



CE-AVDM-0051-2022/2025

**Messrs.
Comité Maritime International
Standing Committee on Marine Insurance
Attn: Joseph Grasso**

VIA EMAIL

**Ref: Venezuela reply on SC Marine Insurance:
Right of Direct Actions Against Insurers - Questionnaire**

Date: 29 September 2022

Dear Joe,

We refer to Evelien Peeters' email dated 17 August 2022, regarding the referenced questionnaire. Please see below in [BLUE](#) the reply from the Venezuelan Maritime Law Association.

COMITÉ MARITIME INTERNATIONAL

Standing Committee on Marine Insurance

Questionnaire for National MLA's on Rights of Direct Action Against Insurers

Note: References to "national laws" in this Questionnaire includes any statutory law of whatever level in each nation and, for common law jurisdictions, any caselaw precedent establishing a right of direct action.

1. Direct action against liability insurer by third party claimants

1.1 Does your national law provide for a right of direct action against liability insurers by third party claimants?

Venezuelan law only expressly sets direct actions by third-party victims against insurers for so-called 'civil liability' (hereinafter "liability") in respect of land transportation (Land Transportation Law, Official Gazette No.38,985 dated August 1, 2008).

The Land Transport Law establishes that liability insurance is mandatory (art. 56) for all motor vehicles, which must be covered by a liability insurance policy, to sufficiently respond to the damages caused to the State or to individuals.

On the other hand, although it is not expressly regulated as a direct action, the third party victim may sue the insurer of the individual who caused the damage by exercising what is called "an

oblique action”¹ set out in common law (art. 1,278) of the Civil Code (Official Gazette No. 2,990 of 26 of July 1982), to protect itself from the insolvency or negligence of the insured with respect to the indemnity due under the insurance contract; or he can try an action by delegation (art. 1,317 of the Civil Code); or by assignment if the rights of the insured under the policy have been assigned to the third party (1,549 and 1,550 of the Civil Code).

In any case, the liability insurer in maritime claims may oppose its defenses and claim, under article 431 of the Maritime Commerce Law (art. 431), that the assured will only have the right of compensation of monies for damages/losses and expenses the assured incurred, when the assured had already paid said damages/losses for the prejudice of third parties. From the above, we infer (under a strict interpretation of the law) that there would be no direct action against the P&I insurer by a third party, due to its reimbursement nature, by which the payment for the damage/loss to the victim by the assured must be previously verified for payment to be due by the insurer.

If so,

1.2 Does such right of direct action apply to any claim, either in tort or in contract?

Article 192 of the Land Transport Law refers to the joint and several liability of the driver, owner and insurer of the vehicle, to repair any damage caused by the vehicle's circulation, unless the defendant can prove that there was the fault of the victim, force majeure or another cause that releases responsibility.

Venezuelan law in article 1221 of the Civil Code states out that the obligation is joint and several when several debtors are obliged to the same thing, so that each one can be compelled to pay in full, and that the payment made by only one of them releases the others.

Therefore, the liability of the insurer does not arise from the insurance contract, but from the law by establishing the right for the victim to go against any of the jointly liable persons assigned by law, that is, against the driver, the owner or the liability insurer.

If not,

1.3 Is there a right of direct action granted to specific categories of claimants?

The only express regulation is the one mentioned in question 1.

2. Jurisdiction

2.1 Does your national law contain provisions on the jurisdiction of courts for direct claims against Insurers?

The Venezuelan law does not expressly contemplate any rule that refers to jurisdiction for direct actions against insurers. However, there is no express prohibition and nothing prevents direct

¹ Generally understood as an action that the law grants a creditor to exercise the rights and actions of its debtor, in order to collect for themselves.



action in the Venezuelan Courts against a liability insurer, based on the constitutional right of access to justice, article 26 of the Venezuelan Constitution (Official Gazette No. 5,908 of February 19, 2009. Amendment No1).

Additionally, the claimant-victim will have to allege, among others, the application by analogy (art. 4) established by the Civil Code, of the regulations of the Land Transportation Law referred above that does recognize the right of direct action for the victim, in order for the judge to apply them to the specific case based on which the claimant is presenting his claim against the insurer.

2.2 Does your national law allow that the direct claims against an insurer are subject to an arbitration clause stipulated into the contract of insurance?

The Venezuelan law does not expressly contemplate this case. However, bearing in mind on the one hand the express stipulation that it makes in the aforementioned matter, and that the right for the claimant-victim arises from the Law by virtue of the joint responsibility attributed to the driver, owner and insurer for tort; and on the other hand based on the principle of territoriality in the application of national laws, then a competent judge in Venezuela may hear and decide this direct action, despite the existence of an arbitration clause in the liability insurance contract.

For instance, under article 2 of the Venezuelan Maritime Procedure Law, the Special Aquatic Jurisdiction, unless otherwise provided, will be exercised by the Maritime Judges in accordance with this Law, since said jurisdiction is non-delegable. Therefore the Venezuelan judges are obliged to accept jurisdiction over the claims included in the Special Aquatic Jurisdiction that are presented to them and whose jurisdiction is attributed by law.

3. Applicable law

3.1 Does your national law contain special conflict of laws provisions on the applicable law governing the right of direct action against Insurers?

There is no express regulation in this regard.

If not,

3.2 Is the proper law governing such direct action established on the basis of the general conflict of laws rules applicable to the insurance contract stipulated with the liability insurers, or to the claim in tort or in contract brought by the third party claimant, or on the basis of other general rules?

As above, the law only expressly sets out direct actions in matters of Land Transportation, and the procedural rules do not expressly regulate conflict of law in matters of direct actions against insurers.

4. Procedure

4.1 Under your national law, can the claimant sue the person liable and the insurer in the same proceedings?

Yes. Procedural laws allows the third-party victim to sue the party that caused the damage and in the same claim and proceeding jointly sue its insurer. It only needs to comply with the requirements in article 340 of the Civil Procedure Code.

Additionally, the third-party victim may summon the insurer as guarantor, making it a party to the lawsuit after it has already been initiated against the party that caused the damage. See art. 370.4.5 of the Civil Procedure Code.

4.2 Can the third party sue directly the insurer only?

Yes. See answers 1.2 and 2 above.

4.3 Can the liable party, as a respondent, ask that the insurer is joined as a further defendant and ask that the decision be issued directly against the insurer?

Yes. The person responsible for the damage can request that his insurer be called as a third party in guarantee based on the aforementioned procedural rule (art. 370.4.5), and seek that the judgement makes it respond for the damages covered in the insurance contract for liability, under the policy.

4.4 Can the insurer, as a respondent, ask that the party liable is joined as a further defendant?

Yes. Based on art. 370.4 as above.

4.5 In case the liable party and the insurer are joined as respondents in the same proceedings, can the insurer file in the same proceedings an action seeking recovery from the insured under the terms of the contract of insurance for the indemnity to be paid by the insurers to the third party?

The insurer could only exercise this type of defense in a case where the victim is at fault or a third party acted in bad faith, or any other cause under the law or contract that exempts or releases it from its responsibility and obligation to pay the sums insured according to the contract. He may also exercise the right of "repetition" but in a separate proceeding.

4.6 What are the rules for jurisdiction for joining the third party and/or filing action between the respondents in the above cases?

In Venezuela these rules are provided for in the aforementioned Civil Procedure Code (art. 370 et seq.).

5. Defences

5.1 Under your national law, in case the insurer is directly sued by the third party

5.1.1 Can the insurer raise any defence which would be available to the liable party as regards the merits and quantum, whether or not the latter is joined in the proceedings as a defendant?

The law does not provide any prohibition or limitation in this regard. Therefore, in cases where a direct action pursued, the insurer could use the same defenses that it would have against the insured under the policy, including limiting its liability to the sum insured in accordance with the contract.

5.2 Can the insurer benefit of the global limitation of liability – if any – available to the liable party, whether or not the latter is joined in the proceedings as a defendant?

In line with the previous answer, the insurer could benefit from the limitations and defenses that it may have by law or within the scope of the liability insurance contract.

5.3 Can the insurer raise defences based on the terms of the insurance contract stipulated with the liable party against the action filed by the third party?

Yes. See previous answer.

5.4 Does a separate judgement against the liable party bind the courts of your country in a direct action against an insurer as regards the merits and quantum?

If that judgment has been issued by another court or arbitral tribunal, for example by virtue of a jurisdiction clause incorporated in the insurance contract, and that it has been issued against or ignoring the jurisdiction and competence of a Venezuelan court attributed by law, the procedural rule states the possibility of preventing the execution of that judgment.

In fact, the judgment or arbitral award that is issued will be subject to recognition and will depend exclusively on the jurisdiction of the Venezuelan courts, where the aforementioned decision would be enforced.

In Venezuela, the procedure for the enforcement of the arbitration award or foreign judgments is the one established in the Civil Procedure Code for the forced enforcement of the judgments (art. 523 et seq.).

Thus, the Venezuelan court may only deny the recognition or execution of an arbitration award in the cases stated in article 49 of the Venezuelan Commercial Arbitration Law. On the other hand, article V of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (Official Gazette No. 4,832 Extraordinary of November 8, 1994) also states other causes that prevent the recognition and enforcement of an arbitral award.

If so,

5.4.1 does this also apply to judgements in default?

See previous answer.



5.4.2 does this also apply to foreign judgements?

[See previous answer.](#)

6. Time limits

6.1. Under your national law, are there any time limits for a direct action against an insurer?

[There is no express provision that regulates this. Thus before a claim of this nature the time bar that applies is that of the ordinary law of 10 years according to the current Civil Code \(art. 1.977\).](#)

[The foregoing is without prejudice to the potential criminal liability that the party that caused the damage may face and that will be determined by the competent criminal courts, in which case the time bars set out by the current Criminal Code \(Official Gazette No. 5,494 dated October 20, 2000\), ranges from 15 years to 3 months depending on the penalty established by law for that crime \(art. 108\).](#)

If so,

6.1.1 how can they be protected?

[The time bar may be interrupted for the reasons stated by the law. The Civil Code establishes that the time bar of actions is interrupted by their exercise before the Courts, by extrajudicial claim of the creditor and by any act of acknowledgment of the debt by the debtor.](#)

6.2 Is it possible for the third party to sue directly the insurer even if the time limit of the action against the liable party has not been protected?

[If the prescription is not interrupted and operates effectively, the affected third party could not sue the insurer.](#)

We trust the above replies assist, and remain at your disposal in case of questions or comments.

Yours truly,

Executive Committee
Asociación Venezolana de Derecho Marítimo (AVDM)