

Introduction to the 2025 Edition

This 2025 Edition of *Louisiana Civil Trial Procedure*, part of the Louisiana Practice Series, provides an essential, all-purpose guide to trial procedure in Louisiana, covering everything from the inception of your case, the schedule of your trial through post-trial motions and execution of judgment. Designed to save you time and effort, each chapter opens with a summary description of its contents, and the authors employ an easy-to-use outline style throughout. Since last year's edition, new material has been added and/or existing material updated on the following subjects:

Two Year Prescription for Torts

- In 2024, the Louisiana Legislature extended the long-standing prescriptive period for torts from one year to two years. It applies to torts occurring on or after the amendment's effective date, July 1, 2024. See LA. CIV. CODE art. 3493.1; See H.B. 315, 2024 Reg. Sess. (La. 2024) (enacted). Lawyers should always consult La. R.S. 9:5601 et seq in addition to the Code of Civil Procedure to generally inform on prescriptive periods.

Mandatory Deadline to File Daubert Motions

- In 2024 the legislature amended LA. CODE CIV. PROC. art. 1425F(1) affirmatively setting the deadline to file expert witness challenges (“Daubert” motions). The article now requires such challenges be filed no later than 60 days prior to the trial. The first sentence in 1425F(1) previously provided that a party may file a pretrial motion to challenge an expert's qualifications or methodologies. The 2024 amendment changed the language in the first sentence from “may” to “shall,” indicating the legislative intent to create a mandatory deadline before the trial. Presumably, failure to challenge timely waives that right during the trial.

Third-Party Litigation Funding

- In 2024, the legislature passed two laws relating to third-party litigation funding that became effective on August 1, 2024. The Transparency and Limitations on Foreign Third-Party Litigation Funding Act limits foreign third-party litigation funding and provides various disclosure and reporting requirements on such agreements. See La. R.S. 9:3580.1 et seq. The Litigation Financing Disclosure Act imposes disclosure requirements on non-foreign third-party litigation funding and provides that such agreements are discoverable. See La. R.S. 3580.11 et seq. Practitioners who are involved in cases that use third-party funding should

be aware of these new laws.

Direct Action Statute

- The legislature significantly amended the Louisiana Direct Action Statute, La. R.S. § 22:1269, effective August 1, 2024. See Acts 2024, No. 275, § 1; Acts 2024, No. 595, § 1. Section B reads “The injured person or, if deceased, the persons identified in Civil Code Arts. 2315.1 and 2315.2 shall have no right of direct action against the insurer,” except for 7 scenarios where direct action is allowed. This is significantly different from the prior version, which gave the injured person, or the survivors or heirs mentioned in Section A, a direct right of action against the insurer “within the terms and limits of the policy.” The prior version of Section B (1) allowed the action to be brought against the insurer alone or against both the insured and insurer jointly and in solido, which the amendment repealed. The 7 exceptions where direct action is allowed against an insurer are:
 - (a) The insured files for bankruptcy in a court of competent jurisdiction or when proceedings to adjudge an insured bankrupt have been commenced before a court of competent jurisdiction.
 - (b) The insured is insolvent.
 - (c) Service of citation or other process has been attempted without success or the insured defendant refuses to answer or otherwise defend the action within one hundred eighty days of service.
 - (d) When 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.
 - (e) When the insurer is an uninsured motorist carrier.
 - (f) The insured is deceased.
 - (g) When 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.

Section B formerly provided that venue in a direct action suit is proper where the injury occurred or where an action could be brought against either the insured or insurer under La. Code Civ. Proc. art. 42. The amendment repealed this. It is also important to note that the legislature amended LA. CODE CIV. PROC. art. 42 by removing foreign and alien insurers from the general venue rules, effective August 1, 2024. See Acts 2024, No. 595, § 3.

Additionally, filing an action against the insured now “interrupts prescription as to all insurers whose policies provide coverage for the claims asserted in the action.” La. R.S. § 22:1269 B.(3). The statute prohibits naming the insurer in the case caption in any action brought pursuant to Section B and prohibits

disclosure of the existence of insurance to the jury unless required by La. Code Evid. art. 411. The amended statute further provides service and notice requirements. La. R.S. § 22:1269 D(2)(a)-(b); E.

La. R.S. § 32:295.1 E Repealed

In 2020, the Legislature repealed La. R.S. § 32:295.1 E, which provided that the failure to wear a seatbelt was inadmissible to mitigate damages, or as evidence of comparative fault in actions to recover damages arising out of the ownership, common maintenance, or operation of a motor vehicle. There are no reported cases addressing admissibility of seatbelt use after this section was repealed. However, the Legislature completely repealing Section E suggests that seatbelt use is more likely to be allowed into evidence in an action to recover damages.

Caselaw Developments

In 2024, the Louisiana Supreme Court denied a defendant's writ arguing that the trial court (a city/parish court) erred in denying defendant's motion to transfer to district court from city court because plaintiffs had not stipulated to the value of their damages and had not responded to defendant's discovery requests. Justice McCallum's concurrence highlighted an inconsistency in the Code of Civil Procedure regarding city court jurisdiction and jury trials and notes that this matter "begs for legislative attention." In *Harper v. Brookshire Grocery Co.*, plaintiffs filed suit in Monroe City Court which has concurrent jurisdiction with the Civil District Court when the amount in dispute does not exceed \$30,000. *Harper v. Brookshire Grocery Co.*, 381 So. 3d 42, 42 – 43 (La. 03/12/24); LA. CODE CIV. PROC. art. 4843F. However, city courts are expressly forbidden from conducting jury trials. *Id.* at 43; LA. CODE CIV. PROC. art. 4871. The inconsistency is that LA. CODE CIV. PROC. art. 1732 provides the threshold for jury trials - \$10,000. *Id.*

A defendant in this situation is not without recourse because LA. CODE CIV. PROC. art. 4872 provides that "[w]here a principal demand is commenced in a parish or city court in which the defendant would otherwise be entitled to trial by jury under the provisions of Article 1731, or under any other provision of law, the defendant may obtain trial by jury by transferring the action to the district court in the manner provided by Article 4873." *Id.* The word "may" seemingly signifies that this transfer is permissive, not mandatory. *Id.* The Court noted that the articles suggest that the city court has discretion in whether to transfer the case because LA. CODE CIV. PROC. art. 4873(2) provides that when there is no opposition, the court "shall" order the transfer. *Id.* However, "there are no statutory or jurisprudential guidelines by which a city court judge is to exercise discretion

in transferring a suit.” Id. Justice McCallum noted defendants face the problem of remaining in city court which infringes upon the fundamental right to trial by jury or seek transfer of the case, thereby admitting the value of a plaintiff’s claim and forcing the “defendant to make a declaration against its own interest.” Id.

A takeaway from Harper is that attorneys should wait until the plaintiff has stipulated the amount of damages or until adequate discovery has taken place before filing a motion to transfer to district court. See also *Beard v. Circle K, Inc.*, 554 So.2d 825, 827 (La. App. 1 Cir. 1989) (“A defendant in a principal demand, who would otherwise be entitled to trial by jury but for plaintiff’s choice of forum is entitled to have the principal demand transferred to district Court.”)

Practice Tips:

Jury Instructions

- Many district courts are encouraging the parties to use the Louisiana Supreme Court’s model jury instructions as much as possible. In this era of technology, it is crucial that jurors understand that they are prohibited from conducting research on the people involved in the case, including using Google and social media platforms. See Rule XLIV Part R. Plain Civil Jury Instructions, Rules for Jurors to Follow:

- (1) Don’t conduct your own research about this case, either by yourself or as a group. This means that you are prohibited from using Google or any other search mechanism to look for information about the case or the people involved in the case, including the lawyers and the judge. These sources are not reliable and could lead you to an unfair verdict. The information that you get about the case in this courtroom will be the most reliable information to help you do your job. (emphasis added).
- (2) Don’t use dictionaries, other books, the Internet or any other resources such as Facebook, Twitter or similar social networks to gather information about the issues. And don’t get other people to do that for you. Don’t allow your spouse, family member, friend or anyone else to do something for you that you are prohibited from doing yourself. For example, you may not ask your friend to conduct research about this case and tell you about the results.

Thus, it is important during voir dire to learn which potential jurors are active participants in relevant online social media platforms.

Punitive Damages

- Exemplary/punitive damages are not part of the civil law, they being effectively a creature of the English common law. Jason Taliadoros, *The Roots of Punitive Damages at Common Law: A Longer History*, 64 CLEV. ST. L. REV. 251 (2016). In the recent era, the legislature has added them as

recoverable in certain situations. See generally LA. CIV. CODE art. 2315.3, et seq. They are available in admiralty/maritime matters and are usually available in recreational boating accident cases where the accident occurs on Louisiana navigable waters. See *Warren v. Shelter Mutual Insurance Company*, 233 So. 3d 568 (La. 2017).

These damages have certain state and federal constitutional protections and limitations. When confronted with them, the defense should consider pleading these protections and limitations as affirmative defenses to preserve any post-trial rights. Suggested defenses are:

(A) Plaintiff's claims for punitive damages violate, and are therefore barred by, the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments to the Constitution of the United States of America on the following non-exclusive grounds:

- it is a violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution to impose punitive damages, which are penal in nature, against a civil defendant upon the plaintiff's satisfying a burden of proof which is less than the "beyond reasonable doubt" burden of proof required in criminal cases;
- the procedures pursuant to which punitive damages are awarded may result in the award of joint and several judgments against multiple defendants for different alleged acts of wrongdoing, which infringes the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution;
- the procedures pursuant to which punitive damages are awarded fail to provide a reasonable limit on the amount of the award against defendant which thereby violates the Due Process Clause of the Fourteenth Amendment of the United States Constitution;
- the procedures pursuant to which punitive damages are awarded fail to provide specific standards for the amount of the award of punitive damages which thereby violate the Due Process Clause of the Fourteenth Amendment of the United States Constitution;
- the procedures pursuant to which punitive damages are awarded result in the imposition of different penalties for the same or similar acts, and thus violate the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution;
- the procedures pursuant to which punitive damages are awarded permit the imposition of punitive damages in excess of the maximum criminal fine for the same or similar conduct, which thereby infringes the Due Process Clause of the Fifth and Fourteenth Amendment of the United States Constitution;
- the procedures pursuant to which punitive damages are awarded permit the imposition of excessive fines in viola-

- tion of the Eighth Amendment of the United States Constitution;
- the award of punitive damages to the plaintiff in this action would constitute a deprivation of property without due process of law;
 - the procedures pursuant to which punitive damages are awarded permit the imposition of an excessive fine and penalty;
 - any award of punitive damages beyond a single digit multiple of the non-punitive damages is unconstitutional; and
 - to the extent the punitive damage claim is founded in maritime law, any award of punitive damages cannot exceed a one-to-one or single digit ratio of the non-punitive damages.
- (B) Plaintiff's claims for punitive damages violate, and are therefore barred by, the following provisions of the Constitution of the State of Louisiana of 1974, including, but not limited to, art. I, § § 2, 3, 5, 13, 15, 20, and 22, as amended, on the following non-exclusive grounds:
- It is a violation of the Due Process and Equal Protection Clauses to impose punitive damages, which are penal in nature, against a civil defendant upon the plaintiff's satisfying a burden of proof which is less than the "beyond a reasonable doubt" burden of proof required in criminal cases;
 - the procedures pursuant to which punitive damages are awarded may result in the award of joint and several judgments against multiple defendants for different alleged acts of wrongdoing;
 - the procedures pursuant to which punitive damages are awarded fail to provide a limit on the amount of the award against Defendant;
 - the procedures pursuant to which punitive damages are awarded fail to provide specific standards for the amount of award of punitive damages;
 - the procedures pursuant to which punitive damages are awarded result in the imposition of different penalties for the same or similar acts;
 - the procedures pursuant to which punitive damages are awarded permit the imposition of punitive damages in excess of the maximum criminal fine for the same or similar conduct;
 - the procedures pursuant to which punitive damages are awarded permit the imposition of excessive fines;
 - the award of punitive damages to the plaintiff in this action would constitute a deprivation of property without due process of law;
 - the procedures pursuant to which punitive damages are awarded permit the imposition of an excessive fine and penalty;

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- the procedure pursuant to which punitive damages are awarded fail to provide specific standards for the amount of the award of punitive damages; and
 - the procedure pursuant to which punitive damages are awarded results in a violation of Defendant's rights to own, control, use, enjoy, and protect its private property.
- (C) Defendant pleads any fault or negligence on the part of the plaintiff as to bar or diminish all of plaintiff's claims for punitive damages, under Louisiana laws of comparative fault and/or joint liability.
- (D) (A) Any claims for punitive damages are additionally barred if state law applies because Louisiana law does not statutorily authorize the assessment of punitive damages against Defendant in a personal injury action such as this one.
- (E) Defendant denies that it is solidarily liable, with the other defendants herein under the general Maritime law for punitive damages on the basis that Louisiana law regarding the extent of exposure for joint tortfeasors should be made applicable to the punitive damage claims of the plaintiff.