RÉSUMÉ DIGEST

ACT 37 (HB 57) **2020 First Extraordinary Session** **Schexnayder**

New law creates the Civil Justice Reform Act of 2020.

Jury Trials

Prior law (C.C.P. Art. 1732) authorized a jury trial when the amount in controversy exceeded $50,000.

New law reduces the threshold for a jury trial to $10,000.

Existing law (C.C.P. Art. 4873) provides that where a principal demand is commenced in a parish or city court in which the defendant would otherwise be entitled to trial by jury, the defendant may obtain a jury trial by transferring the action to the district court in the manner provided by existing law.

New law provides that if a party fails to file a motion to transfer within the delays provided by existing law, the matter shall not be transferred.

New law further provides that a jury trial shall not be available for non-tort suits originally filed in parish or city court when the amount in controversy does not exceed the parish or city court's jurisdictional limit.

Existing law (C.C.P. Art. 1733) provides that a party may obtain a trial by jury by filing a pleading demanding a trial by jury and a bond in the amount and within the time set by the court pursuant to existing law.

New law provides that in a tort action where a petitioner stipulates or otherwise judicially admits that his cause of action exceeds $10,000, but is less than $50,000, a party requesting a jury trial shall provide a cash deposit in the amount of $5,000.

New law further provides that when the case is set for trial, the court may provide for a supplemental bond or cash deposit in accordance with existing law.

Evidence of Liability Insurance

Existing law (C.E. Art. 411) provides that 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.

New law provides that 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 existing law (C.E. Art. 607) which provides for attacking and supporting a witness' credibility.

(3) The cause of action is brought against the insurer alone in the limited circumstances provided by existing law under the direct action statute or under the statute requiring good faith and fair dealing in the settlement of claims.

New law provides that 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 existing law.

New law provides that in all cases brought against an insurer, 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.

Recoverable Past Medical Expenses (Collateral Source)

New law provides the following definitions:

(1) "Health insurance issuer" means any health insurance coverage through a policy or certificate of insurance subject to regulation of insurance under state law, a health maintenance organization, an employer-sponsored health plan, the office of group benefits, or an equivalent federal or state health plan.

(2) "Medical provider" means any healthcare provider, hospital, ambulance service, or their heirs or assignees.

(3) "Cost sharing" means copayments, coinsurance, deductibles, and any other amounts which have been paid or are owed by the plaintiff to the medical provider.

(4) "Contracted medical provider" means any in-network medical provider that has entered into a contract or agreement directly with a health insurance issuer or with a health insurance issuer through a network of providers for the provision of covered healthcare services at a pre-negotiated rate, or any medical provider that has billed and received payment for covered healthcare services from Medicare when the provider is a participating provider in those programs.

(5) "Cost of procurement" means the costs paid by or on behalf of the plaintiff to procure the benefit paid by a health insurance issuer or Medicare and the costs of procurement of the award of medical expenses, including but not limited to contracted attorney fees and health insurance premiums paid.

New law provides that in cases where a claimant's medical expenses have been paid, in whole or in part, by a health insurance issuer or Medicare to a medical provider, the claimant's recovery of medical expenses is limited to the amount actually paid to the medical provider by the health insurance issuer or Medicare, and any applicable cost sharing amounts paid or owed by the claimant, and not the amount billed.

New law provides that the court shall award 40% of the difference between the amount billed and the amount actually paid to the contracted medical provider by a health insurance issuer or Medicare in consideration of the plaintiff's cost of procurement provided that this amount shall not make the award unreasonable.

New law provides that in cases where a claimant's medical expenses have been paid, in whole or in part, by Medicaid to a medical provider, the claimant's recovery of medical expenses paid by Medicaid is limited to the amount actually paid to the medical provider by Medicaid, and any applicable cost sharing amounts paid or owed by the claimant, and not the amount billed.

New law provides that the recovery of any other past medical expenses shall be limited to amounts paid to a medical provider by or on behalf of the claimant, and amounts remaining owed to a medical provider, including medical expenses secured by a contractual or statutory privilege, lien, or guarantee.

New law provides that in cases where a claimant's medical expenses are paid pursuant to the La. Workers' Compensation Law (LWC), a claimant's recovery of medical expenses is limited to the amount paid under the medical payments fee schedule of the LWC.

New law provides that in a jury trial, only after a jury verdict is rendered may the court receive evidence related to the limitations of recoverable past medical expenses paid by a health insurance issuer or Medicare. The jury shall be informed only of the amount billed by a medical provider for medical treatment. Whether any person, health insurance issuer, or Medicare has paid or has agreed to pay, in whole or in part, any of a claimant's medical expenses shall not be disclosed to the jury. In trial to the court alone, the court may consider such evidence.

New law does not apply in medical malpractice claims or in claims brought pursuant to the Governmental Claims Act.

Evidence of Failure to Wear a Safety Belt

Prior law (R.S. 32:295.1(E)) provided that the failure to wear a safety belt in violation of existing law was prohibited from being admitted to mitigate damages in any action to recover damages arising out of the ownership, common maintenance, or operation of motor vehicle, and the failure to wear a safety belt in violation of existing law was prohibited from being considered evidence of comparative negligence.

New law repeals prior law.

Effective Date

Effective on Jan. 1, 2021. New law has prospective application only and shall not apply to a cause of action arising or action pending prior to Jan. 1, 2021.

(Amends C.C.P. Arts. 1732, 1733(A), and 4873(1) and C.E. Art. 411; Adds R.S. 9:2800.27; Repeals R.S. 32:295.1(E))