

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

PRISCILLA MOSHER AND BARRY
O. MOSHER

NO. 2014 CW 1425

VERSUS

GLOBAL-LINK LOGISTICS,
L.L.C. AND WAYNE KISSENGER

DEC 30 2014

In Re: Indiana Insurance Company, applying for supervisory writs, 18th Judicial District Court, Parish of West Baton Rouge, No. 35876.

BEFORE: KUHN, GUIDRY, PETTIGREW, WELCH AND THERIOT, JJ.

WRIT GRANTED. Valid long arm service of process cannot be effected on a defendant by sending a certified copy of the citation and petition to defendant's place of employment by certified mail. See **Collier v. Landry**, 12-718 (La. App. 5th Cir. 4/10/13), 115 So.3d 31, and **Drago v. Drago**, 477 So.2d 786, 788 (La. App. 5th Cir. 10/10/85). Therefore, Wayne Kissenger was never validly served. As "any steps taken to 'hasten the matter to judgment' are ineffective as to defendants not served," plaintiff's claim against Kissenger was abandoned on October 27, 2009, three years from the date of the filing of the petition, and was terminated as to Global-Link Logistics, L.L.C., on June 2, 2010, when the judgment confirming preliminary default against Global-Link was entered. See **Murphy v. Hurdle Planting & Livestock, Inc.**, 331 So.2d 566, 568 (La. App. 1st Cir.), writ denied sub nom. **Murphy v. Hurdle Planting & Livestock, Inc.**, 334 So.2d 434 (La. 1976).

Further, on June 2, 2010, a judgment confirming preliminary default against Global-Link Logistics, L.L.C., was signed. At this point, the suit was no longer "pending" for the purposes of interrupting prescription as to other solidary obligors. See **Terrel v. Perkins**, 96-2629 (La. App. 1st Cir. 11/7/97), 704 So.2d 35, 38. On June 2, 2010, the one-year prescriptive period as to any other solidary obligors began to run again. The prescriptive period elapsed on June 2, 2011, prior to plaintiff's attempt to amend his petition. Plaintiff's argument that the amended petition naming Indiana Insurance Company as a defendant was timely because it related back to the original petition is without merit.

In addition, the failure to raise a claim that arises from the transaction or occurrence that is the subject matter of the litigation amounts to a waiver of that claim. See **Westerman v. State Farm Mut. Auto. Ins. Co.**, 2001-2159 (La. App. 1st Cir. 9/27/02), 834 So.2d 445. In the instant case, plaintiff's claims against Wayne Kissenger, Global-Link Logistics, L.L.C., and Indiana Insurance Company arose from the same occurrence, to wit, the automobile accident of October 29, 2005. Thus, Mr. Mosher was required to assert both claims in one action. Failure to do so amounted to a waiver of the claim against Indiana.

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

2014 CW 1425
(PAGE 2 OF 2)

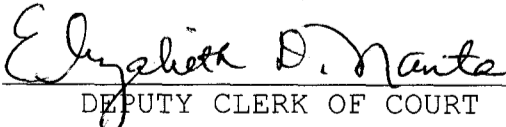
For the above-stated reasons, no suit remained pending which could be amended to name Indiana Insurance Company as a defendant, and any claims plaintiff may have against Indiana are prescribed. We hereby reverse the September 16, 2014 judgment of the trial court and grant Indiana's exception of prescription. The suit is dismissed.

JTP
JEW
JMG

Theriot, J., concurs. A judgment confirming preliminary default against Global-Link Logistics, LLC was signed on June 2, 2010; thereby triggering the one-year prescriptive period as to any other solidary obligor. The prescriptive period elapsed prior to plaintiff's attempt to amend their petition. See **Terrel v. Perkins**, 96-2629 (La. App. 1st Cir. 11/7/97), 704 So.2d 35, 38.

Kuhn, J., dissents.

COURT OF APPEAL, FIRST CIRCUIT


DEPUTY CLERK OF COURT
FOR THE COURT