

IN THE  
SUPREME COURT  
STATE OF LOUISIANA

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CASE NO. 2024-CD-0359

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THERESA FISHER,

*Plaintiff-Applicant*

VERSUS

STEVEN HARTER, JR., STEVEN HARTER, SR., AND  
THE HANOVER INSURANCE GROUP,

*Defendants-Respondents*

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CIVIL PROCEEDING

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ORIGINAL BRIEF ON BEHALF OF  
DEFENDANT-RESPONDENT, STEVEN HARTER, SR.

WITH REPECT TO A WRIT OF SUPERVISORY REVIEW  
FROM THE SECOND CIRCUIT COURT OF APPEAL, NO. 55,853-CW,  
CONCERNING THE FEBRUARY 20, 2024 JUDGMENT OF THE HONORABLE  
CHRIS VICTORY, JUDGE PRESIDING IN DOCKET NO. 615,908, FIRST  
JUDICIAL DISTRICT COURT, PARISH OF CADDO

NOTE:

DEFENDANT-RESPONDENT, STEVEN HARTER, SR. JOINS  
THE PLAINTIFF-APPLICANT, THERESA FISHER IN SEEKING  
TO HAVE LA. R.S. 13:4163 DECLARED UNCONSTITUTIONAL

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## **INTRODUCTION**

The unique procedural posture of the matter at issue before this Honorable Court makes for strange bedfellows. For the reasons hereinafter set forth, Defendant-Respondent Steven Harter Sr. (“Harter, Sr.”) joins with the Plaintiff-Applicant Theresa Fisher in seeking a judgment declaring La. R.S. 13:4163 unconstitutional on its face and as applied to the facts of this case.

### **STATEMENT OF THE CASE AND ARGUMENT BY STEVEN HARTER, SR.**

This lawsuit arises out of a motor vehicle accident that occurred on June 2, 2018, when the 2005 Lincoln Navigator driven by Steven Harter, Jr. (“Harter, Jr.”) rear-ended the vehicle driven by the Plaintiff-Relator, Theresa Fisher (“Fisher”).<sup>1</sup> The force of the collision pushed Fisher’s vehicle into the preceding vehicle.<sup>2</sup>

At the time of the June 2, 2018 accident, Harter, Jr. was a minor.<sup>3</sup> This lawsuit was filed on April 12, 2019,<sup>4</sup> which was after Harter, Jr. had already reached the age of majority.<sup>5</sup>

Harter, Jr. is the son of Harter, Sr.<sup>6</sup> and his wife, Laura Harter (“Laura”). Hanover Insurance Group (“Hanover”) provided both Harter, Jr. and Harter, Sr. with liability insurance coverage in connection with the accident under (a) an auto liability policy providing bodily injury limits of \$250,000 per person; and (b) an umbrella liability policy which provides additional limit of \$2,000,000.<sup>7</sup>

In the original Petition for Damages filed by Fisher on April 12, 2019, only Harter, Jr. and Hanover were named as defendants;<sup>8</sup> Harter, Sr. was not.

In compliance with its contractual obligation to provide Harter, Jr. with a defense, Hanover hired the Shreveport law firm Seabaugh, Joffrion, Sepulvado & Victory, LLC to represent Harter, Jr. and Hanover, and on June 3, 2019, Alan T. Seabaugh (“Seabaugh”) and Michael C. Melerine (“Melerine”), both lawyers with that firm, filed a pleading on behalf of Harter, Jr. and Hanover entitled “Declinatory Exception of Lack of Procedural

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<sup>1</sup> See Petition for Damages, R. 4-5.

<sup>2</sup> See Petition for Damages, R. 4-5.

<sup>3</sup> See Consent Judgment, R. 340-342.

<sup>4</sup> See Petition for Damages, R. 4-5.

<sup>5</sup> See Consent Judgment, R. 340-342.

<sup>6</sup> See Consent Judgment, R. 340-342.

<sup>7</sup> See Consent Judgment, R. 340-342.

<sup>8</sup> See Petition for Damages, R. 4-5.

Capacity and Answer to Petition for Damages.”<sup>9</sup> In the exception, Seabaugh and Melerine contended that because Harter, Jr. was a minor at that time of the accident, he lacked procedural capacity to be sued. However, because Harter, Jr. was a major by the time the lawsuit was filed, the contention by Seabaugh and Melerine that Harter, Jr. lacked procedural capacity to be sued was incorrect.<sup>10</sup> Unfortunately for Harter, Sr., the filing of the exception resulted in Fisher filing a “Supplemental and Amending Petition for Damages” naming Harter, Sr. as an additional defendant, thereby exposing Harter, Sr. to the possibility of a judgment being rendered against him in excess of the insurance coverage afforded him by the Hanover policies.<sup>1112</sup>

Seabaugh and Melerine then filed an answer on behalf of Harter, Sr.<sup>13</sup>

The trial court entered a Consent Judgment on September 8, 2020, regarding (a) liability, (b) the vicarious liability of Harter, Sr. for the tortious acts of Harter, Jr., and (c) insurance coverage.<sup>14</sup> Only the issue of causation of damages and the extent of damages remains for trial.<sup>15</sup>

During the five (5) plus years that have passed since Harter, Sr. was joined as a defendant, the trial of this matter has been continued several times because Seabaugh and Melerine, who are both members of the Louisiana Legislature, have asserted the privilege granted to them by La. R.S. 13:4163.

In early 2023 Seabaugh notified Harter, Sr. that based upon (a) the injuries and disabilities that Fisher claims she sustained as in the accident, (b) the amount of the medical bills she alleges that she has she has already incurred as a result of her injuries<sup>16</sup>, and (c) the amount of the medical expenses that she may incur in the future, the judgment ultimately rendered against Harter, Sr. could exceed the limits of the insurance coverage afforded to him by the Hanover policies. To his credit, Seabaugh further informed Harter,

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<sup>9</sup> See Declinatory Exception of Lack of Procedural Capacity and Answer to Petition for Damages filed June 3, 2019, R. 26-32.

<sup>10</sup> See Consent Judgment, R. 340-342.

<sup>11</sup> See Supplemental and Amending Petition for Damages filed June 7, 2019, R. 36-41.

<sup>12</sup> It is noted that because of Louisiana’s community property laws, the financial future of Harter, Sr.’s wife, Laura, is also exposed to potential ruin even though she is not named as a party to this action.

<sup>13</sup> See Answer to Amended Plaintiffs First Supplemental and Amended Petition for Damages filed June 20, 2019, R. 43-47.

<sup>14</sup> See Consent Judgment, R. 340-342.

<sup>15</sup> See Consent Judgment, R. 340-342.

<sup>16</sup> In her latest discovery responses, Fisher claims to have already incurred medical expenses totaling \$968,515.04.

Sr. that he might want to consult with another lawyer regarding his options should that occur.

Obviously, this caused Harter, Sr. and his wife Laura great distress. Accordingly, Harter, Sr. contacted and consulted with undersigned counsel, C. Vernon Richie (“Richie”). Richie thereafter accompanied Harter, Sr. to a mediation held in February of 2023 which did not result in a resolution of the matter.

On October 19, 2023, Fisher filed her Motion for Declaratory Judgment with Incorporated Memorandum in Support, seeking a declaration that La. R.S. 13:4163 is unconstitutional on its face and as applied in this case.<sup>17</sup> Although Richie had not previously enrolled as an attorney of record for Harter, Sr., Fisher requested that Harter Sr. be served with the motion through Richie.<sup>18</sup> After being served, Richie enrolled as an additional attorney of record for Harter, Sr.<sup>19</sup>

The district court heard Fisher’s constitutional challenge to La. R.S. 13:4163 on February 15, 2024.<sup>20</sup> Richie did not participate in the hearing. The district court rendered judgment denying Fisher’s motion on February 20, 2024.<sup>21</sup>

On February 21, 2024, Fisher filed her Notice of Intent to Seek Supervisory Review.<sup>22</sup>

On February 29, 2024, Senator Seabaugh pre-filed SB 185, which was introduced in the Senate on March 11, 2024.<sup>23</sup> SB 185 sought to amend La. R.S. 13:416 to divest the district court of its inherent judicial powers by mandating the imposition of attorney fees and costs against **any party** who attempts to challenge a legislator’s exercise of his legislative privilege.

On March 20, 2024, Fisher simultaneously filed applications for supervisory writs in both the Second Circuit Court of Appeal and this Court. On April 19, 2024, the Second

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<sup>17</sup> See Motion for Declaratory Judgment with Incorporated Memorandum in Support filed October 19, 2023, R. 1024.

<sup>18</sup> See Motion for Declaratory Judgment with Incorporated Memorandum in Support filed October 19, 2023, R. 1024.

<sup>19</sup> See Notice of Enrollment as Additional Counsel for Steven Harter, Sr. and Request for Notice filed October 27, 2023.

<sup>20</sup> See Transcript of February 15, 2024 Motion Hearing, R. 1373.

<sup>21</sup> See February 20, 2024 Opinion, R. 1342-43.

<sup>22</sup> See Notice of Intent to Seek Application for Supervisory Writ, R. 1348.

<sup>23</sup> See Exhibit A, Legislative Materials for SB 185, 02/29 Journal Entry.

Circuit denied Fisher’s writ application, stating: “On the showing made, we decline to exercise this Court’s supervisory jurisdiction.”<sup>24</sup>

On April 22, 2024, the Senate passed SB 185 without a single Nay vote,<sup>25</sup> and then on May 23, 2024, the House passed SB 185, once again without a single Nay vote.<sup>26</sup> On May 28, 2024, the Senate concurred in the House amendments, again without a single Nay vote.<sup>27</sup> Governor Jeff Landry vetoed SB 185 on June 20, 2024.<sup>28</sup>

Strikingly, had the Governor not vetoed SB 185, even Seabaugh’s and Melerine’s own client, Harter, Sr., would have been unable to object to Seabaugh and Melerine using the legislative continuance without both he, and his other lawyer, Richie, being subject to mandatory sanctions.

This Court unanimously granted Fisher’s writ on June 25, 2024. *Fisher v. Harter*, 24-00359 (La. 6/25/24), \_\_\_ So.3d \_\_\_.

Even in its current form La. R.S. 13:4163 is a legislative usurpation of the judiciary’s constitutionally vested authority to control its docket, manage its cases, determine whether continuances are proper, and impose penalties and sanctions. Not content with this unfettered and unconstitutional expropriation of judicial power, the Legislature passed Seabaugh’s bill, SB 185—which sought to mandate the imposition of attorney fees against **any party** who dares oppose a legislative continuance. As noted above, this would include Harter, Sr. and his other lawyer, Richie, even though Harter, Sr. did not hire Seabaugh and Melerine to represent him, but instead is provided Seabaugh’s and Melerine’s legal representation by Hanover pursuant to its contractual obligation to provide him with a defense.

We recognize that legislators who are attorneys should not be disadvantaged due to their decision to undertake public service. At the same time, the constitution does not permit legislators who are also attorneys unchecked authority to continue any deadline

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<sup>24</sup> See *Fisher v. Harter*, 55,853 (La. App. 2 Cir. 4/19/24) (unpublished writ denial), R. 1352.

<sup>25</sup> See Legislative Materials for SB 185, Senate Vote on SB 185 Final Passage (#351) which is attached as Exhibit A to Fisher’s brief.

<sup>26</sup> See Legislative Materials for SB 185, Senate Vote on SB 185, p. 6; House Vote on SB 185, p. 7, which is attached as Exhibit A to Fisher’s brief.

<sup>27</sup> See Legislative Materials for SB 185, Senate Concurrence Vote, p. 8, which is attached as Exhibit A to Fisher’s brief.

<sup>28</sup> See Legislative Materials for SB 185, SB185 Veto Message, p. 15, which is attached as Exhibit A to Fisher’s brief.

whatsoever for any reason simply by virtue of their status as a legislator especially when doing so may not be in the best interest of their own client.

Harter Sr. feels that he and his wife, Laura, have been and are being harmed in several ways by the seemingly endless stream of legislative continuances.

First, there is the emotional damage. For the last five (5) years, they have been haunted by the fear of losing everything they have worked to accrue. Oftentimes, fear of the unknown is more emotionally damaging than the certainty of knowing the outcome. One way or another, they need closure as soon as possible. The continued use of legislative continuance is denying them the certainty and closure that they need and deserve.

Second, based upon Fisher's discovery responses, it appears that she has incurred hundreds of thousands of dollars in additional medical expenses since Seabaugh and Melerine were first granted a legislative continuance. If these expenses are reasonably related to her injuries sustained in this accident, Harter, Sr.'s potential exposure to an excess judgment has significantly increased since Seabaugh and Melerine were first granted a legislative continuance. We realize that had this matter gone to trial years ago, Fisher would have been entitled to seek an award for provable future medical expenses. However, she would have to prove (a) that it is more probable than not that additional medical services will be necessary, (b) what those future medical services are, and (c) what those medical services will likely cost. As every experienced trial lawyer knows, future medical expenses are much harder to prove than expenses already incurred. Thus, the continued use of the legislative continuance in this matter has potentially caused Harter, Sr. harm by giving Fisher an evidentiary advantage she would not have had if this matter had been tried years ago.

Thirdly, there is the matter of legal interest. If Fisher is awarded a judgment in excess of the insurance coverage provided to Harter, Sr. by Hanover, Harter, Sr. would presumably be personally liable for the legal interest on the excess amount from the date of judicial demand which occurred over five years ago. Until this matter is concluded, legal interest will continue to accrue, and Harter Sr. is powerless to prevent this from happening.

Bluntly stated, lawyers have duties to their clients and the fact that they may also be in the legislature does not absolve them of those duties. They cannot be allowed to put their legislative duties and political ambitions ahead of the best interests of their clients.

**CONCLUSION AND PRAYER**

The adage “Justice delayed, is justice denied.” can apply to any party to a lawsuit and in this instance, it applies to Harter, Sr. Accordingly, Harter, Sr. joins with Fisher in praying that this Court reverse the district court’s judgment and render judgment declaring La. R.S. 13:4163 unconstitutional so that it cannot be used to further delay full and final resolution of the underlying lawsuit.

Respectfully submitted:

A handwritten signature in blue ink, appearing to read 'CVR', is written over a horizontal line.

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**VERIFICATION AND CERTIFICATE OF SERVICE**

I hereby certify that the allegations contained in this brief are true and that a copy of the foregoing brief has been served upon opposing counsel, the trial court judge, and the appellate court as listed below on this the 31<sup>st</sup> day of July, 2024.

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