

# Tort Update

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# Recent Developments - Louisiana Tort Law

- Modified Comparative Fault
- Recovery of Past Medical Expenses
- Elimination of the *Housley* Presumption
- Expanded No Pay No Play Law
- Abandonment Procedure
- Direct Actions Against Liability Insurers
- RFAs Not Deemed Admitted Without Rule 10.1 Conf. and Order

# Modified Comparative Fault

Louisiana Code of Civil Procedure Article 2323

- Louisiana changed from a pure comparative-fault to a modified comparative-fault system. For causes of action filed on or after January 1, 2026.
- A plaintiff may only recover damages if they are found less than **51%** at fault.
- If a plaintiff is found 51% or more at fault, they are barred from recovering compensation.

## Examples:

- Total damages are \$100,000 and the plaintiff is found 30% at fault: the plaintiff may recover \$70,000.
- Total damages are \$100,000 and the plaintiff is found 50% at fault: the plaintiff may recover \$50,000.
- Total damages are \$100,000 and the plaintiff is found 51% or more at fault: the plaintiff recovers nothing.

# Recovery of Past Medical Expenses

(The Collateral Source Rule)

Louisiana Revised Statute 9:2800.27

- Under the current language of **La. R.S. § 9:2800.27(B)**, a plaintiff's past medical expense recovery is strictly limited to the amount actually paid to the contracted healthcare provider by a health insurance issuer or Medicare along with any applicable cost-sharing liabilities like deductibles or copays.
- The statute now provides that juries must now be shown both the amount billed and the amount actually paid. **La. R.S. § 9:2800.27(E)**.
- Additionally, when counsel secures a pre-negotiated rate with a medical provider, the recovery is capped at that negotiated rate along with any applicable cost-sharing liabilities like deductibles or copays. **La. R.S. § 9:2800.27(G)**.
- Applies to causes of action filed on or after January 1, 2026.

# Elimination of the *Housley* Presumption

Louisiana Code of Evidence Article 306.1

- Louisiana Code of Evidence Article 306.1 now governs causation presumptions in personal injury cases. It provides:

*“Notwithstanding any other provision of law, in a claim for personal injury damages that is not raised pursuant to the Louisiana Workers’ Compensation Law, the lack of a prior history of an illness, injury, or condition shall not create a presumption that an illness, injury, or condition was caused by the act that is the subject of the claim.”*

- This language expressly abolishes the *Housley* presumption. A plaintiff’s lack of prior complaints and the timing of symptoms no longer create any presumption of causation.
- **Causes of action arising prior to May 28, 2025** may still invoke *Housley*.
- **Causes of action arising on or after May 28, 2025** are governed by 306.1.

# Expanded No Pay No Play Law

Louisiana Revised Statute 32:866

- Effective August 1, 2025.
- Louisiana's No Pay, No Play law sets strict limits on what uninsured drivers can recover after an accident. Before the revised statute went into effect, if you were uninsured at the time of a collision, you were prohibited from recovering the first \$15,000 of bodily injury damages and the first \$25,000 of property damages from the at-fault party's insurer.
- Now, under the updated law, an uninsured driver is not allowed to recover the first:
  - **\$100,000** for bodily injury
  - **\$100,000** in property damage
- **Example:** An uninsured driver is hit by another driver who runs a stop sign. The driver who ran the stop sign is found 100% at fault. The uninsured driver suffers \$200,000 in bodily injuries. Under the new law, the uninsured driver can only recover \$100,000 for their bodily injury claims, even if though the other driver was found 100% at fault.

# Abandonment Procedure

## Louisiana Code of Civil Procedure Article 561

- Abandonment and Renunciation Under La. C.C.P. Article 561
  - The new revisions to 561 add that “After the three-year abandonment period has expired, the defendant may renounce the defense of abandonment.”
    - The article does not provide any context or guidance as to what constitutes a renunciation of abandonment.
- ***Foundation Elevation & Repair, LLC v. Miller, 408 So. 3d 893 (La. 2025)***
  - The 2026 Comments explain that the amendments to Subparagraph (A)(2) “[a]dopt current jurisprudential rules providing that a step in the prosecution or defense of an action interrupts the three-year abandonment period and that, after the three-year abandonment period has expired, the defendant may renounce the defense of abandonment,” citing directly to *Miller, supra*.
- Affidavit Requirements: The revisions also require additional procedural safeguards when seeking an abandonment dismissal. A party seeking ex parte dismissal must now file a detailed affidavit certifying, among other things, that no renunciation has occurred.
  - See the next slide for a list of what must be included in the mover’s detailed affidavit.

# Affidavit Requirements for Ex Parte Motion to Dismiss

Louisiana Code of Civil Procedure Article 561 (B)(1) and (2)

**B. (1)** Any party or other interested person may file an ex parte motion to dismiss based on abandonment and shall attach to the motion to dismiss an affidavit of the mover or the mover's attorney of record **certifying all of the following:**

**(a)** The three-year abandonment period has expired.

**(b)** No timely step in the prosecution or defense of the action has been taken pursuant to Subparagraph (A)(2) or (3) of this Article.

**(c)** No renunciation has occurred pursuant to Subparagraph (A)(2) of this Article.

**(2)** The affidavit shall also include a list of all pleadings, documents, or judgments that have been filed in the record during the three years preceding the date on which the mover claims that the abandonment period expired. The mover shall also list and attach all written communication pertaining to the action between the mover and any adverse party or their attorneys of record in the one year preceding the date on which the mover claims that the abandonment period expired.

# Direct Actions Against Liability Insurers

Louisiana Revised Statute 22:1269

- As of August 1, 2024, Louisiana's Direct Action Statute was revised to remove a plaintiff's ability to file a lawsuit directly against an insurance company.
- The new change now prohibits a plaintiff from pursuing a direct claim against the insurance company unless one of seven circumstances applies. See La. R.S. 22:1269(B)(1)(a)-(g).
- **Retroactivity of the Statute:** The statutory amendment is silent as to whether the amendment applies retroactively.
  - There is limited appellate court guidance, however, the Louisiana Fourth Circuit Court of Appeal addressed this issue in *Hurel v. National Fire & Marine Insurance Company*, 2025-0049, 414 So. 3d 778 (La. App. 4<sup>th</sup> Cir. 3/11/25).
    - **Issue:** Whether the amended version of the Direct Action Statute applies to a matter in which the underlying accident occurred prior to the effective date of the amendments, yet suit was not filed until after the effective date of the amendments.
    - **Holding:** The Fourth Circuit held that plaintiff's right of action against the insurer became operative only when, and if, the remedy served by the Direct Action Statute was invoked before the amendment removed the procedural right of action against the insurer.

# RFAs Not Deemed Admitted Without Rule 10.1

## Conference and Order

### Louisiana Code of Civil Procedure Article 1467(C)

- Effective August 1, 2026.
- Except in a default-judgment proceeding, unanswered requests may be deemed admitted only by court order. Before seeking such an order, the requesting party must conduct a conference and file a Rule 10.1 Certificate of Conference in accordance with the Louisiana District Court Rules.
- **Key Takeaway:** The expiration of thirty days no longer makes requests admitted by operation of law. Counsel seeking to rely on unanswered requests must first complete the Rule 10.1 process and then obtain an order deeming the requests admitted.

# Questions