Supreme Court of Louisiana

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FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **10th day of May, 2011**, are as follows:

BY WEIMER, J.:

2010-C -2011 MITCHELL S. GLASGOW, ET AL. v. PAR MINERALS CORPORATION, ET AL.
(Parish of Allen)

Accordingly, we reverse the decisions of both lower courts and remand this matter to the district court for further proceedings consistent with this opinion.
REVERSED AND REMANDED.

VICTORY, J., dissents and assigns reasons.
GUIDRY, J., dissents and assigns reasons.
CLARK, J., dissents for reasons assigned by Justice Victory.

5/10/11

SUPREME COURT OF LOUISIANA

NO. 2010-C-2011

MITCHELL S. GLASGOW, ET AL.

VERSUS

PAR MINERALS CORPORATION, ET AL.

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,
THIRD CIRCUIT, PARISH OF ALLEN

WEIMER, Justice

We granted certiorari in this case to determine whether a lawsuit against a worker's statutory employer can interrupt prescription against an alleged third-party tortfeasor. Answering that inquiry in the affirmative, we find that the lower courts erred in sustaining the alleged third-party tortfeasor's exception of prescription. Accordingly, we reverse the decisions of both lower courts and remand this matter to the district court for further proceedings consistent with this opinion.

FACTS AND PROCEDURAL HISTORY

This case arises from a fire at an oil well site which left Mitchell Glasgow severely burned. The oil well accident occurred on September 27, 2007.

At the time, Mr. Glasgow was directly employed by Therral Story Well Service (TSWS). Mineral owners had contracted with another company, PAR Minerals, Inc., to produce oil and gas. In turn, PAR Minerals contracted with Mr. Glasgow's direct

employer, TSWS, to drill a well. PAR Minerals also contracted with Pipe Services Unlimited, Inc. to complete the well.

Mr. Glasgow filed a tort suit against PAR Minerals and its insurer on September 4, 2008. According to Mr. Glasgow's original petition, during drilling operations, the well penetrated into formations that were pressurized with hydrocarbons. Mr. Glasgow was circulating water through the well while awaiting heavier drilling mud to be pumped into the well to control the hydrocarbon pressure. Mr. Glasgow's direct supervisor, a TSWS employee, told Mr. Glasgow to stand away from the well because the pressure was dangerous. But, PAR Minerals' "on-site supervisor ... countermanded that order, and told Petitioner GLASGOW to get on his station at the pump, and to abandon his station only after shutting the pump off should the gas escape the well. Petitioner followed Defendant PAR's orders." Then, "after only a few more minutes, hydrocarbon gas from down-hole escaped from the water tank sufficiently so that it ignited as Petitioner was attempting to shut off the pump. The ignited hydrocarbon gas cloud set Petitioner MITCHELL GLASGOW on fire."

On September 10, 2008, less than one year after the well accident, service of process of the lawsuit was made on PAR Minerals. During discovery, Mr. Glasgow learned that the person he believed was "PAR's on-site supervisor" was actually an independent contractor employed by the contractor's own corporation, Pipe Services, Inc. On May 4, 2009, Mr. Glasgow named Pipe Services as a defendant in a supplemental and amended petition.

At the time Pipe Services was named as a defendant, Mr. Glasgow was receiving workers' compensation benefits from his direct employer, TSWS.

On June 17, 2009, PAR Minerals filed a motion for summary judgment. PAR Minerals alleged that it was Mr. Glasgow's "statutory employer" under LSA-R.S. 23:1061. Because a statutory employer is immune from tort liability, argued PAR Minerals, it should be dismissed from Mr. Glasgow's tort lawsuit.

The district court granted PAR Minerals' motion,[1] and dismissed PAR Minerals from the lawsuit. Though there are no extensive reasons in the record, the district court apparently agreed (and the parties do not now dispute) that PAR Minerals was Mr. Glasgow's statutory employer.

Shortly after the district court granted PAR Minerals' motion for summary judgment, Pipe Services filed an exception of prescription. In its exception, Pipe Services cited the fact that the district court found PAR Minerals to be "the statutory employer of Mitchell Glasgow, and [to be] immune from tort liability." Citing also the fact that Pipe Services was not named as a defendant until more than a year after the accident, Pipe Services argued that based on PAR Minerals being "immune from tort liability," that "[t]here was no timely suit against a joint tortfeasor to interrupt prescription and plaintiffs' claims have thus prescribed." In other words, because Mr. Glasgow named Pipe Services as a defendant more than one year from his accident, the general prescriptive period of one year now rendered Mr. Glasgow's claims against Pipe Services untimely. Prescription could not be interrupted for Mr. Glasgow's claim against Pipe Services under the principle that timely suit against one tortfeasor (here PAR Minerals) interrupts prescription against another tortfeasor (here Pipe Services), given that the district court had ruled that PAR Minerals was immune from a suit in tort.

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[1] The district court ruled from the bench on October 7, 2009, and a written judgment was signed later on October 19, 2009.

The district court agreed, ruling that Mr. Glasgow's claim against Pipe Services was prescribed. Mr. Glasgow appealed.

A majority of a panel of the Court of Appeal, Third Circuit, affirmed the judgment of the district court. **Glasgow v. PAR Minerals Corp.**, 2010-64 (La.App. 3 Cir. 7/28/10), 43 So.3d 1093. The majority held that Mr. Glasgow's petition was prescribed on its face; that prescription was not interrupted as to Pipe Services because Pipe Services was not solidarily liable with PAR Minerals as "[n]o workers' compensation action was ever brought against PAR." **Glasgow**, 2010-64 at 4, 7, 43 So.2d at 1096, 1097-1098. The majority further held that "because PAR was immune from liability based in tort, no solidary liability existed between Pipe Services and PAR." ***Id.***, 2010-64 at 7, 43 So.3d at 1098.

One member of the appellate court panel dissented. Judge Pickett observed that Mr. Glasgow's "Motion and Order for Devolutive Appeal" identified a ruling signed on December 28, 2009, as the basis for the appeal. That ruling was a venue ruling, Judge Pickett noted, but the ruling on prescription was a different ruling altogether and was signed on December 7, 2009. Judge Pickett would have dismissed the appeal because the motion did not identify the prescription judgment that Mr. Glasgow briefed as being in error. **Glasgow**, 2010-64 at 1, 43 So.3d at 1098 (Pickett, J. dissenting).[2]

We granted certiorari to address Mr. Glasgow's contention that because he filed suit against a solidary obligor and effected service within the prescriptive period

[2] Because the result Judge Pickett would have reached, *i.e.* dismissal of appeal, was substantially the same as the ruling of the majority, *i.e.* affirming the district court's dismissal, Judge Pickett's reasons would perhaps better be characterized as a concurrence.

against that obligor, prescription was thus interrupted against another solidary obligor, and his lawsuit should not have been dismissed as untimely.[3]

LAW AND DISCUSSION

A lawsuit for personal injury is subject to a one-year period of liberative prescription, following the date of accident, pursuant to LSA-C.C. art. 3492. According to Mr. Glasgow's petition, the accident that gave rise to Mr. Glasgow's injuries occurred on September 27, 2007. By a supplemental and amending petition, Mr. Glasgow named Pipe Services as a defendant on May 4, 2009, more than one year later. As a result, the supplemental and amending petition on its face revealed that prescription had run, and it was Mr. Glasgow's burden to demonstrate why his claim had not prescribed. **Denoux v. Vessel Management Services, Inc.**, 07-2143, p. 5 (La.5/21/08), 983 So.2d 84, 88; **Lima v. Schmidt**, 595 So.2d 624, 628 (La.1992).

The jurisprudence recognizes three theories upon which a plaintiff may rely to establish that prescription has not run: suspension, interruption, and renunciation. **Lima**, 595 So.2d at 628. In this case, Mr. Glasgow relies upon the theory of interruption to argue that his claim is not prescribed.

Mr. Glasgow's theory of interruption is based upon two provisions of the Civil Code. The first, LSA-C.C. art. 3462, in pertinent part, provides:

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[3] Pipe Services has argued for dismissal of this matter based upon Mr. Glasgow placing the wrong date for the judgment he intended to appeal in his "Motion and Order for Devolutive Appeal." We find this argument to have been amply addressed by the majority of the court of appeal panel, which cited long held principles for rejecting it. See, e.g., **Kirkeby-Natus Corp. v. Campbell**, 199 So.2d 904, 905 (La. 1967) ("appeals are favored by the courts; ... they should be dismissed only for substantial causes; and ... unless the grounds urged for dismissal are free from doubt appeals will be maintained."). Although Mr. Glasgow used the date of another judgment in the same case, he indicated later within the body of the motion that he was appealing the "ruling, which granted defendant's, Pipe Services Unlimited's, exception of prescription." Both parties later filed briefs in the Court of Appeal on the issue of prescription. Therefore, like the Court of Appeal, we decline to dismiss this matter for what appears to be only a typographical mistake prejudicing no one.

> If action is commenced in an incompetent court, or in an improper venue, prescription is interrupted only as to a defendant served by process within the prescriptive period.

Indisputably, the latter part of Article 3462 is met here because Mr. Glasgow filed suit against and effected service upon PAR Minerals within the one-year prescriptive period. The parties are not, however, in apparent agreement on the initial threshold excerpted above, *i.e.*, the commencement of a lawsuit "in an incompetent court." This case calls upon us to determine whether commencing a tort lawsuit against a party that is immune from tort liability satisfies this threshold. Guided by civilian methodology, we find this threshold met.

Civilian methodology and the Louisiana Civil Code instruct that the sources of law are legislation and custom, and that legislation is the superior source of law. LSA-C.C. arts. 1, 3. Legislation, which is defined as the solemn expression of legislative will, LSA-C.C. art. 2, is to be interpreted according to the rules set forth in the Civil Code. Chief among those rules is the admonition in LSA-C.C. art. 9 that "[w]hen 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." Additionally, LSA-C.C. art. 11 instructs that "[t]he words of a law must be given their generally prevailing meaning."

In our analysis of the meaning of the term "an incompetent court," we initially note that the term is cast in the negative and the term is not defined in the Civil Code or in the Code of Civil Procedure. The opposite term, cast in the positive, *i.e.* "competent court," is defined in the Code of Civil Procedure: "'Competent court', or 'court of competent jurisdiction', means a court which has jurisdiction over the subject matter of, and is the proper venue for, the action or proceeding." LSA-C.C.P. art. 5251. By inference, an "incompetent court" certainly means a court lacking

subject matter jurisdiction, because LSA-C.C.P. art. 5251 lists subject matter jurisdiction among the requirements for being competent. But because this meaning is supplied by inference, and because the Civil Code itself does not define either a competent court or an incompetent court, the term we are called upon here to apply ("incompetent court") may have a broader meaning than simply referring to a court lacking subject matter jurisdiction.

We leave the full breadth of the term "incompetent court" for determination another day. For this case, it is sufficient for us to observe as a "generally prevailing meaning" called for by LSA-C.C. art. 11 that the district court would not have been competent to render a tort judgment against a party that is immune from tort. The legislature has removed the possibility of a tort remedy against statutory employers. See LSA-R.S. 23:1032(A) ("compensation under this Chapter, shall be exclusive of all other rights, remedies and claims for damages"). As a matter of plain meaning, "incompetent" is defined as "not qualified to act in a particular capacity." NEW OXFORD AMERICAN DICTIONARY 880 (3rd ed. 2010). Our state constitution also underscores that a district court would be incompetent to render the only remedy available from a statutory employer, because only the Office of Workers' Compensation is qualified in the first instance to award the exclusive remedy of worker's compensation benefits. See La. Const. art. V, § 16(A).

By commencing a tort lawsuit against and effectuating service upon PAR Minerals within the prescriptive period of one year, Mr. Glasgow thereby successfully interrupted prescription as to PAR Minerals even though PAR Minerals ultimately proved to be immune to a tort claim. But interrupting prescription as to PAR Minerals does not render timely the claim against Pipe Services, a claim which was

added more than one year after Mr. Glasgow's accident, unless the law makes the interruption effective as to Pipe Services also.

Mr. Glasgow, therefore, turns a second time to the Civil Code, and argues that the Civil Code's treatment of solidary obligors transfers the interruption of prescription effective for his claim against PAR Minerals directly to his claim against Pipe Services. We agree.

In pertinent part, LSA-C.C. art. 1799 provides: "The interruption of prescription against one solidary obligor is effective against all solidary obligors." The Civil Code restates this provision in LSA-C.C. art. 3503: "When prescription is interrupted against a solidary obligor, the interruption is effective against all solidary obligors." This court has already interpreted LSA-C.C. arts. 1799 and 3503 to apply to the situation when a first party sued is liable for workers' compensation benefits (and is immune from tort liability), but a party later sued is allegedly liable in tort. See **Williams v. Sewerage & Water Bd. of New Orleans**, 611 So.2d 1383 (La. 1993).

In **Williams**, this court explained that obligors are solidary when "each ... is 'obliged to the same thing.'" **Williams**, 611 So.2d at 1387, *quoting* **Hoefly v. Government Employees Insurance Co.**, 418 So.2d 575, 576 (La. 1982). A defendant obligated for workers' compensation benefits because the defendant is an employer is a solidary obligor along with an alleged tortfeasor: "In a worker's compensation claim where the employee does not suffer a fatal injury, some elements of compensation damages are the same as those which may be recovered as tort damages, *i.e*. lost wages and medical expenses." **Williams**, 611 So.2d at 1387. Even

though workers' compensation and tort remedies have different legislative sources,[4] that does not alter the solidary relationship between a defendant with employer status and a defendant that is an alleged tortfeasor. "'It is the coextensiveness of the obligations for the same debt, and not the source of liability, that determines the solidarity of the obligation.' Thus, to the extent that the worker's compensation death benefits and the wrongful death and survival provisions overlap, [the employer] and [alleged tortfeasor] are obligated to the same thing even though the obligations arise from different sources." **Williams**, 611 So.2d at 1388, *quoting* **Narcise v. Illinois Central Gulf Railroad Co.**, 427 So.2d 1192, 1195 (La. 1983).

Pipe Services argues that this case is distinguishable from **Williams** such that no solidary relationship can exist between Pipe Services and PAR Minerals. Pipe Services emphasizes that workers' compensation benefits have been voluntarily provided by Mr. Glasgow's direct employer, TSWS, and that there has been no lawsuit against PAR Minerals for workers' compensation benefits. Pipe Services argues that the fact that benefits have been paid voluntarily and the fact there has been no lawsuit for compensation benefits render **Williams** inapplicable under this pronouncement: "we hold a suit timely filed against the employer for workers' compensation interrupted the prescription as to the subsequent claim against the third party tort-feasor for damages." **Williams**, 611 So.2d at 1390.

The language just quoted reflected the facts and procedural posture before us in **Williams**, as there was a lawsuit for workers' compensation benefits.[5]

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[4] The fountainhead of tort liability is LSA-C.C. art. 2315; workers' compensation liability is established by the Louisiana Workers' Compensation Act, LSA-R.S. 23:1021, *et seq*.

[5] At the time, suits for workers' compensation benefits were commenced in the first instance in district courts. This changed with the amendment of La. Const. art. V, § 16(A) to allow for workers' compensation cases to be filed with the Office of Workers' Compensation. See 1990 La. Acts No. 1098, § 1, approved Oct. 6, 1990, eff. Nov. 8, 1990.

Notwithstanding, Pipe Services' argument would have us ignore the reasoning of **Williams**, which bears repeating here because it applies with greater force in this case than when we first said it: "It is the coextensiveness of the obligations for the same debt, and not the source of liability, that determines the solidarity of the obligation." **Williams**, 611 So.2d at 1388, *quoting* **Narcise v. Illinois Central Gulf Railroad Co.**, 427 So.2d 1192, 1195 (La. 1983) (emphasis added).

This reasoning now applies with greater force because the year after this court, in **Narcise**, ruled that the source of liability was immaterial for establishing solidary liability, the legislature promoted that ruling to an article of the Civil Code: "An obligation may be solidary though it derives from a different source for each obligor." LSA-C.C. art. 1797 (1984 La. Acts No. 331, § 1). See also LSA-C.C. art. 1797, cmt. (a) "This Article is new. It restates a principle developed by the Louisiana jurisprudence." Therefore, whether the source of the obligation was voluntary or not, the fact that an obligation existed to provide workers' compensation benefits meant that for purposes of prescription, the alleged tortfeasor and the employer were solidary obligors.[6]

Pipe Services also argues that **Williams** should be overruled, because an amendment to La. Const. art. V, § 16(A), effective after the events in **Williams**, now provides for workers' compensation claims to be brought, not in a district court (as was the case in **Williams**), but in the Office of Workers' Compensation. In brief,

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[6] On this point, Pipe Services' reliance upon **Gary v. Camden Fire Ins. Co.**, 96-0055 (La. 7/2/96) 676 So.2d 553 ("voluntary payments are insufficient to toll prescription under Article 3462") is misplaced. The Civil Code provides a two-part formula for interrupting prescription in this situation: a solidary relationship (LSA-C.C. art. 1799 or art. 3503); and a lawsuit against one of the solidary obligors (LSA-C.C. art. 3462). In **Camden**, one part of this formula was missing because there was no timely lawsuit against one of the solidary obligors, only an acknowledgment to pay workers' compensation benefits. See **Camden**, 96-0055 pp. 3-4; 676 So.2d at 555-556. Here, as recounted in the earlier analysis under LSA-C.C. art. 3462, there was a timely lawsuit against one of the solidary obligors.

Pipe Services further argues: "There are no workers' compensation 'lawsuits'. ... The workers' compensation 'claim', a.k.a. the 1008, is filed at an administrative office and not a courthouse. This court should reconsider the opinion of *Ad Hoc* Justice Shortess in *Williams v. Sewerage & Water Board of New Orleans*. It no longer is viable in light of the fact the workers' compensation claims are not filed in court. *Williams* should be overruled."

We find this argument also relies on distinguishing "the source of the obligation" as a rationale to thwart solidary liability. Though Pipe Services does not explain why it should matter here, Pipe Services's argument suggests that there is some inherent difference between an obligation arising from adjudication by a district court, and an obligation arising from adjudication by an administrative agency. Aside from observing a lack of support for this argument, we find Pipe Services' argument to be inconsistent with the law of solidary liability. See LSA-C.C. art. 1797 ("An obligation may be solidary though it derives from a different source for each obligor."). Given that Article 1797 has been retained in the Civil Code, Pipe Services fails to persuade that the legislature intended to change the nature of solidary liability when the legislature proposed and the voters amended La. Const. art. V, § 16(A) to allow workers' compensation claims to be brought before an administrative agency instead of a court.

Contrary to Pipe Services' argument, it is also of no moment that Mr. Glasgow's petition enumerates tort damages rather than workers' compensation benefits. "Louisiana has chosen a system of fact pleading. ... Therefore, it is not necessary for a plaintiff to plead the theory of his case in the petition." **Wright v. Louisiana Power & Light**, 2006-1181, p. 15 (La. 3/9/07), 951 So.2d 1058, 1069,

citing LSA-C.C.P. art. 854, cmt. (a); **Montalvo v. Sondes**, 93-2813, p. 6 (La.5/23/94), 637 So.2d 127, 131; and **Kizer v. Lilly**, 471 So.2d 716, 719 (La.1985)).

We decline, therefore, to overrule **Williams v. Sewerage & Water Bd. of New Orleans**, 611 So.2d 1383 (La. 1993). However, from the well-worn course **Williams** has traveled in the jurisprudence, three panels of the courts of appeal have deviated by distinguishing **Williams** in a manner inconsistent with our holding here.

In **Keller v. McLeod**, 2003-267 (La.App. 3 Cir. 2/11/04) 866 So.2d 388, plaintiff sued a statutory employer in tort but "did not file an action for workers' compensation benefits against [the statutory employer] and therefore [plaintiff] has no other remedies against [the statutory employer];" consequently, the court found no solidary liability and no interruption of prescription. In **Williams v. Holiday Inn Worldwide**, 2002-0762 p. 3 (La.App. 4 Cir. 5/15/02), 816 So.2d 998, 1001, plaintiff filed a tort suit against a statutory employer. Similar to the court in **Keller**, the court in **Holiday Inn Worldwide** reasoned that because there was no compensation lawsuit, there was no solidary relationship with an alleged tortfeasor and no interruption of prescription. ***Id.***, 2002-0762 p. 3, 816 So.2d at 1001. The court similarly found no interruption of prescription in **Layman v. City of New Orleans**, 1998-0705, p. 3 (La.App. 4 Cir. 12/9/98) 753 So.2d 254, 256, because plaintiff "sued only for negligence damages. He did not sue for worker's compensation benefits."

In our review of these three cases, we find that the courts imposed pleading requirements which are inconsistent with Louisiana's rules of pleading, or otherwise failed to recognize a solidary relationship by drawing a distinction between liability derived from workers' compensation and liability derived from tort. The rulings of these courts are, therefore, contrary to LSA-C.C. art. 1797 ("An obligation may be solidary though it derives from a different source for each obligor."). We overrule

them here. Indeed, as in **Williams** itself, civilian methodology and the Civil Code again compel us to reject the proposition "that parties cannot be solidarily liable unless their liability is based upon the same cause of action" and we likewise affirm the principle that for purposes of prescription, parties "are solidarily liable to the extent that they share coextensive liability to repair certain elements of the same damage." **Williams**, 611 So.2d at 1389.

CONCLUSION

The Civil Code provides a two-part formula for interrupting prescription in this situation: 1) a timely lawsuit (and service, if in an incompetent court; see LSA-C.C. art. 3462); and 2) a solidary relationship between a party sued within the prescriptive period and a party not sued within the prescriptive period (see LSA-C.C. art. 1799 or art. 3503). The procedural posture here is comparable to that in **Williams v. Sewerage & Water Bd. of New Orleans**, 611 So.2d 1183 (La. 1993), except that in **Williams**, the suit in district court was for workers' compensation and the suit was brought against a direct employer rather than a statutory employer. The procedural distinctions here are without a difference, because LSA-C.C. art. 1797 provides that the source of the solidary relationship is immaterial. For this reason, to the extent **Keller v. McLeod**, 2003-267 (La.App. 3 Cir. 2/11/04), 866 So.2d 388; **Williams v. Holiday Inn Worldwide**, 2002-0762 (La.App. 4 Cir. 5/15/02), 816 So.2d 998; and **Layman v. City of New Orleans**, 1998-0705 (La.App. 4 Cir. 12/9/98), 753 So.2d 254, are inconsistent with the conclusion that a timely lawsuit (and service, if in an incompetent court) against a principal or statutory employer interrupts prescription as to a third-party alleged tortfeasor, those cases are overruled. In the instant case, we find both parts of the formula provided by the Civil Code for interrupting prescription have been met; the lower courts erred in sustaining the alleged third-

party tortfeasor's exception of prescription. Accordingly, we reverse the decisions of both lower courts and remand this matter to the district court for further proceedings consistent with this opinion.

REVERSED AND REMANDED.

5/10/11

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No. 2010-C-2011

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VERSUS

PAR MINERALS CORPORATION, ET AL.

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL, THIRD CIRCUIT, PARISH OF ALLEN

VICTORY, J., dissenting.

I dissent from the majority's holding that the timely filing of a tort suit against a party that is later dismissed as the plaintiff's statutory employer interrupts prescription against an alleged third party tortfeasor. It is well-established that a suit that is timely filed against a defendant who is not liable does not interrupt prescription against other defendants who were sued too late. ***Vicknair v. Hibernia Building Corp.***, 479 So. 2d 904 (La. 1985). Here, the party that was timely sued is not liable in tort because it was the plaintiff's statutory employer; thus, the timely filed suit against it does not interrupt prescription as to the defendant who was sued too late.

Further, I strongly disagree that the holding of ***Williams v. Sewerage & Water Bd. of New Orleans***, 611 So. 2d 1383 (La. 1993) applies to interrupt prescription as to the late-filed defendant. In ***Williams***, the plaintiff timely filed a workers compensation suit, and the Court held this interrupted prescription as to a subsequent claim against a third party for tort damages. First, ***Williams*** is distinguishable because here there was no timely filed workers' compensation case against the employer, there was only a tort suit which was dismissed. Secondly, I disagree with the holding of ***Williams*** because it was based on faulty reasoning. The Court in ***Williams*** relied on

Hoefly v. Government Employees Insurance Co., 418 So. 2d 575 (La. 1982) to hold that the workers' compensation lawsuit interrupted suit on the tort claim because the defendants were solidarily liable. However, ***Hoefly*** actually held that solidarity exists where (1) each defendant is obligated to the same thing; (2) each obligor is liable for the whole performance; and (3) payment by one solidary obligor exonerates the other obligor as to the creditor. It is beyond cavil that payment of workers' compensation benefits by the employer would not exonerate the tortfeasor as to the payment of tort damages to the plaintiff.

Finally, in my view ***Williams*** is not viable anymore because workers' compensation claims are no longer filed in the district court, but are instead administrative proceedings filed at an Office of Workers' Compensation. These proceedings are not a matter of public record and notice of the claim is not given to anyone except the defendant employer. Thus, the third party tortfeasor would have no notice of the timely filed workers' compensation claim.

For the above reasons, I respectfully dissent.

5/10/11

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PAR MINERALS CORPORATION, ET AL.

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THIRD CIRCUIT, PARISH OF ALLEN

Guidry, Justice dissents with reasons.

In my view, *Williams v. Sewerage & Water Board of New Orleans*, 611 So.2d 1383 (La. 1993) is not controlling. In *Williams*, the plaintiff filed both tort and worker's compensation claims against the timely sued defendant. Following the addition of other solidarily liable defendants after the one year prescriptive period had run, and the dismissal of the original tort claims, the worker's compensation claim against at least one of the original defendants continued. In this case, after PAR Minerals was dismissed from the tort suit, the plaintiff did not file a worker's compensation claim. Suit against the timely sued defendant did not continue and, consequently, the interruption of prescription is considered never to have occurred. La. C.C. art. 3463. Accordingly, I would affirm the court of appeal decision.

5/10/11

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**ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,
THIRD CIRCUIT, PARISH OF ALLEN**

CLARK, J., dissenting.

I dissent for the reasons assigned by Justice Victory.