

RÉSUMÉ DIGEST

ACT 275 (HB 337)

2024 Regular Session

McFarland

Prior law granted an injured person, or his survivors or heirs, a right of direct action against an insurer alone or against both the insured and insurer jointly and in solido under the general rules of venue prescribed by C.C.P. Art. 42. Authorized an injured person to bring action against the insurer alone only when at least one of the following applied:

- (1) The insured had been adjudged bankrupt by a court of competent jurisdiction or proceedings to adjudge an insured bankrupt were commenced.
- (2) The insured was insolvent.
- (3) Service of citation or other process could not be made on the insured.
- (4) The cause of action was for damages as a result of an offense or quasi-offense between children and their parents or between married persons.
- (5) The insurer was an uninsured motorist carrier.
- (6) The insured is deceased.

New law repeals prior law and provides that the injured person or, if deceased, persons listed in existing law (C.C. Arts. 2315.1 and 2315.2), have no right to file a survival or wrongful death claim as a direct action against an insurer unless one of the following applies:

- (1) The insured files for bankruptcy in a court of competent jurisdiction or proceedings to adjudge an insured bankrupt have been commenced.
- (2) The insured is insolvent.
- (3) Service of citation or other process has been attempted without success or the insured defendant refuses to answer or defend the action within 180 days of service.
- (4) The cause of action is for damages as a result of an offense or quasi-offense between children and their parents or between married persons.
- (5) The insurer is an uninsured motorist carrier.
- (6) The insured is deceased.
- (7) The insurer is defending the lawsuit under a reservation of rights, or the insurer denies coverage to the insured, but only for the purpose of establishing coverage.

New law provides that the filing of an action against an insured interrupts prescription for all insurers whose policies provide coverage for the claims asserted in the action.

New law prohibits the name of an insurer from inclusion in the caption of an action brought against the insurer. Further requires the action to be captioned only against the insured defendant or other noninsured defendants.

Prior law (C.E. Art. 411(D)) required the court to provide certain instructions to the jury regarding insurance. New law repeals prior law.

New law prohibits a court from disclosing the existence of insurance coverage or mentioning coverage in the jury's presence unless required in new and existing law (C.E. Art. 411).

New law authorizes a court to dismiss the action of any insured or other defendant if the action cannot proceed due to the insured's insolvency or other circumstances described in new and existing law.

In certain instances, new law authorizes an insurer to be joined on motion of any party as a defendant for the purposes of entering final judgment or enforcing a settlement. Provides

that the joining of an insurer defendant is subject to the terms and limits of the policy. Further provides that new law does not apply if the insurer timely denied coverage or reserved rights, unless there has been an adjudication in favor of coverage.

New law requires a judgment entered against an insured to also be rendered against any nonparty insurer that is joined post verdict.

New law prohibits disclosure of an insurer to the jury in a subsequent trial that results from a reversed or remanded judgment.

New law provides that when an insured defendant files the first responsive pleading, counsel for the defendant is required to certify to the plaintiff the name and address of any additional insurers who waive any further notice related to the cause of action.

New law deems that an insurer has provided all notice regarding insurers who have entered a waiver unless the insured provides written notice to the parties instructing notice to be additionally sent to another counsel. Further provides that if an insurer waives notice of a cause of action, the order to join the defendant post verdict may be issued ex parte.

New law authorizes notice of the commencement of a civil action to be provided by the plaintiff or counsel to a nonparty insurer by service of citation through any method of service provided by law.

New law authorizes any copy of a motion to join the insurer post verdict to be granted in chambers within 15 days following service, unless a contradictory hearing is requested.

New law requires an insurer that denies coverage to do the following:

- (1) Provide written notice of reservation of rights to assert a coverage defense to the named insured at his last known address by U.S. postal mail or other similar tracking method, commercial courier, or by hand delivery, within 90 days after the liability insurer makes a determination of the existence of a coverage defense, but not later than 30 days before trial.
- (2) Provide notice to all counsel of record in a cause of action against the insured that a reservation of rights has been issued, and provide such notice within 60 days of sending the notice of reservation of rights, but not later than 30 days before trial.

Prior law provided an intent for all liability policies within their terms and limits to be executed for the benefit of all injured persons and their survivors or heirs to whom the insured is liable; and that it is the purpose of all liability policies to give protection and coverage to all insureds, whether they are the named insured or additional insureds under the omnibus clause, for any legal liability the insured may have as or for a tortfeasor within the terms and limits of the policy.

New law repeals prior law and provides that the purpose of all liability policies is to provide protection and coverage to all insureds, whether the insured is a named insured or an additional insured under the omnibus clause, for all legal liability the insured may have within the terms and limits of the policy.

New law (uncodified) does not prevent a plaintiff from resolving a claim of coverage against one insurer while preserving a claim against another insurer of the same defendant in the cause of action.

Effective August 1, 2024.

(Amends R.S. 22:1269(B)(1) and (D); Adds R.S. 22:1269(B)(3) and (4), (E), and (F); Repeals C.E. Art. 411(D))