

TAMALA LANDRY, ET AL

NO. 25-C-131 C/W 25-C-138

VERSUS

FIFTH CIRCUIT

STATE OF LOUISIANA, ET AL

COURT OF APPEAL

C/W

STATE OF LOUISIANA


TAMALA LANDRY, ET AL

VERSUS

STATE OF LOUISIANA THROUGH THE
DEPARTMENT OF TRANSPORTATION &
DEVELOPMENT, ET AL

June 26, 2025

Morgan Naquin
Deputy Clerk

FIFTH CIRCUIT COURT OF APPEAL
A TRUE COPY OF DOCUMENTS AS
SAME APPEARS IN OUR RECORDS

Morgan Naquin
Deputy, Clerk of Court

IN RE THE STATE OF LOUISIANA, THROUGH THE DEPARTMENT OF PUBLIC SAFETY AND
CORRECTIONS AND OFFICE OF STATE POLICE

APPLYING FOR SUPERVISORY WRIT FROM THE FORTIETH JUDICIAL DISTRICT COURT,
PARISH OF ST JOHN THE BAPTIST, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE
NGHANA LEWIS, DIVISION "B", NUMBER 82681

Panel composed of Judges Fredericka Homberg Wicker,
Marc E. Johnson, and Timothy S. Marcel

WRIT DENIED

This matter is before us on two applications for supervisory review filed by
defendant, State of Louisiana, through the Department of Public Safety and
Corrections and Office of State Police (No. 25-C-131) and by defendant, State of
Louisiana, through the Department of Transportation and Development (No. 25-C-
138),¹ both of which seek review of the trial court's judgment denying the

¹ Defendants-Applicants, the State of Louisiana through the Department of Safety and
Corrections and the Office of State Police and State of Louisiana, through the Department of
Transportation and Development, will be collectively referred to hereinafter as the "State."

defendants' Motion for Partial Summary Judgment² and ruling that La. R.S. 13:5106(B)(1) and (2) impose separate statutory damage caps of \$500,000 per decedent for survival actions and wrongful death actions. We have consolidated these writs for purposes of rendering our decision.

For the reasons discussed herein, the writs are denied.

DISCUSSION

This matter arises out of a massive traffic pileup that occurred on October 23, 2023, that left numerous people injured and resulted in multiple casualties. Two of the decedents were Nakia Gaines and his minor son, Mason Gaines, whose mother is plaintiff, Tamala Landry. Mr. Gaines was also the father of plaintiffs, Madison Gaines and Jordyn Gaines. Ms. Landry, Madison and Jordyn filed a Petition seeking damages against the State. Ms. Landry seeks wrongful death and survivor damages for Mason, who survived the crash but died hours later. Madison and Jordyn seek wrongful death and survivor damages for injuries to and the death of their father, who did not die immediately, but succumbed to his injuries while still at the scene.

The State's Motion for Partial Summary Judgment sought to have the district court limit damages to a single statutory cap of \$500,000 for each decedent under its interpretation of La. R.S. 13:5601(B), which provides, in pertinent part:

(B)(1) The total liability of the state and political subdivisions for all damages for **personal injury** to any one person, including all claims and all derivative claims [including survival claims, pursuant to La. R.S. 13:5601(D)(1)] , 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, regardless of the number of suits filed or claims made for personal injury to that person.

(B)(2) The total liability of the state and political subdivisions for **wrongful death** of any one person, including all claims and derivative claims, exclusive of property damages, medical care and related

² The Motion for Partial Summary Judgment was originally filed by the State, through the Department of Public Safety and Corrections and Office of State Police, but was joined in and adopted by the State, through Department of Transportation and Development.

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, regardless of the number of suits filed or claims made for the wrongful death of that person.

The plaintiffs assert, however, that the proper interpretation of the statute is that Sections (B)(1) and (2) provide separate statutory caps per victim. The district court agreed with the plaintiffs and denied the State's Motion for Partial Summary Judgment.

Standard of Review

Appellate courts review summary judgments *de novo*, under the same criteria as the district courts to determine whether summary judgment is appropriate. *Neville v. Redmann*, 22-175 (La. App. 5 Cir. 12/31/22), 356 So3d 568, 575, citing, *Lapuyade v. Rawbar, Inc.*, 18-474 (La. App. 5 Cir. 12/27/18), 263 So.3d 508, 511-12. Under La. C.C.P. art. 966(A)(3), summary judgment "shall be granted if the motion, memorandum, and supporting documents show that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law." The burden of proof rests with the mover, unless the mover will not bear the burden of proof at trial on the issue before the court on summary judgment. La. C.C.P. art. 966(D)(1). In that instance, the mover need only show the court the absence of factual support for one or more essential elements of the adverse party's claim. *Id.* The burden is then on the adverse party to establish factual support sufficient to demonstrate the existence of a genuine issue of material fact or that the mover is not entitled to judgment as a matter of law. *Id.* A court's determination of whether a genuine issue of material fact exists requires reference to the applicable substantive law. *Hacienda Holding Co., L.L.C. v. Home Bank*, 20-189 (La. App. 5 Cir. 12/30/20), 309 So.3d 435, 445 (citing *Stephens v. Southern Sweeping Servs.*, 03-826 (La. App. 5 Cir. 11/25/03), 862 So.2d 197, 199). A summary judgment may be rendered dispositive of a particular issue, theory of

recovery, cause of action, or defense, in favor of one or more parties, even though the granting of the summary judgment does not dispose of the entire case as to that party or parties. La. C.C.P. art. 966(E). The issue presented in this application is strictly an issue of law. All parties are in agreement as to what law applies; they differ on the interpretation of that law.

Survival Action vs. Wrongful Death Action

“In Louisiana, it is well established that the survival action and the wrongful death action are two different causes of action that arise at different times.” *Walls v. Am. Optical Corp.*, 98-0455 (La. 9/8/99), 740 So. 2d 1262, 1273. In *Taylor v. Giddens*, 618 So.2d 834, 840 (La.1993), the Louisiana Supreme Court distinguished the wrongful death and survival actions, finding that:

Although both actions arise from a common tort, survival and wrongful death actions are separate and distinct. Each right arises at a different time and addresses itself to the recovery of damages for totally different injuries and losses. The survival action comes into existence simultaneously with the existence of the tort and is transmitted to beneficiaries upon the victim's death and permits recovery only for the damages suffered by the victim from the time of injury to the moment of death. It is in the nature of a succession right. On the other hand, the wrongful death action does not arise until the victim dies and it compensates the beneficiaries for their own injuries which they suffer from the moment of the victim's death and thereafter. Wrongful death damages compensate beneficiaries for their own injuries.

(Internal citations omitted).

Civil Code article 2315.1 provides for survival actions and article 2315.2 provides for wrongful death actions. As we recently stated in *Angelica v. Wilkerson*, 24-332 (La. App. 5 Cir. 4/9/25), __ So.3d __, 2025 WL 1065236, “[s]urvival damages provide compensation for the damages suffered by the *victim* from the time of injury to the moment of his death; they differ from wrongful death damages, which compensate *beneficiaries* for their *own* injuries suffered from the moment of the victim's death and thereafter.” (Emphasis added). Citing, La. C.C.

art. 2315.1; *Warren v. Louisiana Medical Mut. Ins. Co.*, 07-0492 (La. 12/2/08), 21 So.3d 186, 188; *Taylor v. Giddens*, 618 So.2d 834, 840 (La. 1993).

If the injured individual dies from *any* cause, his claim for personal injuries devolves to the individuals identified in La. C.C. art. 2315.1. Thus, “[a] survival action is derivative of the primary tort victim’s action.” *Lennie v. Exxon Mobil Corp.*, 17-204 (La. App. 5 Cir. 6/27/18), 251 So.3d 637, 649. The survival action “‘is in the nature of a succession right.’” *Joseph v. Huntington Ingalls Inc.*, 18-2061 (La. 1/29/20), 347 So.3d 579, 589, n.1, *citing Taylor*, 618 So.2d at 840.

On the other hand, wrongful death damages are personal, not to the injured person who died, but to the individuals named in La. C.C. art. 2315.2, for damages *they* sustained as a result of the wrongful death of the person. A wrongful death action is not derivative of the primary tort victim’s action; it is a separate cause of action granted to survivors, discussed by the Louisiana Supreme Court in *Walls*.

The Court summarized the plaintiffs’ argument in that case as follows:

The plaintiffs urge this Court to find that the wrongful death action is a derivative action ‘deriving from the wrongful act and injury to the victim whose eventual death results in further injury to the survivors [because] the right to recover, or the ‘right of action,’ arises with the wrongful conduct under [La. C.C. art. 2315](#)... [The plaintiffs argue that] [i]t is the ‘act’ that causes the injury and gives rise to the right to recover damages, and the wrongful death is derivative of the victim's underlying injury. Thus, the argument continues, the wrongful death plaintiff's ‘right of action’ arises at the time of injury to the victim and is thus governed under the same law as that which governs the victim's action.

740 So.2d at 1273.

The Supreme Court rejected this argument, stating:

We do not consider the wrongful death action to be a derivative cause of action. Rather, the wrongful death action is an independent and distinct action that arises even in the absence of a viable personal injury action by the direct tort victim and compensates the beneficiaries for their own individual injury arising out of the victim's death. *Taylor v. Giddens*, 618 So.2d at 840. In *Callais v. Allstate Ins. Co.*, 334 So.2d 692, 700 (La.1975) this court discussed the “nature” of the wrongful death action.

In the context of Article 2315, it is evident that Wrongful [sic] death is a relational concept. It embraces conduct that causes the death of another. It is bilateral in the sense that two parties are involved: the actor, who causes death, and the victim, whose death gives rise to the cause of action.

Given this relational or causative origin, one could be misled into viewing the wrongful death action as derivative. However, in *Taylor v. Giddens*, 618 So.2d at 840, **this Court left no doubt that the wrongful death action is an independent and separate cause of action.**

Id. at 1274. (Emphasis added).

Application of Section 5106(B)

In its application to this Court, the State contends that the damages to all plaintiffs can total no more than \$500,000 per decedent under La. R.S. 13:5106(B). The State claims that the language of La. R.S. 13:5106(B), taken together with its legislative history supports its position. The State primarily relies on the decision in *Miller v. Thibeaux*, 13-541 c/w 13-1029 (La. App. 3 Cir. 2/2/26), 184 So.3d 856, wherein the Third Circuit held that, under La. R.S. 13:5601(B), a single cap of \$500,000 per victim applies to both wrongful death and survival actions. We respectfully disagree, finding *Miller* to be contrary to the plain language of the statute.

The starting point for the interpretation of any statute is the language of the statute itself. “When a law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written and no further interpretation may be made in search of the intent of the legislature.” La. C.C. art. 9. Section 5106(B), quoted above, contains two separate subsections that provide separate caps for separate causes of action. Had the legislature intended there to be a single cap of \$500,000 per victim for *all* damages sustained by a single victim in a single incident, it could have consolidated the two subsections to state to the effect that:

The total liability of the state and political subdivisions for all damages, including **personal injury to, and wrongful death of**, any one person, including all claims and all derivative claims ... shall not exceed five hundred thousand dollars, regardless of the number of suits filed or claims made for personal injury to or wrongful death of that person.

The legislature has not done so and, accordingly, we will interpret the statute as written.³ As discussed above, it is settled law that survival and wrongful death claims are separate and distinct causes of action. Section 5106(B) contains two separate subsections, relating to separate and distinct causes of action. The Fourth and First Circuits have also found that Section 5106(A) and (B) establish separate caps for separate causes of action. In *Barrilleaux v Barthelemy*, 02-1416 (La. App. 4 Cir. 4/2/03), 844 So.2d 1006, *writ denied*, 03-1254 (La. 0/5/03), 852 So.2d 1040, the Fourth Circuit held that:

The plain wording of...subsection B(1)[] supports the conclusion that there exists one cap for personal injury damages and that such damages include *all derivative claims*. 'Derivative claims' is a term defined in subsection D(4) to include survival claims. Therefore, based upon a plain reading of the statutory language, Laurie's survival action, *i.e.*, the claim asserted by her surviving husband and sons for Laurie's personal suffering while she lived, is limited to one \$500,000.00 cap.

³ The State also cites *Fecke v. Bd. of Supervisors of Louisiana State university*, 217 So.3d 237, 244 (2016) for its contention that "the Legislature specifically established 'a limit of \$500,000.00 on general damages assessed against the state in personal injury and wrongful death actions.'" (Emphasis supplied by the State). The *Fecke* court actually said that:

The Legislature responded [to *Lockett, supra*], amending La. R.S. 13:106(B)(1) and (2) to limit the total liability of the state and political subdivisions for personal injury or wrongful death of any one person, including all claims and derivative claims, to \$500,000 regardless of the number of suits filed or claims made for the personal injury or wrongful death of that person." (Footnote omitted).

There was no issue on *Fecke* as to whether Sections 5106(B)(1) and (2) establish separate caps. The personal injury victim in *Fecke* did not die. The issues in that case were "(1) whether a plaintiff is entitled to legal interest on an award for future medical care paid directly to the health care provider from the Future Medical Care Fund ("FMCF"); (2) whether a plaintiff is entitled to recover attorney's fees and costs from an award for future medical care prior to its placement into the FMCF; and (3) whether a plaintiff who was unemployed at the time of the injury is entitled to recover the loss of future earnings." The Court there held that "a plaintiff who is awarded future medical care...is not entitled to legal interest on the award and may not recover attorney's fees or costs from the award prior to its placement into the FMCF [and that] a plaintiff who was unemployed at the time of the injury may recover the loss of future earnings...." We find nothing in *Fecke* that undercuts our interpretation of Section 5106(B) as set forth herein.

Additionally, the plain language of the statute in subsection B(2) that governs caps on wrongful death supports the conclusion that there exists a separate \$500,000.00 cap for wrongful death claims. ...The plain reading of the statute provides for one cap on personal injury damages (including survival actions for those personal injury damages) and one cap for wrongful death damages.

844 So.2d 1009-1. (Emphasis in original). See also, *O'Connor v. Litchfield*, 03-0397 (La. App. 1 Cir. 12/31/02), 864 So.2d 234, 236, *reh'g denied*, 04-0397 (La. App. 1 Cir. 2/9/04), *writ not considered*, 04-0655 (5/7/04), 872 So.2d 1069 (“The plain reading of the statute provides for one cap on personal injury damages ... and one cap for wrongful death damages.”)

After the decisions in *O'Connor* and *Barrilleaux*, the legislature enacted 2005 La. Acts 1, § 1, amending Section 5106(B) to read as it does currently. The legislature stated in § 2 of Act 1 that the amendments were “intended to explain the original intent of the legislature, notwithstanding the contrary interpretation by the Louisiana Supreme Court in *Lockett v. the State of Louisiana, Department of Transportation and Development*, 03-1767 (La. 2/25/04) 869 So.2d 87.”

Lockett did not address whether Sections 5106(B)(1) and (B)(2) establish separate caps. In *Lockett*, the Louisiana Supreme Court found the provisions of Section 5106(B)(2) to be ambiguous and, after reviewing the legislative history of the statute, interpreted the cap on wrongful death damages provided in that section, to be a per plaintiff, rather than per victim, cap. The 2005 amendment was designed to resolve any ambiguity by making it clear that the caps – in that case, the wrongful death cap -- apply on a per victim basis.

Nine years after the 2005 amendments to Section 5106(B) The First Circuit considered the statutory cap under the current version of the statute and concluded that there is a per victim personal injury (including survival damages) cap and separate per victim wrongful death cap. *Dakmak v. Baton Rouge City Police Dep't*, 12-1468 (La. App. 1 Cir. 9/4/14), 153 So.3d 498. In *Dakmak*, a jury awarded

\$1,000,000 in damages for the survival action and a total of \$30,000 in wrongful death damages. On appeal, the defendant argued that the damages exceeded the statutory cap. The First Circuit agreed, as to the survival damages, reducing the award to \$500,000, but allowed the wrongful death damages to stand, stating:

This court has interpreted La. R.S. 13:5106(B) to provide one \$500,000.00 cap on personal injury damages (including survival actions for those personal injury damages) and one \$500,000.00 cap for wrongful death damages. ... Therefore, the trial court judgment must be amended to reduce the \$1,000,000.00 judgment to plaintiffs *for Mr. Dakmak's personal injuries* [only] to \$500,000.00.

153 So.3d at 508-09. (Emphasis added; citation omitted). See also *Mitchell v. City of New Orleans*, 187 F.Supp.3d 726 (E.D. La. 2016), where the court found, after reviewing the legislative history of Section 5106(B) and the case law interpreting that section, including *Miller*, that “a single \$500,000 statutory cap applied to damages for the wrongful death of any one person, regardless of the number of claims made for that wrongful death [and that] a separate \$500,000 cap applies to damages for personal injury including survival actions for those damages.”

Our ruling is in accord with *Barrilleaux*, *O'Connor*, *Dakmak* and *Mitchell*, rather than *Miller*, which, as stated, we find to be an incorrect interpretation of the statute, as written. We therefore find that the plain language of La. R.S. 13:5106(B) clearly and unequivocally provides one cap of \$500,000 per victim for personal injury damages, including survivor damages, and a separate cap of \$500,000 per victim for the wrongful death of an individual.

For the reasons stated, the State’s Applications for Supervisory writs are **DENIED.**

Gretna, Louisiana, this 26th day of June, 2025.

FHW
MEJ
TSM

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
STEPHEN J. WINDHORST
JOHN J. MOLAISSON, JR.
SCOTT U. SCHLEGEL
TIMOTHY S. MARCEL

JUDGES



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NOTICE OF DISPOSITION CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE DISPOSITION IN THE FOREGOING MATTER HAS BEEN TRANSMITTED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 4-6** THIS DAY **06/26/2025** TO THE TRIAL JUDGE, THE TRIAL COURT CLERK OF COURT, AND AT LEAST ONE OF THE COUNSEL OF RECORD FOR EACH PARTY, AND TO EACH PARTY NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

25-C-131
C/W 25-C-138

E-NOTIFIED

40th District Court (Clerk)
Honorable Nghana Lewis (DISTRICT JUDGE)
Dennis J. Phayer (Relator)

Elizabeth B. Murrill (Relator)
Brian J. Branch (Respondent)
Valerie B. Gernhauser (Relator)
Gary M. Langlois, Jr. (Respondent)

MAILED