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Florida Now Recognizes a Statutory Right of Contribution Among Insurers With a Duty to Defend, Abolishes the Argonaut Rule

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On June 18, 2019, the Florida Legislature passed a new law codified as Florida Statute, Section 624.1055, which creates a right of contribution among liability insurers for defense costs incurred in defending a common insured when multiple insurance policies have been triggered. The new law applies to all insurance policies issued for delivery in the state of Florida, or under which an insurer has the duty to defend an insured against claims asserted, or suits or actions filed, in the state of Florida.

This new law effectively overturns the longstanding precedent set by *Argonaut Insurance v. Maryland Casualty*, 372 So. 2d 960 (Fla. 3d DCA 1979), *Continental Casualty Company v. United Pacific Insurance Company*, 637 So. 2d 270 (Fla. 5th DCA 1994), and their progeny. Those cases held that an insurer with a duty to defend could not assert a claim for contribution against another insurer that also had a duty to defend their mutual insured and failed to contribute to the defense. The rationale underlying this old rule (referred to as the Argonaut Rule) was that each carrier owes a complete and independent duty to defend under the insuring policy, so that, by issuing the policy, the carrier did so without considering or expecting that it would be entitled to recover payment from another carrier for such defense costs.

The new law is intended to mitigate litigation downtime and ease the hardships on policyholders by incentivizing insurers to more promptly assume their defense, by providing a clear process for insurers to recover prorated defense costs from other insurers on the risk. Despite the goal of creating a clear mechanism for insurers to recover prorated defense costs from other carriers, the statute raises unique questions as to timing and implementation that have not yet been addressed by the courts in practice and have created some uncertainty among practitioners.