

COURT OF APPEALS FOR THE FOURTH CIRCUIT
STATE OF LOUISIANA

IN RE: Court of Appeal No. 2008-CA-0635

TASCH, INC.

Versus

HORIZON GROUP, ORLEANS PARISH SCHOOL BOARD AND THE
ORLEANS PARISH SCHOOL BOARD MEMBERS, ELLENESE
BROOKS-SIMS, UNA ANDERSON, CHERYL E. MILLS, GAIL MOORE
GLAPION, JIMMY FAHRENHOLTZ, CAROLYN GREEN FORD,
ELLIOT C. WILLARD

(Civil District Court, Orleans Parish, NO. 2002-12557, “H-12”)

Appeal from the Civil District Court for the Parish of Orleans, Honorable

Michael G. Bagneris Presiding Civil Action No.2002-12557, a Civil

Proceeding, Original Brief of Appellant, Tasch, Inc.

<p><u>Counsel for Appellant:</u> Scott G. Wolfe, Jr. Wolfe Law Group, L.L.C. 4821 Prytania Street New Orleans, Louisiana 70115 (504) 894-9653 Fax: (866) 761-8934 scott@wolfelaw.com Louisiana Bar No. 30122</p>	<p><u>Counsel for Appellee:</u> Bryan & Jupiter 650 Poydras Street, Ste 2345 Telephone: 504-561-8933 Fax: 504-561-6050 Louisiana Bar No. 7600</p>
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BRIEF OF APPELLANT

Appeal from the Civil District Court for the Parish of Orleans, Honorable Michael G. Bagneris Presiding Civil Action No. 2002-12557.

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II. Table of Authorities

CODE ARTICLES:

Louisiana Civil Code Article 561

CASES:

<i>Benjamin-Jenkins v. Lawson</i> , 781 So. 2d 893 (La App. 4 th Cir. 2001)	10,11,14
<i>Breaux v. Auto-Zone Inc.</i> , 787 So. 2d 322 (La. App. 1 st Cir. 2000)	11. 14
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<i>Burkett v. Resolution Trust Crop.</i> , 757 So. 2d 819 (La. App. 5 th Cir 2000)	9
<i>Commerce Funding Corp. v. Lewis Plumbing & Heating, Inc.</i> , 788 So.2d 1203 (La. App. 4 Cir. 2001	16
<i>Delta Dev. Co. v. Jurgens</i> , 456 So. 2d 145, 1984 (La 1984)	10
<i>De Salvo v. Waguespack</i> , 187 So.2d 489 (La. App. 4 Cir. 1966)	15
<i>Reed v. Peoples State Bank of Many</i> ,..... 839 So. 2d 955 (La. App. 2 nd Cir. 2003)	15
<i>Wilkes v. Carroll</i> ,..... 756 So. 2d 1257 (La. App. 2 nd Cir. 2000)	11, 14

III. Statement of Jurisdiction

This is an appeal from a judgment rendered by the Honorable Michael G. Bagneris of the Civil District Court for the Parish of Orleans. This Court has jurisdiction to hear this appeal pursuant to Article V, § 10(A) of the Louisiana Constitution of 1974.

IV. Statement of the Case

a) Introduction

This case presents a travesty of justice, whereby the Defendant Orleans Parish School Board moved *ex parte* to dismiss the action on the condition of abandonment, notwithstanding Plaintiff's clear pursuit of the case.

The *ex parte* action by the Defendant (a) was not served upon the Plaintiff; (b) was filed immediately after counsel for the Plaintiff enrolled as counsel; and (c) was ordered by the Court and taken by the Defendant(s) notwithstanding clear action by the Plaintiff to pursue its claims.

In the alternative that the *ex parte* motion and order was proper, the Plaintiff avers that the abandonment dismissal was based on a mere technicality, and compromises the spirit of Louisiana Civil Code Article 561.

The trial court dismissed based on Legal Abandonment found in Louisiana Civil Code Article 561. The trial court maintains the last “step” taken in this case being more than three years ago by either party. The trial court relies on case law to prove this but there is more relevant and explicit case law proving the contrary.

The official court record was lost and/or damaged due to the extreme circumstances of Hurricane Katrina, thus there is a dispute to whether it is accurate. This discrepancy is the most critical issue before this Appellate Court.

Many different attorneys handled this case and the Appellant’s counsel passed away during the litigation process. Since the death of this counsel, current counsel cannot obtain his file.

It is in the best interest of this court and justice for the case to be tried based upon the merits.

b) Action of the Trial Court and Procedural History

In August 2002, the Appellant filed the Original Petition at the center of these proceedings. As demonstrated by **Exhibit A**, a printout of the Orleans Civil Sheriff’s Service Summary for 2002-12557, the Original Petition was served upon the various defendants from August 12, 2002 through August 13, 2002.

Over the course of the next few years leading to the event of Hurricane Katrina, Plaintiff and Defendant litigated the claim and discussed settlement possibilities. At the time of Hurricane Katrina and shortly thereafter, counsel for Defendant (Bernard L. Charbonnet, Jr.) and counsel for Plaintiff (Clayton J.

Swank, III) were actively communicating with one another about a tentative or possible settlement agreement. Evidence of these communications in 2005 is attached hereto as **Exhibit B**.

Counsel for the Plaintiff, Clayton Swank, III, passed away shortly after Hurricane Katrina. Upon information and belief, Bernard L. Charbonnet, Jr. became disassociated with the case.

On October 22, 2007, current counsel for the Plaintiff filed a Motion to Enroll. Plaintiff's new counsel immediately began to "take steps" to advance Tasch, Inc.'s claim, including:

- The Motion to Enroll itself, on Oct. 22, 2007;
- Re-issuing Service on Horizon Group (which was never returned) on October 25, 2007;
- Filing a Motion for Leave to File A Supplemental and Amending Petition on January 11, 2008;
- Filing A Supplemental and Amending Petition on January 11, 2008;
- Requesting and issuing service of the Amended Petition on February 21, 2008.

On October 29, 2007, unenrolled counsel for the Defendant, Clare Jupiter, filed a Motion for Abandonment. A courtesy copy of the motion was never delivered to Plaintiff's counsel. The Order was signed on February 13, 2008 and served on February 29, 2008.

The trial court issued its Written Reasons for Judgment on April 24, 2008, and a Appeal was returned on May 20, 2008.

c) Assignment of Errors

Error Number 1: The trial court erred granting the Appellee’s Motion for Abandonment as “steps” were taken, and the action was not “abandoned.”

Error Number 2: The trial court erred in granting a Motion for an attorney who has never enrolled with the court in the matter.

Error Number 3: In the alternative, the Order granting the Defendant(s)’ Motion for Abandonment was based on a mere technicality, and compromises the spirit of Louisiana Civil Code of Procedure Article 561.

Error Number 4: In the alternative, that the Order granting the Defendant(s)’ Motion for Abandonment is considered proper by the Court, it should not have been granted to dismiss the case with prejudice, but should, instead, have been granted to dismiss *without prejudice*.

d) Issues Presented for Review

This Court is presented with the following issues:

- 1) Were the actions taken by either party on the court record enough to constitute the necessary “steps” needed to keep the case from becoming legally abandoned?
- 2) Were the actions taken by either party off the court record enough to constitute the necessary “steps” to keep the case from becoming legally abandoned, as per the spirit of Louisiana Civil Code of Procedure Article 561.
- 3) Can an attorney not of record on the case be permitted to file a Motion for Abandonment?
- 4) Should a case dismissed under La CCP Art 561 be dismissed *with prejudice* or *without prejudice*?

V. Legal Argument

Error 1: The Instant Action was *not* Abandoned, as “steps” were taken in its prosecution and/or defense.

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A. Relevant Code Articles Regarding Dismissal of a Case for Abandonment

Louisiana Code of Civil Procedure Article 561(A) provides as follows regarding Abandonment:

Art. 561(A)

(1) An action, except as provided in Subparagraph (2) of this Paragraph, is abandoned when the parties fail to take any step in its prosecution or defense in the trial court for a period of three years.

(2) If a party whose action is declared or claimed to be abandoned proves that the failure to take a step in the prosecution or defense in the trial court or the failure to take any step in the prosecution or disposition of an appeal was caused by or was a direct result of Hurricane Katrina or Rita, an action originally initiated by the filing of a pleading prior to August 26, 2005, which has not previously been abandoned in accordance with the provisions of Subparagraph (1) of this Paragraph, is

abandoned when the parties fail to take any step in its prosecution or defense in the trial court for a period of five years.

B. The Applicable Code Articles, Coupled with the Circumstances of This Case Indicates that the Case was not Abandoned and Appellee’s Motion to Dismiss for Abandonment Should Have Been Denied.

In his Written Reasons for Judgment, the Honorable Bagneris states:

“The last ‘step’ in the prosecution or defense of this matter occurred on November 21, 2002 when the Defendant, Orleans Parish School Board Members filed an Exception and Answer to Plaintiff’s Petition for Damages...the date that begins the running of abandonment in this case. The next “steps” taken in this matter included the following: March 7, 2003: Motion to Enroll as Counsel, October 24, 2003: Notice of Change of Address, October 31, 2003L Motion to Withdraw as Counsel, October 24, 2007: Motion to Enroll as Counsel. The court relies on the long line of cases that have ruled that Motions to Enroll or Withdraw are not formal steps before the court in the prosecution of a suit for purposes of determining whether a suit has been abandoned. Thus, the referenced filings did not interrupt the abandonment period.”

(i) The Court granted the Motion to Dismiss without considering matters clearly within the record.

While the Honorable Bagneris indicates that the Motion to Dismiss for Abandonment could not be affected by a “Motion to Enroll [or Withdraw] as Counsel,” it is clear that his Order and Written Reasons fails to consider other components of the record. The Appellant urges to the Appeals Court that these

parts of the record indicate that the Plaintiff did not intend to abandon the lawsuit, and as engaged in the active pursuit thereof.

The trial court's written reasons specifically do not consider the following actions taken by the Plaintiff *before* the February 13, 2008, order to dismiss:

- Re-issuing Service on Horizon Group (which was never returned) on October 25, 2007;
- Motion For Leave to File a Supplemental and Amended Petition, and Order Granting, and the Supplemental and Amending Petition itself, all filed and signed on January 11, 2008;

The Appellants urge that these actions were “steps” in the prosecution of the case.

For the purposes of La CCP Art 561, it is clear that a step that appears in the court record is a step “before the court” that prevents abandonment. *See generally* *Burkett v. Resolution Trust Corp.*, 757 So.2d 819 (La. App. 5 Cir. 2000). In *Brister v. Manville Forset Prods.*, the court went further to say that “the serving of any discovery materials....was to be considered a step in the prosecution or defense of an action for purposes of La. Code of Civ. Proc. Ann. art. 561, notwithstanding that such discovery materials were not filed in the record of the proceeding.” 749 So.2d 881, (La. App. 2 Cir. 1999).

For the purposes of abandonment, it is also clear that “when any party to a suit took formal action in the trial court, it was effective as to all of the parties.” *Delta Dev. Co. v. Jurgens*, 456 So.2d 145 (La. 1984).

These cases make it clear that Article 561 was “not designed to dismiss actions on mere technicalities, but to dismiss those in fact abandoned.” *Benjamin-Jenkins v. Lawson*, 781 So.2d 893 (La. App. 4 Cir. 2001).

The Motion to Enroll, Motion for Leave to File an Amending Petition, Order Granting Leave, Amending and Supplemental Petition, and service of the foregoing through the Orleans Civil Sheriff are all actions taken by the Plaintiff *before* the 561 order was granted by the Court. It is clear from these actions that steps were being taken by the Plaintiff to prosecute its claim, and the failure of the trial court to consider these actions at all is an error.

The Honorable Bagneris should have considered these actions when deciding the *ex parte* Motion to Dismiss, and the Motion to Dismiss based on abandonment should have been denied based on the actions of Plaintiff clear in the court record.

(ii) There is uncertainty concerning the record, the correspondence between these parties, the effect of this case by Hurricane Katrina, and related items - all warranting a Denial of the Motion to Dismiss for Abandonment in the interest of justice.

The definitive aspect of Abandonment law in Louisiana is the requirement of the passage of time without any action in the case.

After the event of Hurricane Katrina, the Louisiana legislature amended Art 561 to further reflect this intent of the rule, and to accommodate litigants for the effects of Katrina, amended 561(A)(2) to provide that:

If a party whose action is declared or claimed to be abandoned proves that the failure to take a step in the prosecution or defense in the trial court or the failure to take any step in the prosecution or disposition of an appeal was caused by or was a direct result of Hurricane Katrina or Rita, an action originally initiated by the filing of a pleading prior to August 26, 2005, which has not previously been abandoned in accordance with the provisions of Subparagraph (1) of this Paragraph, is abandoned when the parties fail to take any step in its prosecution or defense in the trial court for a period of five years.

The goals of Art 561 are further identified in Louisiana jurisprudence. *Wilkes v. Carroll*, 756 So.2d 1257 (La. App. 2 Cir. 2000) (La. Code Civ. Proc. Ann. art. 561 is to be liberally construed and any action or step taken to hasten a matter to judgment should be considered.) *Breaux v. Auto Zone, Inc.*, 787 So.2d 322 (La. App. 1 Cir. 2000) (Art 561 was not intended to dismiss those cases in which a plaintiff has clearly demonstrated before the court during the prescribed period that the plaintiff does not intend to abandon the lawsuit). *Lawson* (Art 561 was not designed to dismiss actions on mere technicalities, but to dismiss those in fact abandoned).

For the following reasons, the circumstances regarding the abandonment or non-abandonment of this case are complicated, and uncertain:

- There has been difficulty experienced by current counsel for Plaintiff & Defendant, and by the District Court itself, in locating the entirety of the record of this case.
- Immediate counsel for Plaintiff was not able to obtain the record from prior counsel, because Mr. Swank has passed away and was a sole practitioner.
- Immediate counsel for the Defendant (Clare Jupiter) was not the trial attorney for this matter before Hurricane Katrina. Former trial counsel, Bernard Charbonnet, is not longer associated with the case. In conversations with Ms. Jupiter, there has been difficulty in obtaining the complete record from Mr. Charbonnet.
- Ms. Jupiter signed and filed the affidavit attached to the Motion to Dismiss at controversy, but she was not the counsel dealing with this matter in the preceding three years, and may not have knowledge of any missing components of the record, discovery between the parties or the correspondence of the parties attached to this brief as **Exhibit B**.
- From the correspondence attached as **Exhibit B**, it is clear that counsel for Plaintiff and Defendant, as well as Plaintiff and Defendant themselves, were affected by Hurricane Katrina. And furthermore, this civil action was affected by the event.

For all of the foregoing reasons, the Appellant contends that it is in the interest of justice and the spirit of Art. 561, that the dismissal at controversy be reversed.

It is not in the interest of justice that the Appellee(s) benefit from the confusion surrounding the record in this case, and indeed, with the problems above enumerated the Abandonment of this action cannot be verified.

Error 2: The trial court erred in granting a Motion for an attorney who has never enrolled with the court in the matter.

Louisiana Rule of Court 9.12 provides that attorneys may enroll in the case by either (a) oral notice made in open court when all parties or their counsel are present; or (b) by filing a written Notice of Enrollment.

A Motion to Enroll is required by Louisiana Procedural Rules and jurisprudence. *Stillman v. Board of Supervisors of Southern University* (La App. 1 Cir. 2008) (Discovery sent by attorney who had not enrolled as required by 9.12 was not effective for the purposes of preventing abandonment).

Clare Jupiter filed the Ex Parte Motion to Dismiss, but did not enroll as counsel for the Defendants. Her failure to enroll and provide notice of representative was to the detriment of Plaintiff.

Until Plaintiff was served with an Order granted the abandonment, it was not aware that Clare Jupiter was counsel in this matter. Plaintiff was unable to communicate and engage Ms. Jupiter during the months in controversy surrounding the Motion for Abandonment.

Error Number 3: In the alternative, the Order granting the Defendant(s)' Motion for Abandonment was based on a mere technicality, and compromises the spirit of Louisiana Civil Code of Procedure Article 561.

In the alternative that the Order to dismiss is considered proper by this Honorable Court of Appeals, the Plaintiff urges that its granting was based on a mere technicality and compromises the spirit of Louisiana Civil Code of Procedure Article 561.

The goals of Art 561 are identified in Louisiana jurisprudence. *Wilkes v. Carroll*, 756 So.2d 1257 (La. App. 2 Cir. 2000) (La. Code Civ. Proc. Ann. art. 561 is to be liberally construed and any action or step taken to hasten a matter to judgment should be considered.) *Breaux v. Auto Zone, Inc.*, 787 So.2d 322 (La. App. 1 Cir. 2000) (Art 561 was not intended to dismiss those cases in which a plaintiff has clearly demonstrated before the court during the prescribed period that the plaintiff does not intend to abandon the lawsuit). *Lawson* (Art 561 was not designed to dismiss actions on mere technicalities, but to dismiss those in fact abandoned).

The taking of legal steps as demonstrated by the court record, Exhibit A and the discussion under Error 1 supra, as well as the communication between

Plaintiff's and Defendant's counsel as demonstrated by Exhibit B makes it clear to the Court that the Plaintiff did not *intend* to abandon its action. In the autumn of 2005, then counsel for the parties were very near (if not at) a settlement agreement on this matter. Hurricane Katrina and the chaos surrounding the event resulted in a staling of this claim...but not an abandonment thereof.

Confirming the decision of the Honorable Bagneris would be against the spirit of Art. 561.

Error Number 4: In the alternative, that the Order granting the Defendant(s)' Motion for Abandonment is considered proper by the Court, it should not have been granted to dismiss the case with prejudice, but should, instead, have been granted to dismiss *without prejudice*.

In the alternative that the Court rejects the above discussed assignment of errors, the Plaintiff urges that the Order dismissing the case *with* prejudice was not proper, and that the trial court should have dismissed the action *without* prejudice only.

Louisiana jurisprudence is clear that dismissals under Article 561 should be made *without* prejudice. *Reed v. Peoples State Bank of Many*, 839 So.2d 955 (La. App. 2 Cir. 2003) (Although dismissal of a tort action for failure to prosecute was proper, a trial court did not have the authority to dismiss the action with prejudice). *De Salvo v. Waguespack*, 187 So.2d 489 (La. App. 4 Cir. 1966) (Where an action was abandoned by the parties' failure to take any steps in prosecution or defense in

the trial court for a period of five years, the trial court was not authorized to dismiss the action "with prejudice."). *Commerce Funding Corp. v. Lewis Plumbing & Heating, Inc.*, 788 So.2d 1203 (La. App. 4 Cir. 2001) (Trial court judgment had to be amended to remove "with prejudice" language from order as plaintiff should have been allowed contradictory hearing to give it chance to present objection to prohibition against it filing new suit against defendant).

The granting of the Motion to Dismiss to dismiss this case *with* prejudice is against the jurisprudence in Louisiana regarding La. CCP Art 561, and should be reversed by this Honorable Appeals Court.

VI. Conclusion

This case presents a travesty of justice, whereby the Defendant Orleans Parish School Board moved *ex parte* to dismiss the action on the condition of abandonment, notwithstanding Plaintiff's clear pursuit of the case. The Appellant prays to this Appeals Court that the Order Dismissing this case on account of LA CCP Art 561 be recognized as incorrect, and reversed, or in the alternative, that the portion of the order dismissing the case "with" prejudice be amended to "without prejudice."

VII. Certificate of Service

I, Scott G. Wolfe, Jr., of Wolfe Law Group, L.L.C., hereby certify that a copy of this Appellant Brief was mailed via regular U.S. Mail, Postage prepaid, to counsel of record for Appellee, _____, at _____ on June ____, 2008.

VII. Exhibits

Exhibit A - Orleans Civil Sheriff's Record and Account of Service






















Exhibit B - Correspondence between counsel in 2005

Respectfully Submitted,

Scott G. Wolfe, Jr. (30122)
Wolfe Law Group, L.L.C.
4821 Prytania Street
New Orleans, Louisiana 70115
T: (504) 894-9653
F: (866) 761-8934
Counsel for Appellant

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 - [Click the drill down icon to view detailed service information](#)

Serial #	Entered Date	Released Date	Code	Attorney	Amount	Balance
Paper Name	Street	City	State	Zip	Returned	Deputy
 20	4/21/2008	4/21/2008	MOTION	Wolfe, Scott	\$20.00	\$0.00
ORLEANS PARISH SCHOOL THRU CLARE JUPITER	650 Poydras St	NEW ORLEANS	LA	70130	Yes	Maitre
 19	2/29/2008	2/29/2008	MOTION	Jupiter, Clare	\$20.00	\$20.00
TASCH INC THRU SCOTT G WOLFE JR	4821 Prytania St	NEW ORLEANS	LA	70115	Yes	Gant
 16	2/21/2008	2/21/2008	TRNSFR	Moran, Wendra	\$20.00	\$0.00
					N/A	
 15	2/21/2008	2/21/2008	TRNSFR	Moran, Wendra	\$20.00	\$0.00
					N/A	
 14	2/21/2008	2/21/2008	C/P	Wolfe, Scott	\$20.00	\$0.00
CONCEPT DYNAMICS INC THRU AGT ALICIA POLLITT	650 WOODWARD AVE	HARAHAN	LA		No	Jefferson
 14	2/21/2008		JEFF	Wolfe, Scott	\$20.00	\$0.00
					N/A	
 13	2/21/2008	2/21/2008	C/P	Wolfe, Scott	\$20.00	\$0.00
JEFF POLLITT	650 WOODWARD AVE	HARAHAN	LA		No	Jefferson
 13	2/21/2008	2/21/2008	JEFF	Wolfe, Scott	\$20.00	\$0.00
					N/A	
 12	10/25/2007	10/25/2007	C/P	Wolfe, Scott	\$20.00	\$0.00
HORIZON GROUP THRU JEFFREY D POLITT	650 WOODWARD AVE	HARAHAN	LA		Yes	Jefferson
 12	10/25/2007	10/25/2007	JEFF	Wolfe, Scott	\$20.00	\$0.00
					N/A	
 11	10/18/2002	10/18/2002	DUP	Swank, Clayton	\$0.00	\$0.00
ORLEANS PARISH SCHOOL BOARD	3510 Gen De Gaulle Dr	New Orleans	LA	70125	Yes	Andry
 9	8/13/2002	9/24/2002	C/P	Swank, Clayton	\$20.00	\$0.00
ELLIOT C. WILLARD	1670 Sere St	New Orleans	LA	70122	Yes	Wilson
 8	8/12/2002	9/24/2002	C/P	Swank, Clayton	\$20.00	\$0.00
ELLENESE BROOKS-SIMS DIST 4	4480 Gen De Gaulle STE 208	New Orleans	LA	70131	Yes	Andry
 7	8/12/2002	9/24/2002	C/P	Swank, Clayton	\$20.00	\$0.00
JIMMY FAHRENHOLTZ DIST 3	2824 Ursulines	New Orleans	LA	70119	No	Woodfork
 6	8/12/2002	9/24/2002	C/P	Swank, Clayton	\$20.00	\$0.00
GAIL MOORE GLAPION DIST 2	7641 Fieldston	New Orleans	LA	70126	Yes	Danna, Jr.
 5	8/12/2002	9/24/2002	C/P	Swank, Clayton	\$20.00	\$0.00
DR. CHERYL E. MILLS DISTRIC 1	7901 Sandy Cove	New Orleans	LA	70128	Yes	Fishel
 4	8/12/2002	9/24/2002	C/P	Swank, Clayton	\$20.00	\$0.00
UNA ANDERSON BOARD VICE-PRES DIST 6	428 Calhoun	New Orleans	LA	70118	Yes	Gant
 3	8/12/2002	9/24/2002	C/P	Swank, Clayton	\$20.00	\$0.00
ORLEANS PARISH SCHOOL BORD	3510 Gen De Gaulle	New Orleans	LA	70125	No	Andry
 2	8/12/2002	9/24/2002	C/P	Swank, Clayton	\$20.00	\$0.00
CAROLYN GREEN FORD	3125 Uppertine St	New Orleans	LA	70125	Yes	Mills
 1	8/12/2002	9/24/2002	C/P	Swank, Clayton	\$20.00	\$0.00
HORIZON GROUP	309 FOCIS STREET	METAIRIE	LA		No	Jefferson
 1	8/12/2002	9/24/2002	JEFF	Swank, Clayton	\$20.00	\$0.00
					N/A	

CLAYTON J. SWANK, III

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June 15, 2005

Bernard L. Charbonnet, Jr., Esq.
2140 Rue Royale
at Washington Square
New Orleans, LA 70116-1651


Re: Tasch, Inc. v. Horizon Group, et al
CDC No. 2002-12557

Dear Mr. Charbonnet,

I have reviewed the draft of the mutual release and settlement agreement attached to your letter of June 13, 2005 and find it satisfactory.

I need to know when the funds will be available.

Cordially,



Clayton J. Swank, III

ak

cc: Randy Allen

LAW OFFICE OF
BERNARD L. CHARBONNET, JR.

BERNARD L. CHARBONNET, JR.
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June 13, 2005

Mr. Clayton J. Swank, III
Attorney at Law
Post Office Box 1030
Mandeville, Louisiana 70447-1030

Re: Tasch, Inc. vs. Horizon Group, et al
CDC No. 2002-12557

Dear Mr. Swank:

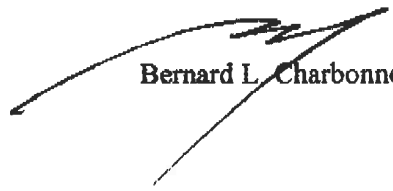
It seems that with all of the policy and personnel changes of recent months at the Orleans Parish School Board, the processing of the settlement associated with the above referenced matter was either overlooked or unattended to.

Accordingly, I am resubmitting my recommendation to the new general counsel. Out of an abundance of caution, I have enclosed herewith a Mutual Release and Settlement Agreement for your approval prior to submission. I recognize that you have given me permission to speak with Randy directly, but in light of the need for your review of this document, I thought it best to forward same to your attention.

I await your advices.

With kindest regards, I remain,

Very truly yours,



Bernard L. Charbonnet, Jr.

BLCjr/kss

Enclosure

Randy Allen

From: bcharbonnet [bcharbonnet@charbonnetassociates.com]
Sent: Saturday, December 03, 2005 5:21 PM
To: 'Randy Allen'
Cc: cjswankatty@aol.com
Subject: RE: Tasch, Inc.

I am back in the office and am corresponding with the General Counsel of the OPSB as to a reasonable time line at which this matter might be brought to conclusion. I will keep you advised. Good Luck!

-----Original Message-----

From: Randy Allen [mailto:randya@taschinc.com]
Sent: Sunday, October 02, 2005 5:49 AM
To: bcharbonnet@charbonnetassociates.com
Subject: Tasch, Inc.

Bernard,

I hope the storm was not too hard on you.

More than ever I need to complete our settlement agreement.

Will you give me an update?

Thanks,

Randy Allen
President
Tasch, Inc.

CLAYTON J. SWANK, III AND ASSOCIATES

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February 17, 2005

Bernard L. Charbonnet, Jr.
2140 Rue Royale
at Washington Square
New Orleans, LA 70116-1651

VIA FACSIMILE #(504) 949-1001

Re: **Tasch, Inc. v. Horizon Group, et al**
CDC Case NO. 2002-12557
Your File No. 1086-04

Dear Mr. Charbonnet,

Randy Allen has asked me to write you. I have no objection with you and Mr. Allen conferring directly regarding settlement.

I, however, reserve the right to approve any settlement document.

Should you have any questions, please advise.

Cordially,



Clayton J. Swank, III

ak

cc: Randy Allen

Randy Allen

From: bcharbonnet@charbonnetassociates.com
Sent: Sunday, October 02, 2005 5:31 PM
To: Randy Allen
Cc: ksilessi@charbonnetlaw.com
Subject: Re: Tasch, Inc.

> I feel your pain! I have attempted to contact the OPSB all to no
> avail. Will continue, and will advise.
> From: "Randy Allen" <randya@taschinc.com>
> Date: 2005/10/02 Sun AM 07:49:20 EDT
> To: <bcharbonnet@charbonnetassociates.com>
> Subject: Tasch, Inc.
>
> Bernard,
>
> I hope the storm was not too hard on you.
>
> More than ever I need to complete our settlement agreement.
>
> Will you give me an update?
>
>
> Thanks,
>
>
> Randy Allen
> President
> Tasch, Inc.
>

CLAYTON J. SWANK, III

AND ASSOCIATES

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June 14, 2005

Tasch, Inc.
2021-A Destrehan Avenue
Harvey, LA 70058
Attn: Randy Allen


VIA FACSIMILE #(504) 347-5007

Re: Tasch, Inc. v. Horizon Group et al

Dear Randy,

Please find enclosed a Draft of the Mutual Release and Settlement Agreement.
Please read it and give me a call.

Cordially,



Clayton J. Swank, III

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