

**NOEL CASSANOVA**

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**NO. 2007-CA-0493**

**VERSUS**

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**COURT OF APPEAL**

**JAMES THOMAS AND  
ALLSTATE INSURANCE  
COMPANY**

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**FOURTH CIRCUIT**

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**STATE OF LOUISIANA**

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**BELSOME, J. CONCURS IN PART AND DISSENTS IN PART.**

I concur with the majority's determination that the trial court did not abuse its discretion in allowing the introduction of Dewayne Thomas' deposition into evidence. I respectfully dissent, however, with the majority's determination that the trial court did not err in its refusal to allow Mr. Cassanova's rebuttal witness, Leonard Estopinal, to testify at trial. As the majority notes, the mandatory language of Article 611(E) of the Louisiana Code of Evidence plainly provides that a plaintiff "shall have the right to rebut evidence adduced by their opponents." Because the trial court abused its discretion in disallowing Mr. Estopinal to testify at trial, I would have granted a new trial on solely those grounds. *See, e.g., State v. LaBrosse*, 568 So.2d 586, 588 (La.App. 4 Cir. 1990)(noting that whether a rebuttal witness was allowed to testify is reviewed for abuse of discretion).