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# DIRECT-ACTION STATUTES

by Mark Mese

Kean Miller Hawthorne D'Armond McCowan & Jarman, LLP

**D**irect-action statutes have been created by the Legislatures in several jurisdictions throughout the United States and its territories. Direct-action statutes provide injured third parties a right to directly sue the tortfeasor's insurer. The right of direct action is not available under common law. See *Insured Lloyds v Bobo*, 156 SE2d 518 (Ga App 1967).

Direct-action statutes have been incorporated into a variety of statutory frameworks. Some jurisdictions, such as Georgia and Kansas, have inserted direct-action statutes into public utility and regulatory areas. Most states with direct-action statutes include them in their insurance regulatory law or insurance codes.

This article reviews all direct-action statutes currently in effect in the United States and its territories.

## Direct-Action Statutes in Various U.S. Jurisdictions

The statutes are reviewed on a jurisdiction-by-jurisdiction basis in alphabetical order. This article includes entire texts of each of the direct-action statutes, unless otherwise noted.

### Connecticut

The Connecticut direct-action statute is contained in D.G.S.A. § 38a-321 and provides as follows.

Each insurance company which issues a policy to any person, firm or corporation, insuring against loss or damage on account of the bodily injury or death by accident of any person, or damage to the property of any person, for which loss or damage such person, firm or corporation

is legally responsible shall, whenever a loss occurs under such policy, become absolutely liable, and the payment of such loss shall not depend upon the satisfaction by the assured of a final judgment against him for loss, damage or death occasioned by such casualty. No such contract of insurance shall be cancelled or annulled by any agreement between the insurance company and the assured after the assured has become responsible for such loss or damage, and any such cancellation or annulment shall be void. Upon the recovery of a final judgment against any person, firm or corporation by any person, including administrators or executors, for loss or damage on account of bodily injury or death or damage to property, if the defendant in such action was insured against such loss or damage at the time when the right of action arose and if such judgment is not satisfied within thirty days after the date when it was rendered, such judgment creditor shall be subrogated to all the rights of the defendant and shall have right of action against the insurer to the same extent that the defendant in such action could have enforced his claim against such insurer had such defendant paid such judgment.

The Connecticut statute allows a direct action against an insurer by an injured third party only after judgment becomes final against the insured tortfeasor and only if the judgment has not been satisfied within 30 days after the judgment was rendered. The statute allows the direct action of the injured tortfeasor as a subrogee of the insured defendant. Under the Connecticut statute, the injured tortfeasor as the subrogee retains no different or greater rights than the insured and is thus subject to defenses an insurer may have had against its insured

under the insurance policy. *Brown v Employer's Reinsurance Corp.*, 539 A2d 138 (Conn 1988).

## Georgia

The Georgia direct-action statute, Ga Code Ann § 46-7-12, amended in 2000, limits the right of direct action to insurance for motor vehicles. The statute provides a right of direct action to any person who sustains an injury or loss to promote public interests. The Georgia direct-action statute does not authorize direct causes of action when the accident giving rise to the suit occurs outside the state of Georgia. See *National Union Fire Ins. Co. v Marty*, 399 SE2d 260 (Ga App 1990).

Georgia courts interpreting this statute have held that an injured person could not join a motor carrier's insurer in an action against a carrier where the carrier was not registered in Georgia and had not filed an insurance policy with the commission. *Caudill v Strickland*, 498 SE2d 81 (Ga App 1998).

Ga Code Ann § 46-7-12 provides as follows.

1. (a) No certificate or permit shall be issued or continued in operation unless there is filed with the commissioner a certificate of insurance for such applicant or holder on forms prescribed by the commissioner evidencing a policy of indemnity insurance in some indemnity insurance company authorized to do business in this state, which policy must provide for the protection, in case of passenger vehicles, of passengers and baggage carried and of the public against injury proximately caused by the negligence of such motor common carrier or motor contract carrier, its servants, or its agents; and, in the case of vehicles transporting freight, to secure the owner or person entitled to recover therefor against loss or damage to such freight for which the motor common carrier or motor contract carrier may be legally liable and for the protection of the public against injuries proximately caused by the negligence of such motor common carrier or motor contract carrier, its servants, or its agents. The commissioner shall determine and fix the

amounts of such indemnity insurance and shall prescribe the provisions and limitations thereof; and such insurance shall be for the benefit of and subject to action by any person who shall sustain injury or loss protected thereby. Such certificate shall be filed by the insurer. The failure to file any form required by the commissioner shall not diminish the rights of any person to pursue an action directly against a motor common carrier's or motor contract carrier's insurer.

- (b) The commissioner shall have power to permit self-insurance, in lieu of a policy of indemnity insurance, whenever in his or her opinion the financial ability of the motor common carrier or motor contract carrier so warrants.
- (c) It shall be permissible under this article for any person having a cause of action arising under this article to join in the same action the motor common carrier or motor contract carrier and the insurance.

## Guam

The U.S. territory of Guam has enacted a direct-action statute, Guam Government Code, § 43354. The statute enacted in Guam is fairly broad and allows a direct action against the insurer alone or against the insurer and insured at the same time. Guam has also enacted a provision that prevents an insurer from taking advantage of the bankruptcy of its insured. Guam Government Code § 43355 prohibits insurers from asserting as a defense the bankruptcy of the insured.

Guam Government Code 43354 provides as follows.

Liability policy: direct action. On any policy of liability insurance the injured person or his heirs or representatives shall have a right of direct action against the insurer within the terms and limits of the policy, whether or not the policy of insurance sued upon was written or delivered in Guam, and whether or not such policy contains a provision forbidding such direct action, provided that the cause of action arose in Guam. Such action may be brought against the

insurer alone, or against both the insured and insurer.

## Iowa

The state of Iowa has enacted a direct-action statute covering all liability policies issued in Iowa. The statute is based on subrogation; thus a creditor of an insured has the contractual right of the insured of the insurer.

Iowa Code § 516.1 provides as follows.

All policies insuring the legal liability of the insured, issued in this state by any company, association or reciprocal exchange shall, notwithstanding any other provision of the statutes, contain a provision providing that, in event an execution on a judgment against the insured returned unsatisfied in an action by a person who is injured or whose property is damaged, the judgment creditor shall have a right of action against the insurer to the same extent that such insured could have enforced the insured's claim against such insurer had such insured paid such judgment.

The Iowa statute requires that before an injured party can bring a direct action against the liability insurer, the injured party must obtain a judgment and show that the judgment remains unsatisfied after an attempt to execute upon it. See *McCann v Iowa Mutual Liability Ins. Co. of Cedar Rapids*, 1 NW2d 682 (Iowa 1942); and *Okelley v Locker*, 145 NW2d 626 (Iowa 1966).

## Kansas

The Kansas direct-action statute is an example of a restricted statute that limits direct action claims to automobile accidents. The Kansas Legislature set out various requirements for an insurer to provide insurance in the state, including minimal limits and a right of direct action against the insurer for insured tortfeasors.

The statute provides in relevant part as follows:  
§ 66-1, 128:

Motor carrier liability insurance requirements; self-insurance, when (a) Except as provided in subsection (c) or pursuant to 49 U.S.C. 14504, no certificate, permit, or license shall be issued by the state corporation

commission to any public motor carrier of property, household goods or passengers, contract motor carrier or property or passengers or private motor carrier of property, until the applicant has filed with the commission a liability insurance policy approved by the commission, in such reasonable amounts as the commission determines by rules and regulations is necessary to adequately protect the interest of the public with due regard to the number of persons and amount of property involved. Such amounts shall not be less than \$100,000 for personal injury or death to any one person in any one accident, \$300,000 for injury or death to two or more persons in any one accident and \$50,000 for loss to property of others in any one accident which liability insurance shall bind the obligors to pay compensation for injuries to persons and loss of or damage to property resulting from the negligent operation of such carrier.

The courts interpreting the Kansas statute have held that an action may be maintained against an insurance company alone even where the insured is not made a party. See *Boyles v Farmers Mutual Hail Ins. Co.*, 78 F Supp 706. The Kansas courts have also said that the statute becomes a part of the liability insurance policy itself. See *Henderson v National Mutual Cas. Co.*, 164 Kan 109, 187 P2d 508.

## Louisiana

Louisiana has been in the forefront of the development of direct-action statutes. The first limited Louisiana direct-action statute was enacted in 1918.<sup>1</sup> Because the Louisiana direct-action statute was one of the earliest and broadest direct-action statutes, it has been subject to significant constitutional attack over the years. In *Watson v Employers Liability Ins. Corp.*, 75 S Ct 166 (U.S. 1954), reh'g den, 75 S Ct 289 (U.S. 1955), the court held that Louisiana's direct-action statute's liability insurer

<sup>1</sup>For a comprehensive review of the Louisiana direct-action statute and its history, see Alston Johnson, *Direct Action Statute*, 43 LaL Rev 1455 (1983).

was applied to all liability insurers, foreign and domestic, and thus did not deny equal protection of the law. The *Watson* court also found that the state of Louisiana had legitimate interest in safeguarding the rights of injured persons and thus the right of direct action against insurers did not deny the insurers, including foreign liability insurers, due process. The *Watson* court held that Louisiana's direct-action statute did not constitute an unconstitutional impairment of the right to contract where the statute had been in existence prior to the issuance of an insurance contract.

The Louisiana direct-action statute, when interacting with federal law, has generally been upheld and enforced but has led to some interesting decisions. In *Acosta v Master Maintenance and Construction, Inc.*, 52 F Supp 2d 699 (MD La 1999), the court held that where a personal injury claimant brought an action in state court against an insured corporation and its foreign insurer under the Louisiana direct-action statute, the dispute was removable. Because the insurer was a party to the Convention on the Recognition and Enforcement of Foreign Arbitration Award, the court allowed removal of both the insurance dispute and the related tort suits much to the chagrin of the state court plaintiffs.

Federal statutes can preempt direct-action statutes. For example, in *City of New Orleans v Kernan*, 933 F Supp 565 (ED La 1996), the court held that the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) preempted actions against a construction company's insurer under the Louisiana direct-action statute for contribution for environmental cleanup in light of specific provisions under the CERCLA statutes addressing when a direct action may be brought.

Because of the long history and the tremendous amount of litigation involving the Louisiana direct-action statute, a review of case law and annotations under the Louisiana direct-action statute is one of the best starting points to investigate novel or unreported issues involving direct-action statutes in other U.S. jurisdictions. The Louisiana direct-action statute provides as follows.

La. R.S. 22:655:

A. No policy or contract of liability insurance shall be issued or delivered in this state, un-

less it contains provisions to the effect that the insolvency or bankruptcy of the insured shall not release the insurer from the payment of damages for injuries sustained or loss occasioned during the existence of the policy, and any judgment which may be rendered against the insured for which the insurer is liable which shall have become executory, shall be deemed prima facie evidence of the insolvency of the insured, and an action may thereafter be maintained within the terms and limits of the policy by the injured person, or his or her survivors, mentioned in Civil Code Art. 2315.1, or heirs against the insurer.

- B. (1) The injured person or his or her survivors or heirs mentioned in Subsection A, at their option, shall have a right of direct action against the insurer within the terms and limits of the policy; and, such action may be brought against the insurer alone, or against both the insured and insurer jointly and in solido, in the parish in which the accident or injury occurred or in the parish in which an action could be brought against either the insured or the insurer under the general rules of venue prescribed by Code of Civil Procedure Art. 42, only. However, such action may be brought against the insurer alone only when:
- (a) The insured has been adjudged a bankrupt by a court of competent jurisdiction or when proceedings to adjudge an insured a bankrupt have been commenced before a court of competent jurisdiction;
  - (b) The insured is insolvent;
  - (c) Service of citation or other process cannot be made on the insured;
  - (d) When the cause of action is for damage as a result of an offense or quasi-offense between children and their parents or between married persons;
  - (e) When the insurer is an uninsured motorist carrier; or

- (f) The insured is deceased.
- (2) This right of direct action shall exist whether or not the policy of insurance sued upon was written or delivered in the state of Louisiana and whether or not such policy contains a provision forbidding such direct action, provided the accident or injury occurred within the state of Louisiana. Nothing contained in this Section shall be construed to affect the provisions of the policy or contract if such provisions are not in violation of the laws of this state.
- C. It is the intent of this Section that any action brought under the provisions of this Section shall be subject to all of the lawful conditions of the policy or contract and the defenses which could be urged by the insurer to a direct action brought by the insured, provided the terms and conditions of such policy or contract are not in violation of the laws of this state.
- D. It is also the intent of this Section that all liability policies within their terms and limits are executed for the benefit of all injured persons and their survivors or heirs to whom the insured is liable; and, that it is the purpose of all liability policies to give protection and coverage to all insureds, whether they are named insureds or additional insureds under the omnibus clause, for any legal liability said insured may have as or for a tortfeasor within the terms and limits of said policy.

### Nebraska

The Nebraska direct-action statute, like the Georgia direct-action statute, is limited to motor vehicle insurance. The Nebraska statute is further limited to cases involving the insolvency or bankruptcy of the insured tortfeasor.

The Nebraska statute, Neb Rev Stat § 44-508, provides:

The policies or contracts of insurance covering legal liability for injury to person or persons caused through the ownership, operation, use or maintenance of automobiles issued by any do-

mestic or foreign company shall, if approved by the Department of Insurance, contain a provision to the effect that the insolvency or bankruptcy of the assured shall not release the company from the payment of damages for injury sustained or loss occasioned during the life of the policy, and, in case of such insolvency or bankruptcy, an action may be maintained within the terms and limits of the policy by the injured person or his or her heirs against the insurer company.

### New Jersey

The New Jersey statute is interesting in that it is a limited direct-action statute apparently giving the right of direct action with regard to damages sustained in automobile accidents and where damages are caused by animals. The statute is also limited to circumstances in which the insured has become insolvent or filed bankruptcy. The New Jersey statute has been further limited in that the statute does not give the injured party a right to proceed against the insurance company for bad faith damages. See *Maertín v Armstrong World Industries, Inc.*, 241 F Supp 2d 434 (D NJ 2002).

The New Jersey statute provides:

§ 17:28-2:

No policy of insurance against loss or damage resulting from accident to or injury suffered by an employee or other person and for which the person insured is liable, or against loss or damage to property caused by animals or by any vehicle drawn, propelled or operated by any motive power, and for which loss or damage the person insured is liable, shall be issued or delivered in this state by any insurer authorized to do business in this state, unless there is contained within the policy a provision that the insolvency or bankruptcy of the person insured shall not release the insurance carrier from the payment of damages for injury sustained or loss occasioned during the life of the policy, and stating that in case execution against the insured is returned unsatisfied in an action brought by the injured person, or his personal representative in case death results from the accident, because of the insolvency or bankruptcy, then an action may be main-

tained by the injured person, or his personal representative, against the corporation under the terms of the policy for the amount of the judgment in the action not exceeding the amount of the policy. No such policy shall be issued or delivered in this state on or after July first, nineteen hundred and twenty-four, by any corporation or other insurer authorized to do business in this state, unless there is contained within the policy a provision that notice given by or on behalf of the insured to any authorized agent of the insurer within this state, with particulars sufficient to identify the insured, shall be deemed to be notice to the insurer, and also a provision that failure to give any notice required to be given by the policy within the time specified therein shall not invalidate any claim made by the insured if it is shown not to have been reasonably possible to give the notice within the prescribed time and that notice was given as soon as was reasonably possible. Unless any such policy of insurance against loss or damage resulting from accident to or injury suffered by an employee or other person and for which the person insured is liable, hereafter issued or renewed in this state, sets forth expressly in words at length and in bold-faced type, "This policy does not insure against loss or damage arising out of claims for loss of services of the person injured and for which loss or damage the insured is legally liable", the policy shall be deemed to insure against such loss or damage.

A policy issued in violation of this section shall, nevertheless, be held valid but be deemed to include the provisions required by this section, and when any provision in the policy or rider is in conflict with the provisions required to be contained by this section, the rights, duties and obligations of the insurer, the policyholder and the injured person shall be governed by the provisions of this section.

## **Puerto Rico**

The Puerto Rican Legislature has created a fairly broad and comprehensive statutory framework al-

lowing third-party claims directly against insurers. Section 2001 of P.R. Laws Ann Title 26 provides absolute liability of an insurer and Puerto Rican courts have held that in a direct action of an injured person against the insurance company of a tortfeasor, the company may plead against the injured person the defenses that it could plead against the insured, but could not assert defenses that are purely personal between the insured and the injured party. See *Garcia v Northern Assurance Co.*, 92 PRR 236 (1965).

Section 2003 of the Puerto Rican Code contains the operative language allowing direct-action claims against insurers. The Puerto Rican courts have held that under this section, the plaintiff has a cause of action against the insurer that may be separate and independent from the action against the insured. See *de Leon Lopez v Corporacion Insular de Seguros*, 742 F Supp 44 (D Puerto Rico 1990), *aff'd*, 931 F2d 116 (1991). In *Morales v Puerto Rico Marine Management, Inc.*, 474 F Supp 1172 (DC Puerto Rico 1979), the court held that the direct-action statute did not apply in a situation where the insured was outside the reach of the long arm statute of Puerto Rico; the actions and injuries related to the insurance claim were heard outside of Puerto Rico; and the insurance policy was negotiated, issued, and delivered outside of Puerto Rico by a foreign insurance company. The right to direct action in Puerto Rico is derived from the following statutes.

### § 2001 Liability insurer's liability absolute

The insurer issuing a policy insuring any person against loss or damage through legal liability for the bodily injury, death, or damage to property of a third person, shall become absolutely liable whenever a loss covered by the policy occurs, and payment of such loss by the insurer to the extent of its liability therefor under the policy shall not depend upon payment by the insured of or upon any final judgment against him arising out of such occurrence.

### § 2003 Suits against insured, insurer

- (1) Any individual sustaining damages and losses shall have, at his option, a direct action against the insurer under the terms and limitations of the policy, which action he may exercise against the insurer only or against the insurer



and the insured jointly. The direct action against the insurer may only be exercised in Puerto Rico. The liability of the insurer shall not exceed that provided for in the policy, and the court shall determine, not only the liability of the insurer, but also the amount of the loss. Any action brought under this section shall be subject to the conditions of the policy or contract and to the defenses that may be pleaded by the insurer to the direct action instituted by the insured.

- (2) If the plaintiff in such an action brings suit against the insured alone, such shall not be deemed to deprive him of the right, by subrogation to the rights of the insured under the policy, to maintain action against and recover from the insurer after securing final judgment against the insured.

### Rhode Island

The Rhode Island statute provides a limited right of direct action. The statute provides that an injured party's direct action can only be brought after a judgment has been obtained against the insured alone. However, a review of the case law under the statute indicates that a tortfeasor can institute a direct action against an insurer if he or she can convince a jury that he or she made good faith efforts to accomplish service against the insured. See *Goodman v Turner*, 512 A2d 861 (RI 1986). The statute also allows a right of direct action in the case of the death, bankruptcy, or insolvency of the tortfeasor. See *Norton v Paolino*, 327 A2d 275 (RI 1974).

The Rhode Island statute, RI Gen Laws § 27-7-2, provides as follows.

An injured party, or, in the event of that party's death, the party entitled to sue for that death, in his or her suit against the insured, shall not join the insurer as a defendant. If the officer serving any process against the insured shall return that process "non est inventus", or where before suit has been brought and probate proceedings have not been initiated the insured has died, or where a suit is pending against an insured in his or her own name and the insured died prior to judg-

ment, or where a nonresident had been involved in an automobile accident in Rhode Island as an operator or owner and died before suit has been brought, the injured party, and, in the event of that party's death, the party entitled to sue for that death, may proceed directly against the insurer. The injured party, or, in the event of that party's death, the party entitled to sue for that death, after having obtained judgment against the insured alone, may proceed on that judgment in a separate action against the insurer; provided, the payment in whole or in part of the liability by either the insured or the insurer shall, to the extent of the payment, be a bar to recovery against the other of the amount paid.

### Wisconsin

The Wisconsin right of direct action is one of the more expansive direct-action statutes and allows claims against the insurer under all types of liability policies and bonds and is not dependent on obtaining a judgment against the insured. The Wisconsin statute, unlike the Louisiana statute, does not allow a right of direct action against a true reinsurer. See *Ott v All-Star Ins. Corp.*, 299 NW2d 839, 99 Wis 2d 635 (Wis 1981). The Wisconsin statute provides: § 632.24:

Any bond or policy of insurance covering liability to others for negligence makes the insurer liable, up to the amounts stated in the bond or policy, to the persons entitled to recover against the insured for the death of any person or for injury to persons or property, irrespective of whether the liability is presently established or is contingent and to become fixed or certain by final judgment against the insured.

### Conclusion

U.S. jurisdictions that have enacted direct-action statutes constitute a small minority of the total U.S. jurisdictions. The creation of direct-action statutes in the various U.S. jurisdictions and territories allows injured parties to bring claims directly against the insurers of tortfeasors causing damage or injury. When reviewing the language of the statutes and the jurisprudence covering the purpose of direct-action

statutes, it is clear that the Legislation was generally designed to protect tort victims and allow the public access to insurance coverage regardless of the solvency of the tortfeasor. See *Cacano v Liberty Mutual Fire Ins. Co.*, 764 S2d 41 (La 2000); and *Turgeon v Shelby Mutual Plate Glass and Cas. Co.*, 112 F Supp 355 (DC Conn 1953).

*Mark Mese is an attorney practicing in the Baton Rouge office of the law firm of Kean Miller Hawthorne D'Armond McCowan & Jarman, LLP. The first 10 years of his legal practice were concentrated in the area of insurance defense and coverage issues from the insurer's perspective. Since 1993, Mr. Mese's practice has been concentrated in the areas of complex litigation and coverage issues representing policyholders. Mr. Mese is involved in TIPS and the Insurance Coverage Litigation Committee. A more detailed biography can be found on page (15) Preface-13 of this Binder. He can be reached at Kean Miller Hawthorne D'Armond McCowan & Jarman, LLP, One American Place, 22nd Floor, Baton Rouge, LA 70825, (225) 382-3424, e-mail mark.mese@keanmiller.com.*