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Overview of State of Louisiana Court System
A. Trial Courts
<p>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 \$10,000.00 (exclusive of interests and costs).</p> <p>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 and/or statute), except they all fall below \$50,000. Small claims courts generally have jurisdictional limitations below \$5,000. Jury trials are not permitted in these courts.</p>
B. Appellate Courts
<p>1. Circuit Courts of Appeal- Each Court of Appeal has appellate jurisdiction over all civil (and criminal) matters decided within its circuit, whether the judgment was issued by a District, 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 form a Panel and decide the merits of an appeal, with a majority required to render a decision. Different standards apply depending on whether there 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 usually given 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". See <i>Arceneaux</i></p>

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 principal business establishment of a domestic partnership or domestic unincorporated association 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 where the principal business established, is located for a foreign corporation or foreign LLC licensed to do business in the state.
 - Parish of Plaintiff's domicile for a foreign corporation, foreign LLC, or non-resident individual who has not appointed an agent for service of process in the state.

B. Statute of Limitations

In Louisiana, the statute of limitations is referred to as the prescriptive period. The prescriptive period applicable to most torts, including uninsured motorist claims, is two years from the date of the accident. (Changed from one year on July 1, 2024). La. C.C. Art. 3493.1. For personal injury actions, the prescriptive period begins to run the day following the accident. La. Rev. Stat. § 9:5629. The prescriptive period for a wrongful death action is one (1) year from the death of the deceased or two (2) years from the day that the injury or damage is sustained, whichever is longer. La. C.C. Art. 2315.2. The prescriptive period for a survival action is one (1) year from the date of death of the deceased or two (2) years from the day that the injury or damage is sustained, whichever is longer. La. C.C. Art. 2315.1.

C. Time for Filing an Answer

- District Court- Twenty-one (21) days (30 days if an out-of-state defendant is served under the long-arm statute or if discovery is served with the Petition).
- If an Exception is filed prior to the Answer, the Answer is due fifteen (15) days after the disposition of the Exception.
- 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. Abandonment occurs by operation of law, so an abandoned suit cannot be reviewed by taking judicial action after the passage of the three-year period.

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).

Effective January 1, 2026, Louisiana will be a MODIFIED COMPARATIVE NEGLIGENCE jurisdiction. Under this scheme, a plaintiff found to be more than fifty-one percent (51%) or more at fault will be barred from recovery, i.e., will get no damages. If the plaintiff is 50% or less at fault, recovery is allowed, but any award will be reduced by the plaintiff's amount of fault. This is contained in Louisiana HB 431 that amends article 2323(A) of the Louisiana Civil Code. This amendment also contains a provision that a Jury will be instructed on this change when the issue of comparative fault is presented to it.

Louisiana was previously 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. Evidence of a person’s failure to wear a seat belt can now be used in civil lawsuits (personal injury claims) to argue for comparative negligence or the mitigation of damages. This means an insurance company or opposing counsel may claim that a person’s injuries were made worse due to not being buckled up, potentially reducing the compensation a plaintiff can recover. As of August 1, 2025, the “no pay, no play” law now prevents uninsured drivers (plaintiffs) from recovering the first \$100,000.00 in damages (bodily injury & property). La. R.S. § 32:866.

C. Gross Negligence, Recklessness, Willful and Wanton Conduct

In Louisiana, punitive damages are only available where specifically allowed by statute. 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—Both wrongful death and survival actions must be filed within one year from date of death of the deceased or within two years from the day that the injury or damage is sustained, whichever is longer. This lengthened prescriptive period went into effect on August 1, 2025.

-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).

Previously, Louisiana jurisprudence supported dismissal of direct negligence actions against employers where defendants stipulated or judicially admitted the employee was in the course and scope of employment at the time of the accident. In *Martin v. Thomas*, 346 So.3d 238 (La. 2022), the Louisiana Supreme Court held a plaintiff can pursue direct negligence claims against the employer separate from and in addition to negligence claims against the employee, even where defendants stipulate to course and scope, because liability had not been admitted. This holding was expanded by *Magill v. Werner Enterprises, Inc. of Nebraska*, No. 2025-CC-00892 (La. 2025). In *Magill*, the Louisiana Supreme Court held a plaintiff can pursue direct negligence claims against an employer despite the employer's stipulation that its employee was in the course and scope of employment and at fault for the accident. This allows plaintiffs to submit evidence to a Jury about a company's

employment, hiring and training practices despite admitting fault and course and scope of employment.
J. Exclusivity of Workers' Compensation
<p>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.</p> <p>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.</p>
Damages
A. Statutory Caps on Damages
Not applicable, excepting suits against medical providers (malpractice) and against public entities.
B. Compensatory Damages for Bodily Injury
<p>Plaintiffs may claim special damages, general damages (<i>i.e.</i>, pain and suffering) and hedonic damages. The computation of damages is left to the sound discretion of the judge or jury (Finder of Fact).</p> <p>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.</p>
C. Collateral Source
<p>Previously, a defendant could not introduce evidence that a plaintiff received payment from a third party, such as their insurance provider, and plaintiffs could recover their total medical bills (subject to exceptions, <i>i.e.</i> Medicaid write offs, workers' compensation write offs, and attorney negotiated discounts). In 2020 the legislature revised the collateral source rule (effective January 1, 2021) providing, 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</p>

The Collateral Source Statute underwent additional major changes in 2025. Effective January 1, 2026 past medical expense recovery is limited to the AMOUNT ACTUALLY PAID (plus amounts still owed) rather than the higher billed amounts. However, the jury shall be informed of the amounts billed and the amounts actually paid for the medical expenses incurred. The goal is to prevent plaintiffs from receiving a windfall and align with the goal of making a plaintiff whole while avoiding unjust enrichment. This law also repeals the “40% difference rule” that previously applied to compensate a plaintiff for the cost of procurement of the health insurance. (Act 466 of the 2025 Regular Session of the Legislature).

Other pertinent provisions of the Louisiana collateral source statute (La. Stat. § 9:2800.27) include

- In cases where a claimant’s medical bills have been paid by Medicaid, the claimant’s recovery is limited to the amount actually paid to the medical provider by Medicaid
- In cases where a claimant’s medical bills have been paid pursuant to the Louisiana Workers’ Compensation Law, the claimant’s recovery is limited to the amount paid under the workers’ compensation medical fee schedule.
- In cases where the attorney for the claimant has entered into a pre-negotiated discount agreement with the medical provider, the claimant’s recover is limited to the amount actually paid pursuant to the pre-negotiated agreement.
- Recoverable past medical expenses include amounts paid to a medical provided by or on behalf of a claimant and the amounts remaining owed to a medical provider, including medical expenses secured by a contractual or statutory privilege, lien, or guarantee. In effect, the full amount charged is recoverable when a plaintiff uses third party funding to pay for medical bills. In theory, the plaintiff owes the full charged amount to the third party funding company.

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.

The Judicial Interest Rate in Louisiana for 2026 is 7.5%.

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. Also known as "Lejeune Damages." 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. Damages can be recovered even if the decedent only survived for one (1) second prior to death.
- Note that the prescription period for wrongful death and survival actions has been lengthened. These damages will also be subject to the modified comparative negligence regime effective January 1, 2026.

G. Punitive Damages

Excluding sex-related crimes against children and child pornography crimes and some other narrow exceptions explained below, 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. Louisiana law also provides for punitive damages in cases of domestic abuse that result in serious bodily injury or severe mental and emotional distress. La. Civ. Code 2315.8. Finally, Louisiana law also allows for punitive damages if a victim's death is caused by "wanton and reckless disregard" for their safety through an act of hazing La. Civ. Code Art. 2315.10.

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).

If an insurer deprives a person of his or her vehicle more than five (5) business days due to delays, the insurer must pay reasonable expenses and can face penalties (up to 10% or \$2,500.00) plus attorneys' fees if the failure is deemed arbitrary. La. R.S. §22:1892.

If the damaged vehicle is a commercial one, the owner may be able to recover lost profits assuming the claim is supported by adequate evidence.

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. See *Maricle v. Liberty Mut. Ins. Co.*, 898 So. 2d 565, 572 (La. App. 3 Cir. 2005). Likewise, the payment of a fine associated with a traffic citation is not equivalent to a guilty plea; therefore, the payment of a citation alone is not admissible as an admission against interest. See *id.* However, A guilty plea to a traffic offense is admissible into evidence as an admission against interest relevant to show fault. See *id.*

C. Failure to Wear a Seat Belt

Failure to wear a seatbelt when an accident occurs is an affirmative defense that can be used to argue for a reduction in damages.

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). See also *Moffitt v. Sewerage & Water Board of New Orleans*, 40 So.3d 336, 345 (La. App. 4th Cir. 2010). Also keep in mind that Louisiana will be a modified comparative fault jurisdiction effective January 1, 2026.

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) (allowing expert testimony to be considered on a Motion for Summary Judgment).

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, Medicaid, or Medicare, recoverable medical expenses are limited to the amount paid by those providers, and any applicable cost sharing amounts paid or owed by the plaintiff, not the amount billed. La. Stat. § 9:2800.27. Further, attorney-negotiated discounts are not recoverable under the collateral source rule pursuant to the Louisiana Supreme Court’s decision in *Hoffman v. 21st Century Ins. Co.*, 209 So. 3d 702 (La. 10/02/2015).

I. Recorded Statements

The statement of any party or witness must be produced when the party requests it. Statements of insured 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(B).

With respect to traffic citations, evidence that the motorist received a citation and paid the citation is inadmissible unless the motorist also pled guilty to the citation in writing. *Maricle v. Liberty Mut. Ins. Co.*, 898 So.2d 586 (La. App. 3 Cir. 3/2/205).

K. Driving History

Driving history may be discoverable and admissible so long as it is relevant to a fact in issue. Driving history is not admissible to show that the driver has been involved in prior accidents or received prior tickets. *Lee v. K-Mart Corp.*, 483 So.2d 609 (La. App. 1 Cir. 1985). However, prior accidents may be relevant to show knowledge or failure to take precautionary measures. *Id.* Conversely, subsequent accidents are not relevant for these purposes. *Id.* For evidence of any other accident – prior or subsequent – to be relevant for any purpose, the accident must (1) occur at substantially the same place; (2) occur under substantially the same conditions; and (3) must be caused by the same or similar defect, danger, act or omission. *Id.* Evidence of other accidents occurring at substantially different places or under different circumstances or conditions is irrelevant and inadmissible. *Id.*

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
<p>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 at least 25 percent less than the amount of the offer or if the final judgment is in favor of the defendant offeror, 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.</p>
B. Liens
<p>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. The lienholder must provide written notice of the lien to the healthcare provider, hospital, ambulance service, the injured person, the person alleged to be liable to the injured person for the injuries sustained, and any insurance carrier that may be required to compensate the injured person.</p>

The notice must contain the name and address of the injured person and the name and location of the interested healthcare provider, hospital, or ambulance service and must be sent by certified mail, return receipt requested, or by facsimile transmission with proof of receipt. Finally, the privilege of an attorney (*i.e.* an attorney lien) will have precedence over any lien asserted by a healthcare provider, hospital, or ambulance service 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. Rev. 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. The prescribed form shall be provided by the insurer and signed by the named insured or his legal representative and shall be conclusively presumed to become a part of the policy or contract when issued and delivered, irrespective of whether physically attached thereto. A properly completed and signed form creates a rebuttable presumption that the insured knowingly rejected coverage, selected a lower limit, or selected economic-only coverage. If the form is signed but not properly completed, such that the rebuttable presumption does not apply, there shall be no uninsured motorist coverage or modified uninsured motorist coverage, as applicable, if it is determined that the insured or his representative intended to modify the uninsured motorist coverage. La. R.S. 22:1295.

With respect to commercial automobile policies, the insured shall have the option of selecting uninsured motorist coverage on a form promulgated by the commissioner. If there is no selection of UM coverage on the form provided to the insured and no payment of premium that includes this coverage, then it shall be presumed that no UM coverage was selected for that policy or contract, and the provision of the Louisiana UM statute shall not apply. La. R.S. 22:1295.

Once a UM insurer receives satisfactory proof of loss (sufficient facts which fully apprise the insurer that (1) the owner or operator of the other vehicle involved in the accident was uninsured or underinsured; (2) that he was at fault; (3) that such fault gave rise to damages; and (4) the extent of those damages), 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. Further, evidence of the existence of insurance coverage generally cannot be disclosed to the jury. La. C.E. 411; La. R.S. 22:1269.

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. However, the 2024 revisions to the Louisiana Direct Action Statute have substantially narrowed the circumstances under which an injured person may bring a direct action against the insurer. The statute indicates that the injured person “shall have no right of direct action” against the insurer unless: (1) the insured files for bankruptcy; (2) the insured is insolvent; (3) service of citation or other process has been attempted on the insured without success or the insured refuses to answer or otherwise defend the action within 180 days of service; (4) when the cause of action is for damages as a result of an offense or quasi-defense between children and their parents or between married persons; (5) when the insurer is a UM carrier; (6) the insured is deceased; and (7) when the insurer is defending the lawsuit under a reservation of rights, or the insurer denies coverage to the insured, but only for purposes of establishing coverage. Even if the insurer is named as a defendant in a suit, the insurer shall not be included in the caption of any action brought against it under the Direct Action Statute; rather, the caption may only include the insured defendant and/or other noninsurance defendants.

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 insureds and third-party claimants and against liability insurers also include (1) misrepresenting insurance policy provisions or facts relevant to any coverage at issue; (2) failing to pay a settlement within 30 days after the agreement is reduced to writing; (3) misleading a claimant as to the applicable statute of limitations; (4) failing to initiate loss adjustment of property damage and med-pay claims within 14 days of notification of the claim; (5) failure to pay claims pursuant to La. R.S. 22:1893 (statute governing certain immovable property claims) when the failure is arbitrary, capricious, or without probable cause; and (6) 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, which include the greater of 50% of the amount due from the insurer to the insured plus any proven economic damages as a result of the breach, or \$1,000.00 (whichever is greater), plus reasonable attorney fees and costs. La. R.S. 22:1892.

Please note that former La. R.S. 22:1973, which provided a different penalty calculation of acts (1)-(4) described in the preceding paragraph, has been repealed effectively July 1, 2024.

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).

Further, under La. R.S. 22:1892, the insured, claimant, or a representative of the insured or claimant has a duty of good faith and fair dealing when asserting a claim for insurance coverage. The insured/claimant breaches this duty when the insured/claimant (1) fails to comply with affirmative contractual duties or obligations established in the insurance policy, including the duty to act in good faith in providing information regarding the claim, in making demands of the insurer, in setting deadlines, and in attempting to settle the claim; (2) misrepresents pertinent facts or insurance policy provisions relating to any coverages at issue; or (3) submits an estimate or claim for damages that lacks a basis for coverage under the terms of the policy or lacks a good faith evidentiary basis. While a breach does not create a separate cause of action in favor the insurer, the trier of fact must consider an insured/claimant's breach in determining whether to award penalties or attorney fees against the insurer.

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.