

JOSEPH HARRELL

CASE NO: 35572 DIV. C

18TH JUDICIAL DISTRICT COURT

VERSUS

PARISH OF WEST BATON ROUGE

FRED SPENCER AND IMPERIAL
CASUALTY INSURANCE COMPANY

STATE OF LOUISIANA

**UNOPPOSED MOTION TO CONTINUE TRIAL
DUE TO CONFLICT WITH THE LSU TIGER'S
NATIONAL CHAMPIONSHIP GAME**

ON THE UNOPPOSED MOTION OF FRED SPENCER and IMPERIAL CASUALTY INSURANCE COMPANY, in the above numbered and entitled cause of action, appearing herein through undersigned counsel, and on suggesting to the Court that the trial of this matter, which is presently set for January 7, 2007, should be continued for the following reasons:

1.

The above captioned matter is presently set for trial on January 7, 2007.

2.

The No. 1 ranked Ohio State Buckeyes¹ and the No. 2 ranked Louisiana State University Tigers (hereinafter "LSU") will meet in the Allstate² BCS National Championship Game on Monday, Jan. 7, 2008 in the Louisiana Superdome.

3.

This will be just the third meeting between the two schools, playing a home-and-home series in 1987 and 1988. The two teams played to a 13-all tie on Sept. 26, 1987 in Baton Rouge. One year later, Ohio State beat the Tigers 36-33 in Columbus on Sept. 24, 1988.

¹ Occasionally referred to as "Slowhio" due to their perceived lack of speed on both sides of the ball.

² Allstate Property and Casualty Insurance Company is not a party to this litigation, but has signed on as the title sponsor of the Sugar Bowl, which is part of the college football Bowl Championship Series. Allstate replaces Nokia, which chose not to reup. The deal is for four years, and will also include significant advertising across all the BCS games televised on Fox, which was awarded TV rights to air the Sugar Bowl, Fiesta Bowl and Orange Bowl.

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4.

Thus, in addition to the opportunity to be the BCS National Champions, this game also represents LSU's chance to even their win to loss ratio with Ohio State.

5.

All opposing counsel are self-professed LSU fans³, and consequentially, have no objection to having this matter continued.

WHEREFORE, defendants, **FRED SPENCER** and **IMPERIAL CASUALTY INSURANCE COMPANY**, pray that the trial of this matter, presently set for January 7, 2008, be continued to the next available date to be determined by this Honorable Court.

Respectfully submitted,

BABCOCK LAW FIRM, LLC



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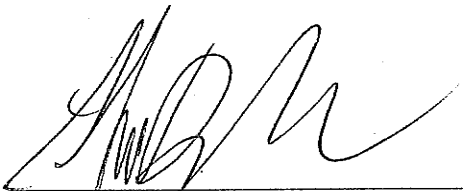
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ATTORNEYS FOR IMPERIAL FIRE AND CASUALTY INSURANCE
COMPANY AND FRED SPENCER

CERTIFICATE OF SERVICE

I, Stephen Babcock, hereby certify that on the 20 day of December, 2007 I served a copy of the above and foregoing *Motion to Continue* on all counsel of record for this proceeding by way of United States Mail, properly addressed and first-class postage prepaid, addressed as follows:

Mr. Peyton Murphy
Mr. Scott Emonet
Murphy Law Firm, PLC
7035 Jefferson Highway
Baton Rouge, LA 70806
Attorneys for: Joseph Harrell



STEPHEN BABCOCK

³ All counsel are veteran members of the T.P.N.(See www.tigerpimpnation.com), which is famous for touring one SEC away game per year, but is making a rare in-state exception for this BCS National Championship game. See also: Bourbon Street Blues Club (2nd Floor) (1/7/2008 12:30 p.m. *et. seq.*) 441 Bourbon St., French Quarter.

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STATE OF LOUISIANA

**MEMORANDUM IN SUPPORT OF UNOPPOSED MOTION TO CONTINUE
TRIAL DUE TO CONFLICT WITH THE LSU TIGER'S
NATIONAL CHAMPIONSHIP GAME**

MAY IT PLEASE THE COURT:

A continuance is the postponement of, or a delay in, the completion of a trial or other hearing. A motion for continuance is usually made in advance of trial by a written motion which must "set forth the grounds on which it is based." LA. CIV. CODE PROC. ANN. art. 1603

There are three peremptory grounds for continuance.⁴ (1) The court must grant a continuance to legislators and designated legislative support personnel if the trial or hearing will interfere with legislative work, as defined in a detailed statute. LA. REV. STAT. ANN.; (2) A litigant also is entitled to a continuance if he or she has been unable "with the exercise of due diligence, to obtain evidence material to his case." LA. CIV. CODE PROC. ANN. art. 1602; (3) The third peremptory ground is when "a material witness has absented himself without the contrivance of the party applying for the continuance." *Id.* If no peremptory ground for continuance exists, the judge nevertheless has the discretion to continue the case "if there is good ground therefor." LA. CIV. CODE PROC. ANN. art. 1601 states as follows:

A continuance may be granted in any case if there is good ground therefor.

All counsel to this matter unequivocally agree that the presence of LSU in the aforementioned contest of pigskin skill unquestionably constitutes good grounds therefor. In fact we have been unable through much imagination and hypothetical scenarios to think of a better reason.

⁴ Unfortunately, neither counsel was able to qualify for any of the three "sure thing" reasons for a continuance.

The granting of a continuance based on "good ground" lies within the sound discretion of the court, and the court's ruling should not be disturbed on appeal in the absence of clear abuse of that discretion. *Patterson v. Leggio*, 347 So.2d 1262 (1st Cir. 1977); *Chedotal v. Richard*, 183 So.2d 665 (1st Cir. 1966); *Sauce v. Bussell*, 298 So.2d 832 (La.1974); *Halley v. Halley*, 457 So.2d 108 (2d Cir.), cert. denied, 461 So.2d 316 (La.1984). See also, La. Unif. Dist. Ct. Rule 9.17.

Further, the veracity of these grounds, and importance of such an event in our society has been recognized jurisprudentially. The court in *Rensing v. Indiana State University Bd. of Trustees* 437 N.E.2d 78 Ind.App.,1982. June 16, 1982 stated that "[i]t is manifest from the record in the case at bar that maintaining a football team is an important aspect of the University's overall business or profession of educating students, even if it may not be said such athletic endeavors themselves are the University's 'principal' occupation. Suffice it to say, it was uncontroverted that football specifically and athletes generally play a beneficial role in creating the desired educational environment at the University, as evidenced by increased enrollments over the last few years as the University has prospered athletically through nationally-recognized intercollegiate athletic teams..."

CONCLUSION

For the aforementioned reasons, **FRED SPENCER** and **IMPERIAL CASUALTY INSURANCE COMPANY** pray that the matter presently set for January 7, 2008 be continued.

Respectfully submitted,

BABCOCK LAW FIRM, LLC


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ATTORNEYS FOR IMPERIAL FIRE AND CASUALTY INSURANCE
COMPANY AND FRED SPENCER

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FRED SPENCER AND IMPERIAL
CASUALTY INSURANCE COMPANY

PARISH OF WEST BATON ROUGE


STATE OF LOUISIANA

ORDER

CONSIDERING THE FOREGOING:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the trial of the above referenced matter presently set for January 7, 2008 be continued, and that a telephone/status conference be initiated by Babcock Law Firm on the 11th day of February, 2008 at 9:30 o'clock a.m. in order to select a new trial date.

Read, Rendered and Signed in Plaquemine, Louisiana, this 20th day of December, 2008


HONORABLE ALVIN BATISTE, JUDGE
18TH JUDICIAL DISTRICT COURT

PLEASE NOTIFY:

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