

SUPREME COURT OF LOUISIANA

NO. 2016-C-1206

LAKISHA BUTLER AND CHELA BUTLER

VERSUS

**LOUISIANA MUTUAL MEDICAL INSURANCE
COMPANY, DR. FLOYD A. BURAS, JR., DR.
LOUIS BEVROTTE, DRS. LEBOEUF & BURAS,
AMC, DR. NEEL SHAH AND CHILDREN'S
HOSPITAL OF NEW ORLEANS**

**ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,
FOURTH CIRCUIT, PARISH OF ORLEANS**

CRICHTON, J., would grant and assigns reasons:

I respectfully dissent and would grant defendant LAMMICO's application for the reasons assigned in Judge Bonin's dissent. In this case, after a six-day trial, the jury returned a verdict in favor of the plaintiff, which the trial court reduced pursuant to the statutory limitations of the Louisiana Medical Malpractice Act, La. R.S. 40:1299.43, *et seq.* The plaintiffs thereafter filed a Motion to Tax Costs, which the trial court ultimately granted in full, finding plaintiffs were entitled to costs totaling \$154,470.37. At the hearing on said Motion, when defendants suggested that the court examine the ledger of costs, arguing that many of the costs alleged by plaintiff were not for trial purposes, nor otherwise taxable, the trial judge stated: "No. I'm not going – this is not going to be trench warfare. I'm not doing line by line, if that's what you're asking. I don't care to do that."

I fully agree with Judge Bonin's statements that a "defeated party is not indiscriminately assessed all of the prevailing party's expenses in the litigation." *Butler v. LAMMICO, et al.*, 15-1191, p. 15 (La.App. 4th Cir. 5/25/16), ___ So.3d ___ (Bonin, J., dissenting). Moreover, it is important to note, as did Judge Bonin, that there is no support, statutory or otherwise, for taxing as costs a number of

items including, but not limited to, services of unused expert witnesses (plaintiff identifies \$11,000 in expert fees for persons whom they report did **not** testify).

Accordingly, while I do not suggest the trial court engage in “trench warfare,” I would grant the instant writ application and remand to the trial court with instructions to actually examine the items supporting the \$154,570.37 award to determine the recoverability (or lack thereof) of each item.