, or a political subdivision, or any compromise reached in favor of the plaintiff or plaintiffs in any such suit shall be exigible, payable, and paid only out of funds appropriated for that purpose by the legislature, if the suit was filed against the state or a state agency, or out of funds appropriated for that purpose by the named political subdivision, if the suit was filed against a political subdivision.
 - C. The governing authority of a parish or municipality, upon the advice and the concurrence of the district attorney, parish attorney, or city attorney of that parish or municipality or proper official as the case may be, may compromise or settle any claim against that parish or municipality without the necessity for the filing of a suit against the parish or municipality in the matter. Any such compromise settlement shall be exigible, payable, and paid only out of funds appropriated for that purpose by the governing authority of that parish or municipality. No claim in excess of ten thousand dollars may be compromised or settled as provided herein before ten days have elapsed after the publication of such proposed compromise or settlement in the official journal of the appropriate political subdivision.
- iii La. R.S. 13:5105. Jury trial prohibited; demand for trial; costs.
 - D. Notwithstanding the provisions of Subsection A, a political subdivision, by general ordinance or resolution, may waive the prohibition against a jury trial provided in Subsection A of this Section. Whenever the jury trial prohibition is waived by a political subdivision, and a jury trial is demanded by the political subdivision or the plaintiff in a suit against the political subdivision or against an officer or employee of the political subdivision, the demand for a jury trial shall be timely filed in accordance with law. The rights to and limitations upon a jury trial shall be as provided in Code of Civil Procedure Articles 1731 and 1732.
- iv La. R.S. 13:5105:
 - E. Notwithstanding the provisions of Subsection B of this Section, the state, a state agency, or state employee who is being indemnified and defended under R.S. 13:5108.1 or the Patients Compensation Fund shall not be required to post any bond, cash deposit, or other charge whatsoever to obtain a trial by jury. If the state, state agency, or state employee who is being indemnified and defended under R.S. 13:5108.1 or the Patients Compensation Fund is ordered to pay court costs, the state or the Patients Compensation Fund, as may be applicable, shall pay all jury costs directly associated with that trial within thirty days after mailing of the notice of judgment of the trial court.

- v La. R.S. 13:5113 C.
 Legal interest on any claim for personal injury or wrongful death shall accrue at six percent per annum from the date service is requested following judicial demand until the judgment thereon is signed by the trial judge in accordance with the Code of Civil Procedure Article 1911. Legal interest accruing subsequent to the signing of the judgment shall be at the rate fixed by Civil Code Article 2924.
- vi La. R.S. 13:5106 D.4.
- vii
 2003 - 1767 (La. 2/25/04), 869 So.2d 87.
- viii La. R.S. 13:5106 B.3(a).
- ix La. R.S. 9:2800 C.
- x La. R.S. 9:2800 F.
- xi La. R. S. 49:112:
 No claim or debt against the state shall be allowed by the state auditor or paid by the state treasurer after the lapse of ten years from the happening of the event or of the facts upon which any suit is founded or judgment rendered or of the execution of the contract under which the claim is made. No interruption or suspension whatsoever of this prescription shall be allowed. The provisions of this Section shall not apply to the claims, or the judgment rendered thereon, listed in Section 2 of Act No. 110 of 1946.
- xii La. R.S. 13:5108:
 The defendant in any suit filed against the state of Louisiana, a state agency or a political subdivision of the state shall not be entitled to file a plea of prescription or peremption barring such suit or the liability of the entity instituting the suit if the suit is contract or for injury to person or property is filed within the time fixed by law for such suits against private persons, or in other suits authorized by legislature if the suit is filed within one year after the date on which the resolution authorizing it was adopted or within one year after the date on which the law authorizing it becomes effective.
- xiii La. R.S. 48:35 F(1)(a).
- xiv La. R.S. 48:35 (1)(c).
- xv 97-1938 (La. 4/24/98), 712 So. 2d 62.
- xvi 2001-0876 (La. 4/3/02), 817 So. 2d 1107.
- xvii 98-2378 (La. 7/7/99), 748 So. 2d 1123.
- xviii 97-1344 (La. 3/4/98), 707 So. 2d 1240.
- xix 96-2201 (La. 11/7/97), 703 So. 2d 566.
- xx 817 So. 2d at 1112.
- xxi
 748 So. 2d at 1127.
- xxii 748 So. 2d at 1127.
- xxiii 97-1938, 97-1967 (La. 4/24/98), 712 So. 2d 62, 65.
- xxiv 319 So. 2d 840, 842 (La.App. 1st Cir. 1975).
- xxv *Id.* at 1112 and 1115.
- xxvi *Id.* at 1112.
- xxvii *Id.* at 1115.
- xxviii 95-0147 (La.App. 1 Cir. 10/6/95), 671 So. 2d 478, *writ denied*, 95-2676 (La. 1/12/96), 667 So. 2d 523.
- xxix 319 So. 2d 840 (La.App. 1st Cir. 1975).

xxx *Id.* at 842.
xxxix 2001-0060 (La.App. 1 Cir. 6/21/02), 822 So. 2d 684.
xxxii *Id.* at 702.
xxxiii *Id.* at 703.
xxxiv 98-2378 (La. 7/7/99), 748 So. 2d 1123.
xxxv 817 So. 2d at 1113.
xxxvi 712 So. 2d at 66.
xxxvii 99-1423 (La.App. 1 Cir. 12/22/00), 781 So. 2d 12, *writ denied*, 2001-0214 (La. 3/16/01), 787 So. 2d 319.
xxxviii 27,065 (La.App. 2 Cir. 7/3/95), 658 So. 2d 820, *writ denied*, 95-1998 (La. 12/15/95), 664 So. 2d 451, *writ denied*, 95-2017 (La. 12/15/95), 664 So. 2d 452.
xxxix 617 So. 2d 880 (La. 1993).
xl 549 So. 2d 840 (La. 1989).
xli 617 So. 2d at 882.
xlii
617 So. 2d at 882.
xlili 549 So. 2d at 844.
xliv 617 So. 2d at 882-883.
xlv 549 So. 2d at 844.
xlvi 549 So. 2d at 844.
xlvii 2000-2106 (La.App. 1 Cir. 12/28/01), 803 So. 2d 1106.
xlviii 95-0190 (La.App. 1 Cir. 10/6/95), 694 So. 2d 266.
xlix 605 So. 2d 1032, 1042 (La. 1991).
l 466 So. 2d 1280, 1285 (La. 1985).
li 615 So. 2d 289, 292 (La. 1993) (emphasis added).
lii 94-1052 (La. 1/17/95), 648 So. 2d 898, 905.
liii 391So. 2d 821, 825-826 (La. 1980).
liv 648 So. 2d at 905.
lv 93-1776 (La. 1/14/94), 630 So. 2d 1271, 1275.
lvi 97-1450 (La.App. 3 Cir. 4/15/98), 711 So. 2d 420, *writ denied*, 98-1368 (La. 7/2/98), 724 So. 2d 735).
lvii *Id.* at 426.
lviii 94-1052 (La. 1/17/95), 648 So. 2d 898.
lix *Id.* at 902-903.
lx 2001-0876 (La. 4/3/02), 817 So. 2d 1107.
lxi *Id.* at 1112 and 1115.
lxii *Id.* at 1115.
lxiii 2001-0876 (La. 4/3/02), 817 So. 2d 1107.
lxiv

In re N.O. Train Car Leakage Fire Litigation, 95-2710 (La.App. 4th Cir. 3/20/96), 671 So.2d 540, *writ denied numerous times, cert. denied*, 519 U.S. 1009, 117 S.Ct. 512 (1996); *Stacks v. Mayflower Transit, Inc.*, 95-693 (La. App. 3d Cir. 11/2/95), 664 So.2d 566; *Butler v. Fidelity Technologies Corp.*, 96-821 (La. App. 3d Cir. 12/26/96). 685 So.2d 676, 678, *writ denied*, 97-0251 (La. 3/21/97), 691 So.2d 84, *cert. denied*, 522 U.S. 821, 118 S.Ct. 77 (1997)(“The historic police powers of the states are not to be superseded by federal act unless it is clear and manifest purpose of Congress”); *Huntleigh Corp. v. La. State Bd. of Private Security Examiners*, 906 F.Supp. 357, 360 (M.D. La. 1995) (“Preemption is not to be presumed lightly. In fact, there is typically a presumption weighing against preemption to insure that neither the Congress nor the courts unintentionally or unnecessarily disturb the federal-state balance.”).

- lxv *Rice v. Santa FE Elevator Corp.*, 331 U.S. 218, 230, 67 S.Ct. 1146, 1152 (1947)); *Cipollone v. Ligette Group, Inc.*, 505 U.S. 504, 112 S.Ct. 2608 (1992)(“strong presumption against pre-emption”).
- lxvi *Maryland v. Louisiana*, 451 U.S. 725, 746, 101 S.Ct. 2114, 2129 (1981).
- lxvii *CSX Trans., Inc. v. Easterwood*, 507 U.S. 658, 664, 113 S.Ct. 1732, 1737 (1993); *In re N.O. Train Car Leakage Fire Litigation*, 95-2710 (La.App. 4th Cir. 3/20/96), 671 So.2d 540, *writ denied numerous times, cert. denied*, 519 U.S. 1009, 117 S.Ct. 512 (1996).
- lxviii 306 F.2d 713, 716-717 (3rd Cir. 1962), *cert denied*, 371 U.S. 923, 83 S.Ct. 290 (1962)(citations omitted).
- lxix 337 F.Supp. 827 (E.D. Ark. 1972).
- lxx See, e.g., *Fidelity Fed. Sav. & Loan v. de la Cuesta*, 458 U.S. 141, 152-53, 102 S.Ct. 3014, 3022 (1982); *Louisiana Pub. Serv. Comm’n v. FCC*, 476 U.S. 355 (1986).
- lxxi 537 U.S. 129, 123 S. Ct. 720 (2003).
- lxxii 2001-2496 (La. 10/10/01), 799 So. 2d 486.
- lxxiii 2001-2467 (La. 9/7/01), 795 So. 2d 1217.
- lxxiv 98-2616 (La.App. 1 Cir. 5/12/00), 760 So. 2d 1220, writ denied, 2000-2365 (La. 11/13/00), 773 So. 2d 727).