

SB 250 Louisiana Direct Action Statute will take effect on **Aug. 1, 2024**.

## **INSURANCE COMPANY SECRECY ACT**

Act No. 275 amends and adds several new provisions to the Louisiana Direct Action Statute, La. R.S. § 22:1269, and it repeals Louisiana Code of Evidence article 411(D). These changes and additions to the Louisiana Direct Action Statute will particularly impact insurers.

### **Limits Disclosure of Insurance Coverage to Juries and Caption Rule**

Creates several new procedural rules, which limits an injured party's ability to file a direct action against the tortfeasors insurance company.

Per the Act, the Louisiana Direct Action Statute will now include the following provision: "A court shall not disclose the existence of insurance coverage to the jury or mention such coverage in the jury's presence unless required by Code of Evidence Article 411."

Art. 411. Liability insurance

A. Although a policy of insurance may be admissible, the amount of coverage under the policy shall not be communicated to the jury unless the amount of coverage is a disputed issue which the jury will decide.

B. The existence of insurance coverage shall not be communicated to the jury unless any of the following apply:

(1) A factual dispute related to an issue of coverage is an issue which the jury will decide.

(2) The existence of insurance coverage would be admissible to attack the credibility of a witness pursuant to Article 607.

(3) The cause of action is brought against the insurer pursuant to R.S. 22:1973 or against the insurer alone pursuant to R.S. 22:1269(B)(1)(a) through (f).

C. The identity of the insurer shall not be communicated to the jury unless the identity of the insurer would be admissible to attack the credibility of a witness pursuant to Article 607.

D. In all cases brought against an insurer pursuant to R.S. 22:1269 or 1973, at the opening and closing of the trial, the court shall read instructions to the jury that there is insurance coverage for the damages claimed by the plaintiff.

## **JURY INSTRUCTIONS:**

A court can no longer read instructions to the jury that there is insurance coverage for the damages claimed by the plaintiff.”

## **CAPTION**

An insurer shall not be included in the caption of any action brought against the insurer pursuant to this Section. The action shall instead be captioned only against the insured defendant or other noninsurance defendants.”

The belief is that this change will force the juries to focus on the non-insurer entities involved in the lawsuit, and not the insurance companies.

### **THERE ARE 7 EXCEPTIONS TO THE GENERAL RULE:**

The current version of the Direct-Action Statute permits an injured party to sue the tortfeasor's liability insurer under any circumstance. The NEW LAW limits the injured party's right of action against a liability insurer only when:

1. The insured files for bankruptcy.
2. The insured is insolvent.
3. Service of 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. The cause of action is for damages as a result of an offense or quasi-offense between children and their parents or between married persons.
5. The insurer is an uninsured motorist carrier.
6. The insured is deceased.
7. The insurer is defending the lawsuit under a reservation of rights or denies coverage to the insured, but only for the purpose of establishing coverage.

Thus, an insurer can no longer be a named defendant under the Direct-Action Statute when it unconditionally defends the insured and when the other six circumstances do not exist.

### **Other Notable Changes to the Louisiana Direct Action Statute**

Act No. 275 provides several other amendments to the Louisiana Direct Action Statute.

Insurers are now required to provide the named insured with written notice of a reservation of rights to deny coverage

within 90 days after the insurer determines the existence of the coverage defense. The notice must be delivered by the U.S. Postal Service with proof of mailing, registered or certified mail, other similar tracking method used or approved by the U.S. Postal Service or a commercial courier, or hand delivery.

- The defendant insured is also subject to new notice requirements, including when a reservation of rights letter or an insurer's refusal to defend is issued and when counsel for an insured defendant (who is authorized by an insurer) files the first responsive pleading on behalf of the insured.
- Still send your certified letters of representation to the insurance company as soon as you get the case. Plaintiffs or their counsel may provide notice of commencement of a civil action to a nonparty insurer by any method of service on a defendant provided by law.
- **PRESCRIPTION AGAINST AN INSURER:**

When an action is filed against the insured, prescription is interrupted as to all insurers whose policies provide coverage for the claims asserted in that action.

- AFTER A JUDGEMENT:

A liability insurer may be joined as a defendant for purposes of entering final judgment or enforcing a settlement, subject to specific restrictions and the terms and limits of the policy. This amendment does not apply if the insurer timely denied coverage or reserved rights per the statute, unless an adjudication in favor of coverage has taken place.