

2023 Regular Session

HOUSE BILL NO. 196

BY REPRESENTATIVE BROWN

1 AN ACT

2 To amend and reenact Code of Civil Procedure Article 966(A)(4), (B)(1), (2), and (3),
3 (D)(2), and (G), and to enact Code of Civil Procedure Article 966(B)(5) and (D)(3),
4 relative to motions for summary judgment; to provide for certain procedures at the
5 hearing on a motion for summary judgment; to provide for the filing and
6 consideration of certain documents; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. Code of Civil Procedure Article 966(A)(4), (B)(1), (2), and (3), (D)(2),
9 and (G) are hereby amended and reenacted and Code of Civil Procedure Article 966(B)(5)
10 and (D)(3) are hereby enacted to read as follows:

11 Art. 966. Motion for summary judgment; procedure

12 A.

13 * * *

14 (4)(a) The only documents that may be filed or referenced in support of or
15 in opposition to the motion are pleadings, memoranda, affidavits, depositions,
16 answers to interrogatories, certified medical records, certified copies of public
17 documents or public records, certified copies of insurance policies, authentic acts,
18 private acts duly acknowledged, promissory notes and assignments thereof, written
19 stipulations, and admissions. The court may permit documents to be filed in any
20 electronically stored format authorized by court rules or approved by the clerk of the
21 court.

22 (b) Any document listed in Subsubparagraph (a) of this Subparagraph
23 previously filed into the record of the cause may be specifically referenced and
24 considered in support of or in opposition to a motion for summary judgment by

1 that is excluded pursuant to a timely filed objection. Any objection to a document
 2 shall be raised in a timely filed opposition or reply memorandum. The court shall
 3 consider all objections prior to rendering judgment. The court shall specifically state
 4 on the record or in writing ~~which documents, if any, it held to be inadmissible or~~
 5 ~~declined to consider~~ whether the court sustains or overrules the objections raised.

6 (3) If a timely objection is made to an expert's qualifications or
 7 methodologies in support of or in opposition to a motion for summary judgment, any
 8 motion in accordance with Article 1425(F) to determine whether the expert is
 9 qualified or the expert's methodologies are reliable shall be filed, heard, and decided
 10 prior to the hearing on the motion for summary judgment.

11 * * *

12 G. When the court ~~grants a motion for summary~~ renders judgment in
 13 accordance with the provisions of this Article; that a party or ~~non-party~~ nonparty is
 14 not negligent, is not at fault, or did not cause in whole or in part the injury or harm
 15 alleged, that party or ~~non-party~~ nonparty shall not be considered in any subsequent
 16 allocation of fault. Evidence shall not be admitted at trial to establish the fault of that
 17 party or ~~non-party~~ nonparty. During the course of the trial, no party or person shall
 18 refer directly or indirectly to any such fault, nor shall that party or ~~non-party's~~
 19 nonparty's fault be submitted to the jury or included on the jury verdict form. This
 20 Paragraph does not apply if the trial or appellate court's judgment rendered in
 21 accordance with this Article is reversed. If the judgment is reversed by an appellate
 22 court, the reversal applies to all parties.

23 * * *

24 Comments - 2023

25 (a) Subsubparagraph (A)(4)(a) expands the exclusive list of documents that
 26 may be filed and offered in support of or in opposition to a motion for summary
 27 judgment to include certified copies of public records and public documents as well
 28 as certified copies of insurance policies. Objections to any of the documents listed
 29 in Subparagraph (A)(4)(a) or their contents may be raised in a timely filed opposition
 30 or reply memorandum. See Subparagraph (D)(2) and Comment (k) (2015) to this
 31 Article. Even though affidavits may be filed in accordance with Subsubparagraph
 32 (A)(4)(a), objections may be filed if the affidavit does not comply with the
 33 requirements of Article 967. Objections may be raised in a timely filed opposition
 34 or reply memorandum if the content of any document filed in accordance with
 35 Subparagraph (A)(4)(a), including any certified copies of public records or public

1 documents, would not be admissible at the trial on the merits. See *Thompson v.*
 2 *Center for Pediatric and Adolescent Medicine, L.L.C.*, 244 So. 3d 441, 446 (La. App.
 3 1 Cir. 2018). In most cases, a certified copy of an insurance policy should include
 4 the declaration page and relevant endorsements.

5 (b) Subsubparagraph (A)(4)(b) is new and provides that a document listed
 6 in Subsubparagraph (A)(4)(a) that was previously filed in the record may be
 7 specifically referenced with the motion and opposition by title and date of filing. At
 8 the time of the filing of the motion or opposition, the party shall also furnish to the
 9 court and opposing party a copy of the entire document, designate the pertinent part
 10 of the document, and include the date the document was filed. See Louisiana District
 11 Court Rule 9.10. Failure to comply with Subsubparagraph (A)(4)(b) may be
 12 grounds for an objection requesting that the court not consider the referenced
 13 document. This Subsubparagraph still allows a party to attach to the motion or
 14 opposition all documents that are submitted and does not require a party to reference
 15 a previously filed document. Subparagraphs (B)(1) and (2) were also revised in
 16 accordance with this change.

17 (c) Subparagraphs (B)(1), (2), and (3) now require that the motion for
 18 summary judgment, opposition to the motion, reply memorandum, and all documents
 19 filed or referenced in support of or in opposition to the motion for summary
 20 judgment be served electronically in accordance with Article 1313(A)(4).

21 (d) Subparagraph (B)(3) clarifies that legal holidays are included in the
 22 calculation of time within which the mover shall file the reply memorandum.
 23 Subparagraph (B)(4) continues to apply in this situation. For example, if the hearing
 24 on the motion for summary judgment is set on Friday, the fifth day to file the reply
 25 memorandum falls on the preceding Sunday. Accordingly, under Subparagraph
 26 (B)(4), the mover would have the entirety of the preceding Monday to file the reply
 27 memorandum. The court should be aware of this requirement when setting hearings
 28 on motions for summary judgment.

29 (e) Subparagraph (B)(5) is new and would change the result reached by the
 30 Louisiana Supreme Court in *Zapata v. Seal*, 330 So. 3d 175 (La. 2021). This
 31 Subparagraph is intended only to prohibit a trial court from reconsidering the
 32 granting of a partial summary judgment because a document was not timely filed and
 33 served with an opposition in accordance with the deadlines imposed by this Article.

34 (f) Subparagraph (D)(2) was amended to include only slight changes in
 35 phraseology. The amendment is not intended to make substantive changes to the
 36 law.

37 (g) Subparagraph (D)(3) sets forth a rule recognizing that if a party timely
 38 objects to the expert's opinion attached to either the motion for summary judgment
 39 or the opposition and elects to file a motion in accordance with Article 1425(F)
 40 questioning the expert's qualifications or methodologies, the court shall set a hearing
 41 and decide the Article 1425(F) motion prior to the hearing on the motion for
 42 summary judgment. To avoid any possible conflict between the time delays in this
 43 Article and Article 1425(F), the court should set appropriate deadlines for the Article
 44 1425(F) hearing in a scheduling or pretrial order.

45 (h) Paragraph G was amended to codify the holding of the Louisiana
 46 Supreme Court in *Amedee v. Aimbridge Hospitality LLC*, 351 So. 3d 321 (La.
 47 2022). A defendant who has filed an opposition to the granting of a motion for
 48 summary judgment dismissing a codefendant may appeal the judgment despite the
 49 plaintiff's failure to appeal. Paragraph G was also amended to answer the question
 50 raised in footnote 1 of the opinion - if summary judgment is granted finding a party
 51 not at fault, not negligent, or not to have caused in whole or in part the injury of any
 52 harm alleged, and that judgment is subsequently reversed, the fault or contribution

1 of that party is deemed not to have been adjudicated as to any other party,
 2 notwithstanding whether any other party has appealed. As a result of the reversal,
 3 the previously dismissed defendant is returned as a party to the case for all purposes
 4 and as to all parties. The final judgment of the appellate court reversing the granting
 5 of a motion for summary judgment as to one party applies to all parties, including
 6 a plaintiff who has failed to appeal.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____