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**Overview of State of Louisiana
Court System****A. Trial Courts**

1. District Courts are courts of general jurisdiction. Most civil actions will proceed in one of Louisiana's forty-three judicial district courts. There are no jurisdictional limitations regarding the amount in controversy, except that a right to a jury trial requires a plaintiff to state a claim in excess of \$50,000 (exclusive of interests and costs).
2. Parish and City Courts and Justice of the Peace Courts are courts of limited jurisdiction. There is no bright-line amount in controversy limitation applicable to all parish and city courts across the State (the amounts vary based on population), except they all fall below \$50,000. Small claims courts generally have jurisdictional limitations below \$5,000. Small claims courts generally have jurisdictional limit. Jury trials are not permitted in these courts, as their amount in controversy limitations all fall below the requisite \$50,000.

B. Appellate Courts

1. Circuit Courts of Appeal- Each Court of Appeal has appellate jurisdiction of all civil matters decided within its circuit, whether the judgment was issued by a District Court, Parish or City Court. The State is divided into five appellate circuits. Each party to an appeal has the right to request oral argument, or the court of appeal can order oral argument sua sponte. Generally, three judges from a particular Circuit decide an appeal, with a majority required to issue a decision. Determinations made by a trial judge are evaluated differently depending on whether they are questions of law or questions of fact. Questions of law are subject to de novo review, with no deference given to the findings of the trial court. Questions of fact are granted great deference by the appellate courts, and cannot be disturbed unless the trial court finding was "manifestly erroneous." Manifestly erroneous has been defined as "clearly wrong" by the Louisiana Supreme Court. See *Arceneaux*

v. Domingue, 365 So.2d 1330, 1333 (La. 1978).

2. Supreme Court- With regard to civil matters, the seven justices generally only hear appeals where they have granted writ of certiorari (a majority of the justices must agree to grant writ). The Court generally only grants writ where an appeal involves conflicting decisions, an unresolved issue of law, the need to overturn or modify existing precedent, or the erroneous interpretation of a law or constitutional provision. For appeals the Supreme Court agrees to review, decisions of the Court require agreement by a majority of the justices.

Procedural

A. Venue

Proper based on tort:

- Parish where the defendant is domiciled or resides.
- Parish where the registered office of a domestic corporation, insurer, or LLC is located.
- Parish where the accident/ wrongful conduct occurred.
- Parish where the damages were sustained.
- In cases of UM carrier, parish of plaintiff insured's domicile.
- In cases of nonresident defendant(s), parish of plaintiff's domicile.

B. Statute of Limitations

In Louisiana, the statute of limitations is referred to as the prescriptive period. The prescriptive period applicable to most torts is one year from the date of the accident. However, claims for damages under U/M provisions of an automobile policy carry a two year prescriptive period. For personal injury actions, the prescriptive period begins to run the day following the accident. La. Rev. Stat. § 9:5629.

C. Time for Filing an Answer

- District Court- 15 days (30 days if an out-of-state defendant is served under the long-arm statute).
- City or Parish Court- 10 days.

D. Dismissal Re-Filing of Suit

- A plaintiff may voluntarily dismiss without prejudice prior to any appearance of record by a defendant.

-A plaintiff must obtain leave of court to voluntarily dismiss without prejudice if any defendant has made an appearance and objects to the dismissal without prejudice.

-An action is deemed abandoned where the parties fail to take any step in its prosecution or defense for a period of three years. A formal order of dismissal will be entered as of the date of abandonment upon ex parte motion and affidavit by any party.

Liability

A. Negligence

Louisiana applies a “duty/risk” negligence formulation (substantially similar to the common law formulation). In order for a plaintiff to prevail on a negligence claim, each of these five elements must be proven:

- 1) The defendant had a duty to conform her conduct to a specific standard;
- 2) The defendant breached her duty by failing to conform to the appropriate standard;
- 3) The substandard conduct was a cause-in-fact of the plaintiff’s injuries;
- 4) The substandard conduct was a legal cause of the plaintiff’s injuries; and
- 5) The plaintiff suffered damages.

See *Detraz v. Lee*, 950 So.2d 557, 562 (La. 2007).

Louisiana is a pure comparative fault state. La. Civ. Code Art. 2323 (A). Contributory negligence and assumption of risk are not stand-alone defenses, as they are subsumed within the comparative fault analysis. The factors to be considered when assigning fault are:

- 1) Did the conduct result from inadvertence or did it involve an awareness of the danger;
- 2) How great was the risk created by the conduct;
- 3) The significance/utility of what the actor sought by the conduct;
- 4) The capacities of the actors, whether superior or inferior;
- 5) Extenuating circumstances which might require the actor to proceed in haste, without proper thought; and

6) The relationship between the fault/negligent conduct and the harm to the plaintiff.

Watson v. State Farm Fire & Cas. Ins. Co., 469 So.2d 967 (La. 1985).

Noteworthy aspects of the pure comparative fault applied in Louisiana include:

- 1) The fault of all actors is considered, including settling tortfeasors, non-parties, insolvent/immune actors, and “phantoms;”
- 2) Plaintiff’s recovery is reduced by the amount of her negligence according to the numerical percentage, whether ten percent, forty percent, or eighty percent.
- 3) Comparative fault is applied to both strict and absolute liability cases.

B. Negligence Defenses

Common Defenses to Tort Suits:

- Comparative Fault of Plaintiff/Others;
- Sudden Emergency Doctrine;
- Plaintiff’s Failure to Mitigate Damages;
- Estoppel;
- Immunity (workers’ compensation bar, etc.).

Failure to wear a seatbelt is now a defense.

C. Gross Negligence, Recklessness, Willful and Wanton Conduct

In the context of tort actions, only applicable for driving while intoxicated. Punitive damages are permitted for injuries caused by the wanton or reckless disregard for the rights and safety of others, where intoxication while driving was a cause-in-fact of the resulting injuries. La. Civ. Code Art. 2315.4.

D. Negligent Hiring and Retention

Louisiana recognizes a cause of action for negligent hiring.

When an employer hires an employee who in the performance of his duties will have a unique opportunity to commit a tort against a third party, he has a duty to exercise reasonable care in the selection of that employee. *Kelley v. Dyson*, 08-1202 (La. App. 5 Cir. 3/24/09), 10 So. 3d 283, 287

E. Negligent Entrustment

To establish negligent entrustment of a vehicle, a plaintiff must demonstrate that the owner or lessor of the vehicle had actual or constructive knowledge that the driver/lessee was incompetent or had an apparent disability at the time he was given permission to drive the vehicle. *Francis v. Crawford*, 732 So.2d 152 (La. App. 2nd Cir. 1999).

F. Dram Shop

Under Louisiana law, the consumption of intoxicating beverages, rather than the sale or furnishing of such beverages, is the proximate cause of any injury inflicted by an intoxicated person upon herself or another person. La. Rev. Stat. 9:2800.1. Sellers may be held liable in where the intoxicating beverages are sold to minors. Legal presumption that the consumption of intoxicating beverages, rather than the sale or serving of such beverages, is the proximate cause of any injury, does not apply to the illegal sale, serving, or furnishing of alcohol to minors. *Wiltz v. Brothers Petroleum, L.L.C.*, 140 So.3d 758 (La. App. 5 Cir. 2014)

G. Joint and Several Liability

The common law concept of joint and several liability is inapplicable in Louisiana. Under Louisiana's pure comparative fault scheme, parties are only responsible for their allotted share of negligence, eliminating the need for contribution cross-claims among defendants.

H. Wrongful Death and/or Survival Actions

- Both permitted—must be filed within one year from date of death.
- Wrongful death claim permitted where a person dies due to fault of another, and includes damages for loss of love, affection, companionship, support/income, and personal services. Primary claimants are surviving spouses and children. If no such claimants exist, then claims by parents permitted; and if no such claimants exist, then claims by siblings permitted. LA C.C. Art. 2315.2
- Survival action claims the deceased's damages, including pain and suffering, and is brought by surviving heirs of the deceased.

I. Vicarious Liability

Under Louisiana law, vicarious liability requires these elements to be shown:

- 1) An employment relationship (worker may be a payroll or borrowed employee);
- 2) The employee must be acting within the course and scope of the employment relationship; and
- 3) The employee must have been at fault.

Louisiana recognizes an exception to vicarious liability in instances of employee "frolic and detour." To establish frolic and detour, it must be shown that the employee's deviation from the employment activities was substantial. *Timmons v. Silman*, 761 So.2d 507 (La. 2009).

J. Exclusivity of Workers' Compensation

Where a person is injured while working, workers' compensation is her exclusive right to recovery. La. R.S. §23:1032. The exclusivity provisions apply not only to the employer, but to co-employees, officers, directors, partners and stockholders of the employer.

Intentional acts are not protected by workers' compensation immunity, and an injured employee may recover in tort for damage arising out of an employer or fellow employee's intentional act.

Damages

A. Statutory Caps on Damages

Not applicable, excepting suits against medical providers (malpractice) and against public entities.

B. Compensatory Damages for Bodily Injury

Plaintiffs may claim special damages, general damages (*i.e.*, pain and suffering) and hedonic damages. The computation of damages is left to the sound discretion of the judge or jury.

A plaintiff may recover loss of earnings capacity, measured as the difference between the amount he reasonably could have expected to earn in the future (had injury not occurred) versus the amount he reasonably expects to earn considering his injury.

C. Collateral Source

Under the prior rule, a defendant could not introduce evidence that a plaintiff received payment from a third party, such as their insurance provider, and plaintiffs could then recover their total medical bills. Now, if the plaintiff's medical bill is paid by a private health insurer or Medicare, recoverable medical expenses are limited to the amount paid by those providers, not the amount billed. The court shall also award up to forty percent of the difference between the amount billed and the amount paid for "procurement costs", unless the defendant can successfully prove this would render the award unreasonable.

La. Stat. § 9:2800.27

D. Pre-Judgment/Post-Judgment Interest

Legal interest automatically runs on all judgments from the date the petition is filed up through the date the judgment is paid. The judicial interest rate varies annually.

E. Damages for Emotional Distress

- Victim who is physically injured may recover for emotional distress suffered as a result of the injury.
- Family members of the physically injured victim (spouses, children, parents, etc.) may recover damages for emotional distress, so long as they witness the event or come upon the scene soon thereafter. The claimant's mental anguish or emotional distress must be severe, debilitating and foreseeable. La. Civ. Code Art. 2315.6.

F. Wrongful Death and/or Survival Action Damages

- No cap on survival or wrongful death damages.
- Wrongful death damages may include loss of love, affection, companionship, support/income, and personal services.
- Survival action damages recover the deceased's damages, including pain and suffering.

G. Punitive Damages

Excluding sex-related crimes against children, punitive damages are only applicable in the context of driving while intoxicated. Punitive damages are permitted for injuries caused by the wanton or reckless disregard for the rights and safety of others, where intoxication while driving was a cause-in-fact of the resulting injuries. La. Civ. Code Art. 2315.4.

Punitive damages are deemed covered by the defendant's liability policy unless it expressly excludes them. *Yonter v. State Farm Mut. Auto. Ins. Co.*, 802 So.2d 950 (La. App. 5th Cir. 2001).

H. Diminution in Value of Damaged Vehicle

-General rule: Recovery of damages to a vehicle is limited to the cost

of its necessary repair.

-Cases of Total Loss: Where vehicle is totally destroyed or so badly damaged that the cost of repair exceeds its value, the measure of damages is the value of the vehicle just before the accident, less the deductible, if any. *Lorick v. Direct Gen. Ins. Co. of Louisiana*, 43,716 (La. App. 2 Cir. 1/21/09), 2 So. 3d 1209, 1212

-Damages include any sales taxes paid by the owner on the repair or replacement of the property damages.

I. Loss of Use of Motor Vehicle

Louisiana law allows for the recovery of the reasonable value of the loss of use of a damaged vehicle during the reasonable period of time that it should have taken for the adjustment and repair of the vehicle or to replace a total loss vehicle, and in most cases that is deemed to have a limit of approximately 30 days. *Riser v. Shelter Mutual Ins. Co.*, 997 So.2d 675 (La. App. 2 Cir. 2008).

Evidentiary Issues

A. Preventability Determination

The Supreme Court of Louisiana has held that a company's internal evaluation as to whether an accident was preventable is not discoverable. *Rader v. R.T.A.*, 595 So.2d 644 (Mem. Op. 1992)

B. Traffic Citation from Accident

In a civil case, a traffic citation is inadmissible to show that a party was charged with a traffic violation. *Maricle v. Liberty Mut. Ins. Co.*, 04-1149 (La.App. 3 Cir. 3/2/05), 898 So.2d 565. However, A guilty plea to a traffic offense is admissible into evidence as an admission against interest relevant to show fault. *Maricle v. Liberty Mut. Ins. Co.*, 2004-1149 (La. App. 3 Cir. 3/2/05), 898 So. 2d 565, 572.

C. Failure to Wear a Seat Belt

Previously, failure to wear a seatbelt was not a defense and not considered negligence in a civil tort suit. But La. R.S. 32:295.1(E) was repealed and Failure to wear a seatbelt is now a defense.

D. Failure of Motorcyclist to Wear a Helmet

By statute, motorcycle users must wear a safety helmet. La. Rev. Stat. § 32:190. At least one Louisiana tort decision commenting on a motorcyclist's failure to wear a helmet held that such failure was negligence, and reduced plaintiff's damages by fifty percent. See *Landry v. Doe*, 597 So.2d 14 (La. App. 1st Cir. 1992).

E. Evidence of Alcohol or Drug Intoxication

Evidence of a driver's intoxication is admissible in Louisiana civil suits and does not require an alcohol or drug test result to prove intoxication; intoxication can be proved by less direct evidence. *Gonzales v. GEICO*, 32 So.3d 919, 927 (La. App. 5 Cir. 2010). However, proof of the effects of intoxication on a driver's ability to drive must be established through competent expert testimony.

F. Testimony of Investigating Police Officer

- Permitted to testify as to personal observations.
- Permitted to testify as to expert opinions so long as they are qualified as experts on the proffered topics and they are relevant to the disputed issues.
- Not permitted to testify that a motorist was cited or believed to be in violation of a traffic law (irrelevant, unduly prejudicial and a legal conclusion). *Domingo v. State Farm Mut. Auto. Ins. Co.*, 54 So.3d 74 (La. App. 5th 2010).

G. Expert Testimony

Louisiana mirrors federal requirements for competence, reliability and relevance. With respect to scientific expert testimony, Louisiana applies the *Daubert* analysis, which analyzes whether the technique has been subjected to peer review and/or publication, the known or potential rate of error, the existence of standards controlling the technique's operation, the technique's refutability or testability, and the technique's general acceptance in the scientific community. *Independent Fire Ins. Co. v. Sunbeam Corp.*, 755 So.2d 226 (La. 2000).

H. Collateral Source

Under the prior rule, a defendant could not introduce evidence that a plaintiff received payment from a third party, such as their insurance provider, and plaintiffs could then recover the “sticker price” of their medical bills. Now, if the plaintiff’s medical bill is paid by a private health insurer or Medicare, recoverable medical expenses are limited to the amount paid by those providers, not the amount billed. The court shall also award up to forty percent of the difference between the amount billed and the amount paid for “procurement costs”, unless the defendant can successfully prove this would render the award unreasonable. La. Stat. § 9:2800.27.

I. Recorded Statements

The statement of any party or witness must be produced when he requests it. Statements of defense drivers, whether or not a party, are not discoverable by the plaintiff or other parties if the statements were taken in anticipation of litigation or in connection with trial preparation (unless failure to produce the statement will subject the plaintiff to undue hardship or injustice).

Initial reports drafted by the truck driver contained in the initial accident report are often ruled admissible under the theory that the document is a company record kept in the ordinary course of business. La. Code Civ. Proc. art. 1424; La. R.S. § 13:3732; *Simmons v. TMSL, Inc.*, 780 So.2d 1074 (La. App. 4th Cir.).

J. Prior Convictions

Evidence of a prior conviction is admissible if the crime: (1) was punishable by death or imprisonment in excess of six months under the law under which he was convicted, and the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to a party; or (2) involved dishonesty or false statement, regardless of the punishment. La. Code Evid. art. 609.

Evidence of a conviction is not admissible if a period of more than ten years has elapsed since the date of the conviction. La. Code Evid. Art. 609.

K. Driving History

Driving history may be discoverable and admissible so long as it is relevant to a fact in issue. Not admissible to show that the driver has been involved in prior accidents or received prior

tickets.

L. Fatigue

HOS violations are admissible into evidence so long as suit involves allegations of fatigued driving.

M. Spoliation

Louisiana recognizes a legal cause of action for spoliation. The theory of “spoliation of evidence” refers to an intentional destruction of evidence for purpose of depriving opposing parties of its use. *Pham v. Contico Int'l, Inc.*, 99-945 (La. App. 5 Cir. 3/22/00), 759 So. 2d 880, 882.

No cause of action exists for negligent spoliation of evidence. *Reynolds v. Bordelon*, 2014-2362 (La. 6/30/15), 172 So. 3d 589, 592

Settlement

A. Offer of Judgment

A written offer of judgment must state that it is being made pursuant to La. C.C.P. Art. 970, and whether the amount of money being offered to settle all claims between the parties is inclusive or exclusive of costs, interest, attorney fees and any other amount which may be awarded at trial. If the final judgment is within 25 percent of the offer, the offeree must pay the offeror’s “costs” of litigation (which can include court costs, expert fees and deposition charges, but not attorney fees) incurred after the offer was made. La. Code Civ. Proc. Art. 970.

B. Liens

Any entity that treated a plaintiff for injuries caused by an accident or that paid part of a plaintiff’s damages and has been subrogated to that part of his claim, can assert a claim for reimbursement of that amount. A defendant generally is not bound by any lien which has not been filed by way of formal petition of intervention in the plaintiff’s suit, but an exception exists in favor of medical providers who provide the defendant written notice of their lien in accordance with the medical lien statute. Any health care provider, hospital, or ambulance service that furnishes services or supplies to any injured person shall have privilege for the reasonable charges or fees

of such health care provider, hospital, or ambulance service on the net amount payable to the injured person, his heirs, or legal representatives, out of the total amount of any recovery or sum had, collected, or to be collected, whether by judgment or by settlement or compromise, from another person on amount of such injuries, and on the net amount payable to any insurance company under any contract providing for indemnity or compensation to the injured person. La. R.S. 9:4752 and 4753.

If a defendant settles with the plaintiff without the lienholder's consent and without placing a lienholder's name on the draft, the defendant remains liable to the lienholder.

C. Minor Settlement

Parents may settle a child's claim without court approval if the payment received by the minor does not exceed \$10,000.00 (exclusive of court costs, attorney fees, and other expenses).

For all other minor claims, court approval of the reasonableness of the settlement must be obtained. La. R.S. 9:196.

D. Negotiating Directly with Attorneys

Adjusters may communicate with attorneys. However, when a person who is not an attorney represents another in the negotiation and settlement of a personal injury claim for consideration, pursuant to a contingency fee contract, that person has engaged in the unauthorized practice of law. *Louisiana Claims Adjustment Bureau, Inc. v. State Farm Ins. Co.*, 877 So. 2d 294, (La. App. 2 Cir. 6/23/04).

E. Confidentiality Agreements

Confidentiality provisions are enforceable in Louisiana. See *Engineered Mech. Servs., Inc. v. Langlois*, 464 So. 2d 329 (La. Ct. App. 1984).

F. Releases

A compromise entered into by one of multiple persons with an interest in the same matter does not bind the others, nor can it be raised by them as a defense, unless the matter compromised is a solidary obligation. La. Civ. Code art. 3075. A compromise settles only those differences that the parties clearly intended to settle, including the necessary consequences of what they express. La. Civ. Code art. 3076.

G. Voidable Releases

Error of fact or fraud must be shown to void a compromise signed by a competent adult releasor.

In Louisiana any provision, clause, covenant, or agreement contained in, collateral to, or affecting a motor carrier transportation contract or a construction contract that purports to indemnify, defend, or hold harmless the indemnitee from liability for loss or damages resulting from the indemnitee's negligence or intentional acts is contrary to the public policy of the state and is null, void, and unenforceable. This applies to the acts or omissions of the indemnitee, an agent or employee of the indemnitee, and a third party over which the indemnitor has no control. This law also states that Louisiana law shall govern any motor carrier transportation contract or construction contract to be performed in the state, and that any provision in such contracts which conflicts with the law shall be null, void, and unenforceable. La. R.S. 9:2780.1.

Transportation Law

A. State DOT Regulatory Requirements

Louisiana's DOTD has adopted and enforces the FMCSA regulatory requirements for commercial motor vehicles.

B. State Speed Limits

Violation of a speed or other safety statute can be considered as evidence of negligence, but violation is not, by itself, sufficient to carry the plaintiff's burden of proving negligence by a preponderance of the evidence. It must also be shown that the action which contravenes a statute is unreasonable under the circumstances and causes the harm of which plaintiff complains. *Stephens v. State Through Dep't of Transp. & Dev.*, 440 So. 2d 920, 928 (La. Ct. App. 1983). In Louisiana, violation of a criminal safety statute is not negligence per se. In order for the violation of a statute to constitute actionable negligence, the violation must be encompassed within the scope of risks that the statute was designed to protect against, and the violation must be a cause-in-fact of the accident.

C. Overview of State CDL Requirements

CDL applicants in Louisiana must meet certain residency, age (i.e. 18 or above) and competency requirements and pass certain written and on-road tests which shall be at least as stringent as the standards established by the Federal Highway Administration in La. R.S. § 32:405.1 and § 32:408.

An applicant in Louisiana for a commercial driver's license must be a domiciliary of Louisiana, unless applying for a nonresidential commercial driver's license. A person domiciled in and holding a valid commercial driver's license from another jurisdiction meeting the standards contained in 49 CFR Part 383, shall not be required to obtain a Louisiana driver's license while operating in Louisiana. However, a holder of a commercial driver's license who has been a resident of Louisiana for thirty days or longer shall be considered a Louisiana domiciliary and shall obtain a Louisiana commercial driver's license within no more than thirty days after establishing a domicile in Louisiana. La. R.S. 32:404.1.

Any person applying for a commercial driver's license in Louisiana shall not have any physical or mental disability affecting the ability to exercise ordinary and reasonable control in the operation of a commercial motor vehicle. Such person, unless exempted by the office of motor vehicles or by a rule or regulation, shall provide a current medical report, on a form approved by the office of motor vehicles, prepared by a duly licensed medical examiner, certifying that he is capable of exercising ordinary and reasonable control in the operation of a commercial motor vehicle. Such person shall submit a valid medical examiner's certificate at every renewal and shall carry a current medical certificate on his person at all times when driving a commercial motor vehicle requiring a commercial driver's license. La. R.S. 32:403.4.

Insurance Issues

A. State Minimum Limits of Financial Responsibility

Minimum required liability coverage:

-\$15,000 for b/i or death to one person in any one accident;
-\$30,000 for b/i or death to any two or more persons in any one accident.

-\$25,000 for property damage caused by any one accident.

La. Stat. § 32:900

B. Uninsured Motorist Coverage

A person injured as a result of a motorist's negligence is entitled to sue not only the motorist, but also the motorist's liability insurer(s) and any insurer which issued an uninsured motorist (UM) policy covering the vehicle in which the plaintiff was riding. The plaintiff can also "stack" one additional UM policy which did not cover the vehicle in which he was riding, but which covered him personally. La. R.S. 22:1295 (Louisiana UM statute).

Any automobile liability insurance covering liability arising out of the ownership, maintenance, or use of any motor vehicle required to be registered in Louisiana is legally deemed to provide UM coverage which is not less than the limits of bodily injury liability provided by the policy, unless any insured named in the policy either rejects coverage, selects lower limits, or selects economic-only coverage, on a form prescribed by the Louisiana commissioner of insurance.

Once a UM insurer receives satisfactory proof of loss (i.e., sufficient evidence for it to determine that the tortfeasor was in fact uninsured or underinsured and sufficient evidence to make an initial evaluation of the nature and extent of its insured's injuries and damages resulting from the subject accident), the UM insurer must then tender to its insured at least the minimum amount of damages which any rational fact finder would probably find to be due to the insured by the UM insurer, after taking credit for any and all liability limits that cover the tortfeasor. If a UM insurer fails to make such a tender and such failure is found to have been arbitrary, capricious, or without probable cause, the insurer shall be subject to a penalty of one thousand dollars or fifty percent of the amount found to be due/not timely tendered to the insured, whichever is greater, plus reasonable attorney fees and costs. See LA R.S. 22:1892.

C. No Fault Insurance

Louisiana does not have true no-fault insurance, excepting medical-payment provisions in liability and accident policies.

D. Disclosure of Limits and Layers of Coverage

A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse payments made to satisfy the judgment. La. Code Civ. Proc. Art. 1423. In a jury trial, the policy will not ordinarily be offered into evidence but rather it will be offered only for use by the judge in confecting a final judgment in the event the jury renders an award to the plaintiff.

Louisiana has a “direct action statute,” which allows the plaintiff to name the defendant’s insurers as direct defendants in the initial suit against the insured. La. R.S. 22:1269.

E. Unfair Claims Practices

See Bad Faith Claims Section, directly below.

F. Bad Faith Claims

Insurers owe their insureds a duty of good faith and fair dealing. The duty specifically requires payment of any amount due to one of its insureds within 30 days after receipt of satisfactory proof of loss. Noncomplying insurers risk the possibility of being held liable for a penalty of up to fifty percent of the amount that it owes its insured, plus reasonable attorney fees, in the event that the insurer’s failure to timely pay is found to have been “arbitrary, capricious or without probable cause.”

Statutory duties in favor of third-party claimants and against liability insurers include misrepresenting insurance policy provisions or facts relevant to any coverage at issue; failing to pay a settlement within 30 days after the agreement is reduced to writing; misleading a claimant as to the applicable statute of limitations; failing to initiate loss adjustment of property damage and med-pay claims within 14 days of notification of the claim; and failing to make a written offer to settle a PD claim within 30 days of receiving satisfactory proof of loss. If an insurer knowingly or arbitrarily breaches these duties, the claimant can recover from the insurer certain penalties, the specifics of which vary depending upon the particular duty breached but which

typically include the greater of “\$5,000.00 or double the amount of any damages that are directly caused by the insurer’s breach,” or the greater of “\$1,000.00 or 50% of the amount due from the insurer,” plus reasonable attorney fees for some (but not all) breaches by the insurer of its statutory duties mentioned herein-above. La. R.S. 22:1892 and 1973.

G. Coverage – Duty of Insured

An insured has a duty to cooperate with the insurer in his defense; in order to vitiate coverage based on insured’s lack of cooperation, insurer must demonstrate actual prejudice from lack of cooperation. *Trosclair v. CNA Ins. Co.*, 637 So.2d 1168 (La. Ct. App. 1994).

H. Fellow Employee Exclusions

If an employee is injured on the job, workers’ compensation is his exclusive legal right to recovery from his employer and co-employees. La. R.S. 23:1032. If an employee is injured by an intentional act, however, he may elect to sue in tort.