

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE
4

5 Legislative Document

No. 485

7 H.P. 402

House of Representatives, February 1, 1983

8 Received by the Clerk of the House on February 1, 1983. Referred to the
9 Committee on Judiciary, and ordered printed pursuant to Joint Rule 14.

10 EDWIN H. PERT, Clerk

Presented by Representative Bell of Paris.

Cosponsor: Representative Livesay of Brunswick.

12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-THREE
16

17 AN ACT Concerning Court Procedures
18 Dealing with Notice in Liability Cases.
19

20 Be it enacted by the People of the State of Maine as
21 follows:

22 24-A MRSA §2904, first ¶, as enacted by PL 1969,
23 c. 132, §1, is amended to read:

24 Whenever any person, administrator, executor, or
25 guardian, recovers a final judgment against any other
26 person for any loss or damage specified in section
27 2903, the judgment creditor shall be entitled to have
28 the insurance money applied to the satisfaction of
29 the judgment by bringing a civil action, in his own
30 name, against the insurer to reach and apply the
31 insurance money, if when the right of action accrued,
32 the judgment debtor was insured against such liability
33 and if before the recovery of the judgment the
34 insurer had had notice of such accident, injury or

1 damage, and had had reasonable notice of the service
2 upon the judgment debtor of the complaint in the
3 civil action in which the judgment was recovered. The
4 insurer shall have the right to invoke the defenses
5 described in this section in the proceedings. None of
6 the provisions of this paragraph and section 2903
7 shall apply:

8 STATEMENT OF FACT

9 When a plaintiff recovers a judgment against a
10 defendant, if the defendant had liability insurance
11 covering the plaintiff's claim, then in the normal
12 course the insurance company pays the judgment. Fre-
13 quently for any one of a number of reasons, the
14 defendant's insurance company does not participate in
15 the plaintiff's law suit and refuses to pay the judg-
16 ment against the defendant.

17 The Revised Statutes, Title 24-A, section 2904
18 provides that a judgment creditor who recovers a
19 judgment against any other person may bring an action
20 directly against the defendant's liability insurer to
21 "reach and apply" the insurance proceeds to satisfy
22 the judgment. The plaintiff may do so, if, when the
23 right of action accrued the judgment debtor was
24 insured against the liability to the plaintiff and,
25 if, before the judgment is entered, the insurance
26 company had had notice of the "accident, injury or
27 damage." So long as there is in effect a liability
28 insurance policy covering the plaintiff's judgment
29 and the insurance company had notice of the happening
30 of the accident, then the insurance company must pay
31 the judgment whether or not it had any knowledge of
32 the plaintiff's law suit or any opportunity to defend
33 against the plaintiff's claim.

34 A frequent application of this statute occurs
35 when an insurance company takes the position the
36 policy it issued to the defendant does not give
37 insurance for plaintiff's claim, that is, the company
38 denies coverage. Then the existence or nonexistence
39 of coverage is litigated in the reach and apply ac-
40 tion directly against the insurance company.

1 A different and troublesome situation arises when
2 an insurance company which does not deny coverage,
3 although it has notice of the occurrence of an acci-
4 dent in which a plaintiff is injured as a result of a
5 defendant-insured's fault, has no knowledge of a law
6 suit by the plaintiff against the defendant until
7 after there has been a judgment, often a default
8 judgment, against the defendant. In this case, the
9 insurance company never has an opportunity to file an
10 answer to the complaint and to defend the law suit.

11 The purpose of this bill is to require that, in
12 addition to being given notice of the injury to a
13 plaintiff, the liability insurance company must also
14 have seasonable notice of the commencement of any law
15 suit for the judgment in which it may be required to
16 pay the plaintiff. This is to afford the insurance
17 company the opportunity to litigate whether the
18 plaintiff is entitled to any recovery and, if so, in
19 what amount. Basic fairness dictates that the insur-
20 ance company have this opportunity before it may be
21 required to pay the resulting judgment.

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