



LOUISIANA STATE LAW INSTITUTE

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January 23, 2013

Representative Chuck Kleckley
Speaker of the House of Representatives
P.O. Box 94062
Baton Rouge, Louisiana 70804-9062

Senator John A. Alario, Jr.
President of the Senate
P.O. Box 94183
Baton Rouge, Louisiana 70804

RE: HCR NO. 13 of 2012

Dear Mr. Speaker and Mr. President:

The Louisiana State Law Institute respectfully submits herewith its report to the legislature in response to 2012 House Concurrent Resolution No. 13, relative to immunity as a peremptory exception.

Sincerely,

A handwritten signature in black ink that reads "William E. Crawford".

William E. Crawford
Director

WEC/puc

cc: Representative Timothy "Tim" Burns

e-mail cc: David R. Poynter Legislative Research Library
drplibrary@legis.state.la.us

LOUISIANA STATE LAW INSTITUTE

**REPORT TO THE LOUISIANA LEGISLATURE:
IMMUNITY AS A PEREMPTORY EXCEPTION**

RESPONSE TO HOUSE CONCURRENT RESOLUTION NO. 13 OF
2012

January 22, 2013

REPORT TO THE LEGISLATURE IN RESPONSE TO
HCR 13 of 2012

HCR 13 of 2012 { attached } requested the Louisiana State Law Institute (“Law Institute”) study and make a specific recommendation on whether immunity should be added to the list of peremptory exceptions in Code of Civil Procedure Article 927.

The Council of the Institute, at its December 14, 2012 regular meeting, approved the addition of “immunity” as a peremptory exception in Article 927, with comment, as follows:

C.C.P. Art. 927

Art. 927. Objections raised by peremptory exception

A. The objections which may be raised through the peremptory exception include but are not limited to the following:

- (1) Prescription.
- (2) Preemption.
- (3) Res judicata.
- (4) Nonjoinder of a party under Articles 641 and 642.
- (5) No cause of action.
- (6) No right of action, or no interest in the plaintiff to institute the suit.
- (7) Discharge in bankruptcy.
- (8) Immunity.**

B. The court may not supply the objection of prescription, which shall be specially pleaded. The nonjoinder of a party, preemption, res judicata, the failure to disclose a cause of action or a right or interest in the plaintiff to institute the suit, or discharge in bankruptcy, may be noticed by either the trial or appellate court on its own motion.

Comment – 2012 [2013]

Subparagraph (A)(8) has been added to specify that an immunity defense may be pled as a peremptory exception and resolved by the trial judge at the earliest opportunity. The holding in cases such as *Molina v. City of New Orleans*, 830 So.2d 994, 1001 (La. App. 4th Cir. 2002) that “[i]mmunity is an affirmative defense, which *must be* specially

pleaded in the defendant's answer" (emphasis supplied), is not efficient in many instances. However, when the defense involves material mixed questions of fact and law, such as determining a "gross negligence" exception, the trial judge may treat the defense in its discretion as an affirmative defense and submit it for resolution at trial on the merits under a preponderance of the evidence standard in light of the surrounding circumstances in the case or as a motion for summary judgment under the standards set forth in Articles 966-67.

Respectfully submitted,

William R. Forrester, Reporter, Code of Civil Procedure Committee

Regular Session, 2012

HOUSE CONCURRENT RESOLUTION NO. 13

BY REPRESENTATIVE TIM BURNS

A CONCURRENT RESOLUTION

To urge and request the Louisiana State Law Institute to study Louisiana's existing laws governing peremptory exceptions and immunity and to make specific recommendations as to whether immunity should be added as a peremptory exception.

WHEREAS, the Legislature of Louisiana has enacted numerous statutes providing various entities with civil liability immunity including the state, state agencies, or political subdivisions of the state; and

WHEREAS, parties involved in litigation have asserted immunity granted to them by law through the peremptory exception of no cause of action, as an affirmative defense, and motions for summary judgment; and

WHEREAS, courts have been inconsistent in determining whether immunity is properly raised in any one of the preceding procedural vehicles.

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby urge and request the Louisiana State Law Institute to study peremptory exceptions and immunity and to make specific recommendations as to whether immunity should be added as a peremptory exception.

BE IT FURTHER RESOLVED that a suitable copy of this Resolution be transmitted to the director of the Louisiana State Law Institute.

HCR NO. 13

ENROLLED

BE IT FURTHER RESOLVED that the Louisiana State Law Institute report its findings and recommendations in the form of specific proposed legislation to the Legislature of Louisiana on or before January 1, 2013.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE