Introduction to the 2026 Edition

This 2026 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, and 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. More than 50 new Practice Tips have been added. Of note for the practitioner:

Two Year Prescription for Torts

- 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 the latest amendments to prescriptive periods.

Mandatory Deadline to File Daubert Motions

- LA. CODE CIV. PROC. art. 1425F(1) affirmatively sets 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 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. Check current case law on this point.

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. The 7 exceptions where direct action is allowed against an insurer are:

(1) The insured files for or faces bankruptcy proceedings.

(2) The insured is insolvent or lacks sufficient assets to satisfy a judgment.

(3) The insured refuses to answer or otherwise defend the action within one hundred eighty days of service or cannot be located and served.
(4) When the claim arises from an offense or quasi-offense between children and their parents or between married persons.
(5) When the insurer is an uninsured motorist carrier.
(6) The insured is deceased.
(7) When the insurer is defending the lawsuit under a reservation of rights, or the insurer denies coverage to the insured, but limited to 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.

Note: Interpretation is part procedural and part substantive, so check current law.

Comparative Fault Changes

Effective January 1, 2026, La Civ. Code Ann. Art. 2323 was amended to provide that a plaintiff found at least 51% comparatively negligent for his injuries or damages will not be able to recover anything. However, if found less than 51%, then the recoverable damages are calculated per current law—reduced in proportion "to the degree or percentage of negligence attributable" to plaintiff. Additional, art. 2323 was further amended to mandate" in cases where the issue of comparative fault is submitted to the jury, the jury shall be instructed on the effect of this Article."

Practice Tip: Check case law to determine whether these changes apply retroactively or prospectively – the Legislature was silent on this point.

Housley Presumption Modified and Codified

Over three decades ago the Supreme Court established an evidentiary rule that presumed medical causation for an injury when plaintiff could show good health before the accident, symptoms of injury first surfaced and continually manifested themselves thereafter, and there was reasonable possibility of causation between the accident and alleged injury established by medical/circumstantial evidence or common knowledge. *Housley v. Cerise*, 597 So.2d 973 (La. 1991). New La. Code Evidence art. 306.1 now provides, with some exceptions, that the lack of such pre-accident evidence no longer creates the presumption of causation. This change is to be prospective only and thus applies to causes of action arising after May 28, 2025.

Practice Tip: Plaintiffs—be prepared to prove causation with direct medical evidence (Experts, diagnostic test results, post-accident medical records) to carry your burden of proof.

Practice Tip: Defendants—discover and use the existence of pre-existing injuries to build out the defense for the claim.

Practice Tip: Check current case law to see how this is being interpreted and implemented.

Increase in "No-pay, No-play" Threshold

The penalties for driving without car insurance has been increased to $100,000 for BI and $100,000 for PD, effective August 1, 2025. La. R.S. 32:866. No provision for whether prospective or retroactive application, so check current case law.

Tort Recovery Limitations for Unauthorized Residents

New La. Civ. Code art. 2315.2 precludes recovery for pain and suffering, as well as property damages, arising from an accident by an "unauthorized alien" (defined as one unlawfully present in the U.S. according to Federal Immigration laws.) But the "alien" is permitted to recover medical expenses and make an UM claim against a UM insurer whose policy names as an insured the "alien."

Overhaul to Court Filings

Beginning January 1, 2026, all count filings must be made either in-person using paper or electronically through a clerk-approved e-filing system. No more filing by fax or mail or courier, with limited exceptions (original wills/notes or other authentic-firm instruments, or any other document the law requires to be original). This is an unfunded mandate, so check with each clerk to be sure of its e-filing platform and for any fees for its use. There are independent e-filing systems for the Courts of Appeal and the Louisiana Supreme Court. Redaction of sensitive personal information is the responsibility of the lawyer. For additional details of Act 532 of 2025, visit the Louisiana Legislature's website, the site for the Courts of Appeal and Supreme Court, or the Louisiana Clerks of Court Association website.

Elimination of "Phantom Damages"

Effective January 1, 2026, with prospective application, La. R.S. 9:2800.27 was amended such that in personal injury cases, plaintiff's recovery of past medical expenses is limited to the amount actually paid by plaintiff's insurer plus any cost-sharing (deductibles) paid or owed by plaintiff. The revisions do no apply to medical malpractice cases or the med-pay benefits from auto liability coverage.