CCP Article 966 Motion for Summary Judgment

The Who, When, What, and How of Summary Judgments

Who May File and When?

- A(1) A party may move for a summary judgment for all or part of the relief which he has prayed.
- A plaintiff's motion may be filed at any time after the answer has been filed.
- A defendant's motion may be filed at any time.
- Which party files more motions for summary judgment? Why?
- Which party is more likely to have a summary judgment granted?

When Should a Court Grant?

A(3) After an opportunity for adequate discovery, a motion for summary judgment shall be granted if the motion, memorandum, and supporting documents . . .

When Granted? Discretion preserved

- **C(2) For good cause shown, the court may order a continuance of the hearing.**

Roadrunner Transp. Sys. v. Brown, 219 So. 3d 1265 (La. App. 4th Cir. 2017)

- **Trial court granted defendant insurance company's MSJ**
- **Defendant argued timeline—MSJ hearing was 8 months after petition was filed.**
- **Standard of review on appeal—de novo**
- **Factors to consider in deciding whether to grant a continuance:**
- **(i) whether the party was ready to go to trial,**
- **(ii) whether the party indicated what additional discovery was needed,**
- **(iii) whether the party took any steps to conduct additional discovery during the period between the filing of the motion and the hearing on it, and**
- **(iv) whether the discovery issue was raised in the trial court before the entry of the summary judgment.**

Roadrunner Transp.

- **Court holds that MSJ was prematurely granted**
- **966(A)(3)—opportunity for adequate discovery**
- **When discovery is alleged to be incomplete, trial court has discretion to hear MSJ or grant a continuance**
  - **Decision reviewed for abuse of discretion**

  4 factors to consider—p.1273 plus 1—"whether discovery has been hindered by a circumstance beyond an opponent's control" p.1274

  Timeline is only one factor to be considered.

Outstanding Discovery—Does Not Guarantee Continuance Rather than Granting SJ

***Price v. Minden Med. Ctr.*, No. 52,499-CA (La. App. 2d Cir. 2/27/19), 266 So. 3d 452.**

The fact that plaintiff had outstanding discovery requests did not by itself establish that plaintiff was denied an opportunity to obtain adequate discovery. District court had suggested need for a continuance to complete discovery, and plaintiff did not file a motion seeking a continuance. Moreover, the case had been pending for about five years, and plaintiff did not complain about discovery responses until after the court had granted partial summary judgment and a motion for summary judgment and dismissal had been filed.

Motions to Compel Discovery and Motion for Summary Judgment

- ***Pendarvis v. Sullivan*, No. 2021-0760 (La. App. 1st Cir. 4/4/22), 341 So. 3d 688.**
- **A court errs by ruling on a motion for summary judgment before ruling on a motion to compel.**
- **The ruling on the motion to compel will determine whether the motion for judgment is ripe for consideration.**

May Court Rule on SJ With Exceptions Pending?

- ***Coastal Fire Prot., LLC v. Custom Drywall & Painting, LLC*, 24-66 (La. App. 4th Cir. 3/13/24), 390 So. 3d 278, *writ denied*, 24-433 (La. 6/25/24), 386 So. 3d 1084.**
- **Court must rule on peremptory exception filed prior to trial.**
- **Defendant filed exception although it had missed deadline for opposition to summary judgment.**
- **The Fourth Circuit acknowledged that this appeared to be a correct characterization, as defendants failed to file a timely opposition to the motion for summary judgment. The court reasoned that this was a product of discord between the summary judgment deadlines in Art. 966(B)(2) and the requirement of Art. 929(B) that a court rule before trial on the peremptory exception. The court stated that the resolution of this discord was best left to the state legislature.**

Purpose

- **A(2) The summary judgment procedure is designed to secure the just, speedy, and inexpensive determination of every action, except those disallowed by Article 969.**
- **The procedure is favored and shall be construed to accomplish these ends.**

What is the Standard for Granting Summary Judgment?

- show that there is no genuine issue as to material fact and
- that the mover is entitled to judgment as a matter of law.
- Important to understand the two parts of the standard
- FRCP Rule 56—amended to "no genuine DISPUTE as to any material fact and the movant is entitled to judgment as a matter of law"

Consider *Murphy v. Savannah*, No. 2018-C-0991 (La. 5/8/19), 282 So. 3d 1034.

- **Plaintiff sues state DOTD for negligence in maintaining a Y-shaped intersection.**
- **Plaintiff would have the burden at trial of proving that the intersection was an unreasonably dangerous condition.**
- **Defendant DOTD moves for summary judgment and supports motion with three documents:**
  - **(1) affidavit of civil engineer employed by state who testified to absence of incident reports at the intersection**
  - **(2) excerpt of deposition of driver who collided with plaintiff**
  - **(3) affidavit of nonemployee civil engineer who testified that intersection was not unreasonably dangerous**
- **Plaintiff opposes with affidavit of traffic operations engineer, who said several things about intersection, but did not say that it was unreasonably dangerous.**

Murphy v. Savannah

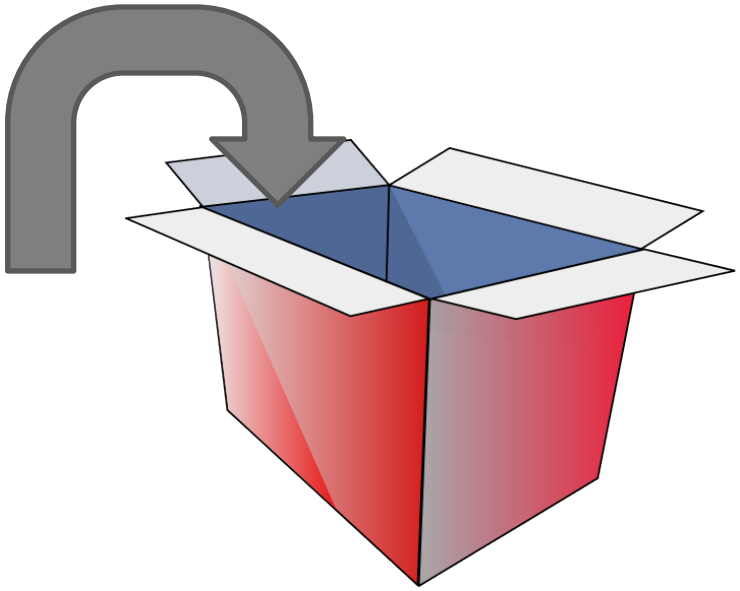
- **Supreme Court notes that the burden of persuasion at trial on unreasonably dangerous would be on plaintiff.**
- **As moving party, defendant DOTD can satisfy burden on moving party by pointing out absence of sufficient factual support for any element of plaintiff's case.**
- **Then, burden is on plaintiff to establish that she will have such proof.**
- **If plaintiff fails, there is no genuine issue of material fact, and summary judgment should be granted.**

Murphy v. Savannah

- **"In the instant case, DOTD will not bear the burden of proof at trial. Therefore, as the party moving for summary judgment, DOTD's burden is to show an absence of factual support for one or more elements essential to plaintiffs' claim."**
- **DOTD focused on proving that plaintiff did not have sufficient evidence that the intersection was unreasonably dangerous.**

What documents may be filed?

- **A(4) The only documents that may be filed in support of or in opposition to the motion are**
  - **pleadings,**
  - **memoranda,**
  - **affidavits,**
  - **depositions,**
  - **answers to interrogatories,**
  - **certified medical records,**
  - **written stipulations, and**
  - **admissions.**
  - **But what if a party wants to introduce an insurance contract?**



List of Documents Expanded By Act No. 317 of 2023

- **a) Amended La. CCP Art. 966(A)(4)(a) to add "certified copies of public documents or public records, certified copies of insurance policies, authentic acts, private acts duly acknowledged, promissory notes and assignments thereof" to the list of documents that may be filed or referenced in support of or in opposition to a motion for summary judgment.**

What Can the Court Consider on Summary Judgment?

The court considers ONLY documents filed or referenced in support or in opposition. 966(D)(2). The court cannot go through the record.

The parties control what documents are considered by the court.

All documents must be considered by the court if there are no objections. See La. C.C.P. art. 966(D)(2). SHALL CONSIDER, but that does not mean that the documents either (1) establish a genuine issue of material fact; or (2) establish that no genuine issue of material fact exists.

Different in FRCP Rule 56:

56 (c)(3) "Materials Not Cited. The court need consider only the cited materials, but it may consider other materials in the record."

What May the Court Consider in Ruling on a Motion for Summary Judgment?

- **Only the documents filed in support of and in opposition to the motion for summary judgment or those previously filed and properly referenced.**
- **The court cannot search the record.**
- **"Different from its federal counterpart—Rule 56(c)(3) of the Federal Rules of Civil Procedure—La. C.C.P. art. 966(D)(2) does not allow a court to consider the record as a whole in deciding a motion for summary judgment. "To the contrary, the comments specifically indicate that the court may only consider those documents filed either in support of or in opposition to a motion for summary judgment." Washington v. Gallo Mech. Contractors, LLC, 16-1251, p. 6 (La. App. 4 Cir. 5/17/17), 221 So.3d 116, 121")."**

Summary Judgment References: Act No. 317 amended La. CCP Art. 966

- **Amended CCP Art. 966(A)(4), adding a new paragraph (b), which provides that any document listed in paragraph (a) that was previously filed into the record may be specifically referenced and considered in support of or in opposition to the motion. The referenced document must be listed in the motion or opposition by title and date of filing, and the offering party must concurrently with the filing of the motion or opposition furnish to the court and opposing parties a copy of the entire document with the relevant part designated and the filing information.**
- **Comment (a) makes clear that a party may object to the documents listed in (A)(4) or their contents in a timely filed objection in the opposition or the reply memorandum if the documents would not be admissible at trial. The fact that a document is listed in 966(a) does not make it automatically admissible. The Comment also states that in most cases a certified copy of an insurance policy should include the declaration page and relevant endorsements.**

Time Limits - Filing of Motion and Service

- **B – Unless extended by the court and agreed to by all of the parties, a motion for summary judgment shall be filed, opposed, or replied to in accordance with the following provisions:**

- **B(1) A motion for summary judgment and all documents in support of the motion shall be FILED AND SERVED and served on all parties in accordance with Article 1313 not less than sixty-five days prior to the trial.**

65 days out!

Time Limits - Legal Holiday

How do we know when there is a legal holiday in the mix?

- **B(4) If the deadline for filing and serving a motion, an opposition, or a reply memorandum falls on a legal holiday, the motion, opposition, or reply is timely if it is filed and served no later than the next day that is not a legal holiday. CCP Art. 5059**

Can the motion for summary judgment be faxed filed on the 65th day?

- "Any document in a civil action may be filed with the clerk of court by facsimile transmission." La. R.S. 13:850
- 13:850 A. Any document in a civil action may be filed with the clerk of court by facsimile transmission. All clerks of court shall make available for their use equipment to accommodate facsimile filing in civil actions. Filing shall be deemed complete at the time the facsimile transmission is received by the clerk of court. No later than on the first business day after receiving a facsimile filing, the clerk of court shall transmit to the filing party via facsimile a confirmation of receipt and include a statement of the fees for the facsimile filing and filing of the original document. The facsimile filing fee and transmission fee are incurred upon receipt of the facsimile filing by the clerk of court and payable as provided in Subsection B of this Section. The facsimile filing shall have the same force and effect as filing the original document, if the filing party complies with Subsection B of this Section.
- B. B. Within seven days, exclusive of legal holidays, after the clerk of court receives the facsimile filing, all of the following shall be delivered to the clerk of court:
- (1) The original document identical to the facsimile filing in number of pages and in content of each page including any attachments, exhibits, and orders. A document not identical to the facsimile filing or which includes pages not included in the facsimile filing shall not be considered the original document.
- (2) The fees for the facsimile filing and filing of the original document stated on the confirmation of receipt, if any.
- (3) A transmission fee of five dollars.
- C. If the filing party fails to comply with any of the requirements of Subsection B of this Section, the facsimile filing shall have no force or effect. The various district courts may provide by court rule for other matters related to filings by facsimile transmission.

But Fax Filing Is Not Complete Until the Original Is Filed With Clerk

Fax Filing and Prescription

***Smith v. St. Charles Parish Pub. Schs,* 246 So. 3d 821 (La. App. 5th Cir. 2018), *writ denied*, 253 So.3d 802 (La. 10/8/18) (3 justices would have granted writ).**

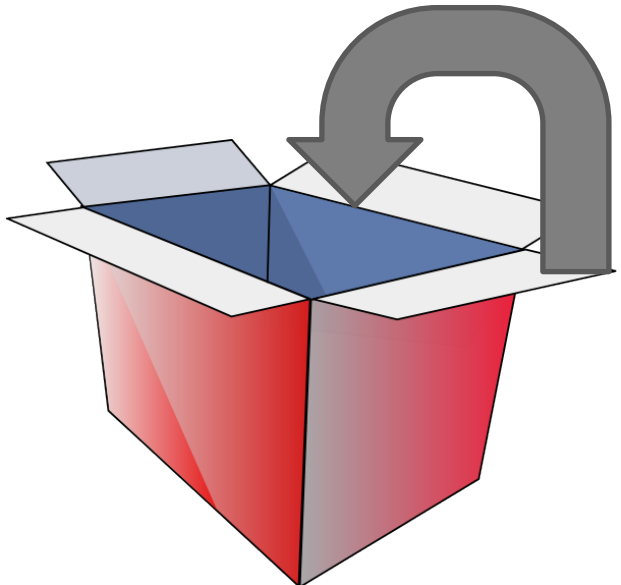
Plaintiff fax filed petition and then filed hard copy with clerk within seven days. The hard copy filed by plaintiff corrected a typo in the faxed version.

Fax filing was of no force or effect because La. R.S. 13:850(B)(1) requires hard copy to be "identical to the facsimile in number of pages and in content of each page."

***See also Worm v. Berry Barn,* LLC, 2020-1086 (La.App. 1 Cir. 10/21/21), 332 So.3d 86, writ denied, 11/1/22. (fax cut off top of pleading) (filing would have been effective if had paid filing fees)**

Time Limits - Opposition

- **B(2) Any opposition to the motion and all documents in support of the opposition shall be filed and served in accordance with Article 1313 not less than fifteen days prior to the hearing on the motion.**



Can opposition and reply memorandum be fax filed?

- **Yes, La. R.S. 13:850 says "any document" and the service of both the opposition and reply memorandum are by mail, delivery, or electronic means.**
- **However, the other parties must be served by the applicable date.**
- **Service of the opposition and reply can be by any method in CCP Art. 1313**

Time Limits - Reply

- **B(3) Any reply memorandum shall be filed and served in accordance with Article 1313 not less than five days prior to the hearing on the motion.**
- **No additional documents may be filed with the reply memorandum.**

Summary Judgment Deadlines: Act No. 317 amended La. CCP Art. 966

- **Counting Days for Deadlines**
- **Amended La. CCP Art. 966(B)(3) to provide that a reply memorandum must be filed and served "not less than five days inclusive of legal holidays notwithstanding Article 5059(B)(3) prior to the hearing on the motion." CCP Art. 5059(B)(3) provides that ". . . . A legal holiday is to be included in the computation of a period of time allowed or prescribed, except when: . . . The period is less than seven days."**

- **Comment (d) of the Act gives the following example:**
- **For example, if the hearing on the motion for summary judgment is set on Friday, the fifth day to file the reply memorandum falls on the preceding Sunday. Accordingly, under Subparagraph (B)(4), the mover would have the entirety of the preceding Monday to file the reply memorandum. The court should be aware of this requirement when setting hearings on motions for summary judgment.**

Summary Judgment: Deadlines and Me-Too Motions

- ***Everett v. Air Prods. & Chems., Inc.*, 22-539 (La. App. 4th Cir. 5/2/23), 382 So. 3d 216, writ denied, 23-885 (La. 10/10/23), 371 So. 3d 459.**
- **CCP Art. 966 does not provide for a motion to join a co-defendant's summary judgment motion.**
- **All deadlines and other requirements apply, as the motion to join is simply a motion for summary judgment.**

Can the time periods for filing the motion, opposition, and reply memorandum be shortened by the court?

- **NO- the time periods may be "extended by the court and agreed to by all of the parties." La. C.C.P. art. 966(B)**

Auricchio v. Harriston, No. 2020-01167 (La. 12/10/21), 332 So. 3d 660.

The 15-day-prior-to-hearing period for filing opposition of CCP Art. 966(B)(2) is mandatory; trial court has no discretion to extend it without consent of the parties.

> ***The 2015 amendment removed language that expressly gave the trial court the discretion, upon a showing of "good cause," to afford additional time to oppose a motion for summary judgment. By removing the discretionary language and replacing it with mandatory language, we must assume the legislature intended to change the law to eliminate the previously afforded discretion.***

***Auricchio*, 332 So. 3d at 663.**

Mahe v. LCMC Health Holdings LLC, No. 2023-0025 (La. 3/14/23), 357 So. 3d 322 (per curiam).

Relying on *Auricchio*, for the principle that the deadlines in La. CCP Art. 966(B) are mandatory, the Court explained that a continuance cannot serve as a pretext to circumvent those deadlines. See *Auricchio v. Harriston*, 2020-01167, p. 5 (La. 10/10/21), 332 So. 3d 660, 663.

Plaintiff could have moved for a continuance before the expiration of the fifteen-day deadline but did not.

The trial court erred in granting the motion for a continuance in order to consider an untimely opposition to a motion for summary judgment.

Summary Judgment: Continuances and Deadlines

- ***Hadwin v. ABC Ins. Co.*, 24-72 (La. 4/9/24), 382 So. 3d 827 (per curiam).**
- **Trial court does not have discretion to grant a continuance after the deadline for filing an opposition has passed. Controlled *by Mahe v. LCMC Health Holdings LLC*, 23-25 (La. 3/14/23), 357 So. 3d 322.**

Time Limits When Continuance Granted

- ***Reed v. Restorative Home Health Care, LLC*, No. 2019-C-01974 (La. 2/26/20), 289 So. 3d 1028 (per curiam).**
- **"[W]hen a court grants a motion to continue a hearing on a motion for summary judgment, the filing deadlines are reset."**
- **Because the trial court did not reset the filing deadlines in conjunction with granting a continuance, the summary judgments granted by the court were vacated.**
- **The Supreme Court noted in the 2015 Official Revision Comments that court orders cannot shorten the time permitted for a party to file or oppose a motion for summary judgment.**

Service of a Motion for SJ

Summary Judgment Service: Act No. 317 amended La. CCP Art. 966

Amended La CCP Art. 966(B)(1) to provide that a motion for summary judgment and all documents filed (except those previously filed and referenced) shall be filed and served as provided in CCP Art. 1313(A)(4)—electronically. It similarly amends Art. 1313 (B)(2) regarding service of the opposition to the motion and documents and (B)(3) regarding service of the reply.

The Submissions on MSJ are Limited to 3 Stages and Documents on Only 2 Stages—Documents at stages 1 and 2---Support and Opposition

- *Baez v. Hosp. Serv. Dis. No. 3 of Allen Parish*, 16-951 (La. App. 3 Cir. 4/5/17), 216 So. 3d 98.
- Issue: Whether trial court abused discretion in denying motion to file surreply on motion for summary judgment.
- Holding and Rationale: No. CCP art. 966(B) does not provide for the filing of a surreply memorandum, and 966(B)(3) does not permit the filing of additional documents with a reply. Even if 966 permitted the filing of a surreply, the attempted filing was untimely, as not filed five days before the date of the hearing. The court noted that under CCP art. 5059(3) if a period is less than seven days, legal holidays are not included.

Time Limits - Hearing

C(1) Unless otherwise agreed to by all of the parties and the court:

(a) A contradictory hearing on the motion for summary judgment shall be set not less than thirty days after the filing and not less than thirty days prior to the trial date; and

(b) Notice of the hearing date shall be served on all parties in accordance with Article 1313(C) not less than thirty days prior to the hearing.

A trial court does not have discretion to proceed to rule on a motion for summary judgment when the notice requirement of CCP Art. 966(C)(1)(b) (notice of hearing at least 30 days before hearing) has not been satisfied unless the parties agree to proceeding. *Holleman v. Golden Nugget Lake Charles, LLC*, No. 21-611 (La. App. 3d Cir. 5/25/22), 339 So. 3d 731.

Time Limits - Judgment

- C(3) The court shall render a judgment on the motion **not less than twenty days prior to the trial**.

Can you get reasons for the granting or denying of a motion?

- **C(4) In all cases, the court shall state on the record or in writing the reasons for granting or denying the motion.**

- **If an appealable judgment is rendered, a party may request written reasons for judgment as provided in CCP Art. 1917.**

Burden of Proof
(no change but heads up)

- **The burden is on the adverse party to produce factual support sufficient to establish the existence of a genuine issue of material fact or that the mover is not entitled to judgment as a matter of law. Art. 966(A)(3)**

Prior to amendment said:

- **Thereafter, if the adverse party fails to produce factual support sufficient to establish that he will be able to satisfy his evidentiary burden of proof at trial, there is no genuine issue of material fact.**
- **See *Celotex* – cite in comments**

Burden of Proof
(no change)

- **D(1) The burden of proof rests with the mover.**
- **Nevertheless, if the mover will not bear the burden of proof at trial on the issue that is before the court on the motion for summary judgment, the mover's burden on the motion does not require him to negate all essential elements of the adverse party's claim, action, or defense, but rather to point out to the court the absence of factual support for one or more elements essential to the adverse party's claim, action, or defense.**

Objections to Evidentiary Documents

- D(2) The court may consider only those documents filed or referenced in support of or in opposition to the motion for summary judgment and shall consider any documents to which no objection is made.
- Any objection to a document shall be raised in a timely filed opposition or reply memorandum.

2023 Amendment Regarding Objections to Documents

- **Objections to Documents and Court's Ruling Thereon**
- **Amended La. CCP Art. 966(D)(2) to provide that a court shall not consider documents excluded pursuant to a timely filed objection, and a court shall state on the record or in writing whether it sustains or overrules such objections.**

What Should a Party Objecting to Consideration of Expert Testimony File?

- **Objection and perhaps Motion to Strike—Art. 967**
- **OR**
- **Art. 1425(F) *Daubert* motion (motion in limine)**
- **See *Adolph v. Lighthouse Property Ins. Co.*, La. App. 1st Cir.**
- **Act No. 317 of 2023 amended La. CCP Art. 966 to add (D)(3): "If a timely objection is made to an expert's qualifications or methodologies in support of or in opposition to a motion for summary judgment, any motion in accordance with Article 1425(F) to determine whether the expert is qualified or the expert's methodologies are reliable shall be filed, heard, and decided prior to the hearing on the motion for summary judgment."**

2023 Amendment Re 1425(F) Motions

- ***Daubert* Motions**
- **Amended La. CCP Art. 966 to add (D)(3): "If a timely objection is made to an expert's qualifications or methodologies in support of or in opposition to a motion for summary judgment, any motion in accordance with Article 1425(F) to determine whether the expert is qualified or the expert's methodologies are reliable shall be filed, heard, and decided prior to the hearing on the motion for summary judgment."**

Expert Witnesses: Act No. 371 of 2024 Amends CCP Art. 1425

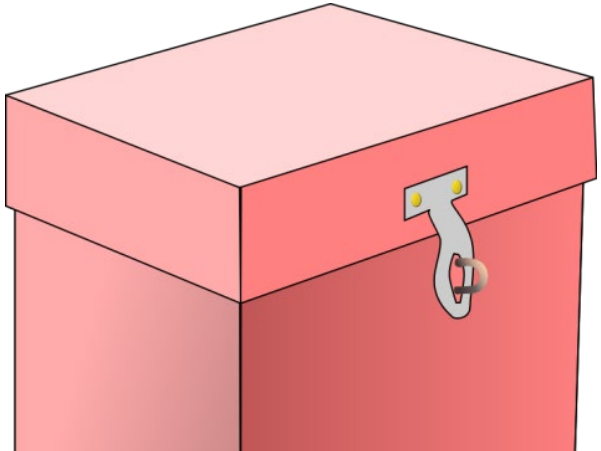
- **Amends (F)(1) to provide that a party seeking to challenge an expert or the expert's methodologies "shall file" a motion for a pretrial hearing.**
- **The language was changed from "may file"**

Partial Summary Judgment

- **E – A summary judgment may be rendered dispositive of a particular issue, theory of recovery, cause of action, or defense, in favor of one or more parties, even though the granting of the summary judgment does not dispose of the entire case as to that party or parties.**

What issues can be considered?

- **F – A summary judgment may be rendered or affirmed only as to those issues set forth in the motion under consideration by the court at that time.**
- **Vanek v. Robertson, 18-321 (La. App. 3d Cir 12/6/18), 261 So. 3d 896.**
- **See also *Cutrone v. English Turn Property Owners Ass'n*, 293 So. 3d 1209.**



966(F) Limitation

- ***Safeway Ins. Co. v. Gov't Employees Ins. Co.*, 329 So. 3d 273 (La. 2021) (per curiam).**
- **Insurance company alleged that vehicle was non-owned under its policy**
- **Neither party argued the classification of the vehicle as a "temporary substitute vehicle"**
- **Issue could not be considered**

Issues That Can Be Considered

- ***Cutrone v. English Turn Property Owners Ass'n*, No. 2019-CA-0896 (La. App. 4th Cir. 3/4/20), 293 So. 3d 1209.**
- **Defendant subdivision moved for summary judgment on the issue of whether it had given adequate warning of the speed bumps prior to plaintiff's fall. Trial court granted summary judgment on *sua sponte* finding that speed bumps were not unreasonably dangerous.**
- **Whether the trial court erred in granting summary judgment on an issue not raised by the parties.**
- **The trial court erred in granting summary judgment on a basis that was not raised by the defendant in the summary judgment motion or in the opposition. The purpose of CCP Art. 966(F) restricting consideration on summary judgment to issues raised in the motion and opposition is to provide notice to the opponent and to avoid surprise. A genuine issue of material fact existed as to the issue raised in the motion for summary judgment—i.e., whether the defendant received adequate warning of the speed bumps.**

What Trial Court Does Not Do on MSJ

- ***Williams v. Archer Western Constr., LLC*, 2016-0158 (La. App. 4 Cir. 10/5/16), 203 So. 3d 325.**
- **Fourth Circuit reversed granting of summary judgment because it determined that the trial court made a credibility determination and accepted as true the version of the facts offered by occupants of vehicle. "'A trial court cannot make credibility determinations on a motion for summary judgment.'" Williams, 203 So. 3d at 330 (quoting Hutchinson v. Knights of Columbus, Council No. 5747, 2003–1533, p. 8 (La. 2/20/04), 866 So. 2d 228, 234)).**

Are summary judgments appealable?

- SJ that dismiss entire case or a party are final and appealable. Art. 1915(A)(1) & (3)
- Partial SJ is not final and appealable unless ….“When a court renders a … partial summary judgment … the judgment shall not constitute a final judgment unless it is designated as a final judgment by the court after an express determination that there is no just reason for delay.” La. C.C.P. art. 1915(B)(1).

Can judge certify a denial of a summary judgment?

- **A judgment denying a motion for summary judgment is an interlocutory non-appealable judgment that is not susceptible of being certified by a trial court as a final judgment for purposes of an immediate appeal under CCP Art. 1915(B)(1). *See, e.g., Brown v. Coregis Ins. Co*, 752 So. 2d 347, 351 (La. App. 1st Cir. 2000) ("the denial of a motion for summary judgment is an interlocutory ruling and is not certifiable as final under La. C.C.P. art. 1915(B)").**
- **Only avenue of review is to apply for supervisory writ.**
- **Appellate court has discretion to convert an improper appeal to an application for a supervisory writ.**

Summary Judgment, if Denied, May be Re-urged if . . .

- *Kilber v. PNK (Lake Charles), LLC*, 16-173 (La. App. 3 Cir. 9/28/16), 201 So. 3d 943.
- Summary judgment motions can be re-urged. Under *Monumental Life Insurance Co. v. Landry*, 02–891, p. 2 (La. App. 3d Cir. 2/19/03), 846 So. 2d 798, 800, a re-urged motion for summary judgment on the same issue must be supported by "meaningful additions which clearly establish that there is no longer any issue of material fact to be determined by a trial on the merits." *Monumental Life*, 846 So. 2d at 800.

What if a party is found to have no fault, negligence, or causation?

- **G – When the court grants a motion for summary judgment in accordance with the provisions of this Article, that a party or non-party is not negligent, is not at fault, or did not cause, in whole or in part, the injury or harm alleged, that party or non-party shall not be considered in any subsequent allocation of fault.**

2023 Amendment to Clarify the Effect of *Amedee*

- **Clarification of Amedee Decision**
- **Amended La. CCP Art. 966(G), adding a final sentence: "This Paragraph does not apply if the trial or appellate court's judgment rendered in accordance with this Article is reversed. If the judgment is reversed by an appellate court, the reversal applies to all parties." The amendment clarifies the effect of the Louisiana Supreme Court's holding in *Amedee v. Aimbridge Hospitality, LLC*, No. 2021-OC-01906 (La. 10/21/22), 351 So. 3d 321.**

What happens on appeal?

- **H – On review, an appellate court shall not reverse a trial court's denial of a motion for summary judgment (remember: only way to get appellate review of denial is by writ application) and grant a summary judgment dismissing a case or a party without assigning the case for briefing and permitting the parties an opportunity to request oral argument.**

What is Reasoning Behind Para. H?

- Summary judgment denied by trial court and case is going to proceed
- Appellate court has granted writ and is about to reverse and grant summary judgment
- Give party opposing summary judgment a chance to brief and perhaps argue

What does it mean when you receive a "Notice for Briefing and Oral Argument" from the denial of a Motion for Summary Judgment?

- **At least two judges are contemplating reversing the trial court and granting the Motion for Summary Judgment.**