

**NEWSFLASH:****LA. HIGH COURT HOLDS MEDICAL MONITORING LAW
CAN'T BE APPLIED RETROACTIVELY**

***Bourgeois v. A.P. Green Industries, Inc.*, 00-CA-1528 (La. 4/3/01), ___ So.2d ___.**

The Louisiana Supreme Court ruled on April 3, 2001 that Louisiana Act 989 of 1999 which attempts to bar pure medical monitoring suits cannot be applied to claims for medical monitoring which accrued prior to its effective date of July 9, 1999. The Supreme Court's opinion was foreshadowed by the Third Circuit two months ago in *Crooks v. Metropolitan Life Insurance Company* previously reported on in this E-zine (see March 2001, Volume 3: "[Law Banning Medical Monitoring Suits Cannot Be Applied Retroactively](#)").

The case before the Louisiana Supreme Court was the same case in which the Supreme Court originally recognized a medical monitoring cause of action absent a manifest injury. (*Bourgeois v. A.P. Green Industries, Inc.*, 97-3188 (La. 7/8/98), 716 So.2d. 355.) The Louisiana legislature reacted to the *Bourgeois* opinion by passing Act 989 which barred medical monitoring claims unless directly related to a manifest physical or mental injury or disease. The Act expressed a legislative intent that it be applied to all claims in existence on its effective date, as well as future claims.

Back at the trial level, the defendants in *Bourgeois* asserted Act 989 as a bar to plaintiffs' claims. The trial court held that Act 989 was unconstitutional as applied to plaintiffs' causes of action.

The Supreme Court affirmed. It held that despite the expressed legislative intent, the plaintiffs' right to assert a cause of action for medical monitoring accrued before Act 989 was enacted. Plaintiffs' rights were vested property rights protected by the guarantee of due process which could not be divested by Act 989.

The Court stated that the plaintiffs' cause of action accrued prior to the effective date of the statute because the seven *Bourgeois* factors were alleged to have converged on a date prior to July 9, 1999. This language by the Court raises the question of when prescription begins to run on a cause of action which requires no manifest physical or mental injury. Stay tuned.

- *Madeleine Fischer*

Remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues, contact:

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