

## BILLIOT OVERRULED

*Billiot v. B.P. Oil Co.*<sup>i</sup> held that a worker could recover punitive damages against an employer if the worker proved what the court phrased as the onerous proof requirements of Civil Code Article 2315.3: 1) defendant's conduct was wanton or reckless; 2) defendant's wanton or reckless conduct threatened public safety; 3) defendant's wanton or reckless conduct occurred in the storage, handling or transportation of hazardous or toxic substances, and; 4) plaintiff's injury was caused by the defendant's wanton or reckless conduct consisting of all these elements.<sup>ii</sup> The Legislature quickly overruled *Billiot* effective June 17, 1995<sup>iii</sup> but did so only prospectively, impliedly sanctioning the cases filed during the period between the supreme court's decision and the statutory amendment to §1032 of the Worker's Compensation Act.<sup>iv</sup> Recently, the supreme court overruled *Billiot* in *Adams v. J. E. Merit Construction, Inc.*, 97-2005 (La. 5/19/98), despite the fact that *Billiot* would affect only the finite number of cases that were pending before the 1995 amendment to LSA - R.S. 23:1032(A) and the fact that the majority on three successive panels had denied writs on the same issue.<sup>v</sup>

The *Adams* plaintiffs, employees of J. E. Merit Construction, Inc. (JE Merit), filed a punitive damage claim after alleged asbestos exposure from September 1993 to April 1994 while working at the B. P. Oil Refinery. The plaintiffs requested financial information from all defendants including JE Merit, Basic Industries, Inc., and B. P. Exploration & Oil, Inc. which related to their punitive damages claims. JE Merit moved for a protective order and partial summary judgment on the ground that plaintiffs had no punitive damages claims so no financial information was discoverable. The supreme court granted a writ to reconsider *Billiot*<sup>vi</sup> after the trial and appellate courts denied JE Merit relief.

According to the *Adams* court, the "four-justice majority"<sup>vii</sup> of *Billiot* erred not only because its holding is contrary to the express language of La. R.S. 23:1032A that "[t]he rights and remedies herein granted . . . shall be exclusive of all other rights and remedies," but also because the underlying reasoning supporting its holding was erroneous. The court ruled there was no reason to believe the legislature intended to exempt punitive damages from the exclusivity provision when the Workers' Compensation statute was enacted in 1914. The court further observed that the *Billiot* court's reading of the exclusivity provision was essentially "[t]o hold that the meaning of terms in a statute are forever 'frozen in time' if the statute is subsequently amended but with no 'substantive' change", a reading that has no basis in law.<sup>viii</sup> Also, the court pointed out that the Legislature had amended La. R.S. 23:1032(A) three times before the alleged asbestos exposure in this case in 1918, 1976 and 1989. Surely by 1989 "they" [the Legislature] were aware that punitive damages were awardable to some tort victims "yet they made no change to the phrase 'the rights and remedies granted to an employee . . . on account of a personal injury . . . shall be exclusive of all other rights and remedies'." Had the legislature meant to exempt punitive damages from the exclusivity provision it would have done so specifically. The court added that based on its reading of Civil Code Article 2315.3 punitive damages are only available to those persons who can recover general and special damages. Because La. R.S. 23:1032 prohibits recovery by the employee against the employer of general and special damages, the employer cannot be liable for punitive damages under that article.<sup>ix</sup>

*Billiot*, a streak on the judicial landscape, has been erased. The court left open the

question whether plaintiffs, if successful in proving an intentional act under La. R.S. 23:1032, could then avail themselves of a remedy under former article 2315.3.<sup>x</sup>

i93-1118 (La. 9/29/94), 645 So.2d. 604.

ii*Id* at 613.

iiiLa. R.S. 23:1032 A. (1)(a), amended by Act 432 of 1995 now reads as follows:

" Except for intentional acts provided in Subsection B, the rights and remedies herein granted to an employee or his dependent on account of an injury, or compensable sickness or disease for which he is entitled to compensation under this Chapter, shall be exclusive of all other rights, remedies, and claims for damages, including but not limited to punitive or exemplary damages, unless such rights, remedies, and damages are created by a statute, whether now existing or created in the future, expressly establishing same as available to such employee, his personal representatives, dependents, or relations, as against his employer, or any principal or any officer, director, stockholder, partner, or employee of such employer or principal, for said injury, or compensable sickness or disease."

iv But see *Adams*, footnote 6: "Because we overrule *Billiot*, we need not discuss defendants' argument, and the trial court's holding, that because the Legislature in amending La.R.S. 23:1032A in 1995 expressly stated that '[t]he provisions of this Act shall be applied prospectively only,' the Legislature believed *Billiot* to be good law prior to 1995. Acts 1995, No. 432, § 2. The prospective application of Act 432 is irrelevant to whether *Billiot* was a correct interpretation of pre-1995 law."

v Chief Justice Calogero, concurring in part, dissenting in part.

vi *Adams v. J. E. Merit Construction, Inc.*, 97-2005 (La. 11/14/97).

vii As Chief Justice Calogero's concurrence and dissent correctly pointed out, the *Billiot* court's decision was in fact 5-2.

viii The court embraced Justice Hall's dissent in *Billiot*: "There is no more reason that the term 'all other rights and remedies' should be frozen in time with the enactment of the worker's compensation law than for the term 'fault' as used in LSA-C.C. art. 2315 to be frozen in time with the enactment of the Civil Code in 1870, or some earlier code."

ix The first phrase of Article 2315.3 provided that "[i]n addition to general and special damages, punitive damages may be awarded . . ." The article was repealed by Acts 1996, 1st Ex. Sess., No. 2, §1, eff. April 16, 1996.

x

"Our holding today does not address whether plaintiffs, if successful in proving an intentional act under La. R.S. 23:1032, would then be eligible to recover punitive damages under former Article 2315.3."