

“The New “Not So Direct” - Direct Action Statute; What’s Changed and What Doesn’t Really Matter?”

March 12, 2026

PRESENTED BY:
HON. MICHAEL P. MENTZ OF THE 24TH JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON AND
DIANNA DUFFY WILLEM OF HEBBLER & GIORDANO, LLC



HISTORY OF THE LOUISIANA DIRECT ACTION STATUTE

HISTORY AND PURPOSE BEHIND THE DIRECT ACTION STATUTE

- Enacted in 1918, expanded in 1930, and now codified (in amended form) at La. R.S. 22:1269.
- Reflected a policy view that liability insurance is purchased not only for the insured's protection, but also for the protection of the public. *Davies v. Consolidated Underwriters*, 6 So. 2d 351, 357 (La. 1942).
- Intended to enhance access to compensation by avoiding privity barriers between injured persons and insurers and by preventing judgment-proof or insolvent insureds from leaving victims without a practical remedy.
- Created a procedural right of action: the plaintiff's substantive claim remained against the insured tortfeasor, but the statute provided a procedural vehicle to sue the insurer directly where a valid tort claim existed. *Soileau v. Smith True Value & Rental*, 144 So. 3d 771, 775 (La. 6/28/13).
- Long controversial among insurers, who argued that naming insurers and disclosing coverage to juries encouraged higher verdicts and contributed to increased insurance costs.

HISTORY AND PURPOSE BEHIND THE DIRECT ACTION STATUTE

- Substantially amended effective August 1, 2024, through Act 275, greatly narrowing when a plaintiff may bring a direct action against an insurer and generally refocusing lawsuits on the insured rather than the insurer.
- Under the amendments, direct action is now generally barred unless one of several enumerated conditions exists (e.g., insured bankruptcy or insolvency, inability to serve the insured, intra-family torts, or UM carrier situations).
- The revised statute also restricts disclosure of insurance in the lawsuit's caption and to the jury, emphasizing that insurance coverage should usually remain in the background of the liability trial.
- Overall purpose today: still to provide a mechanism, in defined exceptional circumstances, for injured parties to reach available liability insurance directly, but balanced against concerns about litigation fairness, jury prejudice, and insurance costs.



CRITICAL CHANGES TO THE DIRECT ACTION STATUTE AS OF 08/01/2024

Critical Changes on August 1, 2024

ACT No. 275—Amends and reenacts the Louisiana Direct Action Statute and repeals La. Code of Evidence Art. 411(D) in its entirety. The effective date of this Act was August 1, 2024.

Critical Changes on August 1, 2024

As amended and re-enacted, 22:1269(B)(1) provides that an injured person or, if deceased, the persons identified in Civil Code Articles 2315.1 and 2315.2 shall have **no right of direct action against the insurer unless one of the following applies:**

a) The insured files for **bankruptcy** or when proceedings to adjudge an insured bankrupt have been commenced.

b) The insured is **insolvent**.

c) Service of citation or other process has been attempted without success or the insured defendant refuses to answer or otherwise defend the action within 180 days of service.

d) When the cause of action is for damages as a result of an offense or quasi-offense between children and their parents or between married persons.

e) When an insurer is an **uninsured motorist carrier**.

f) The insured is **deceased**.

g) When the insurer is defending the lawsuit under a **reservation of rights**, or the insurer denies coverage to the insured, but only for the purpose of establishing coverage.

Critical Changes on August 1, 2024

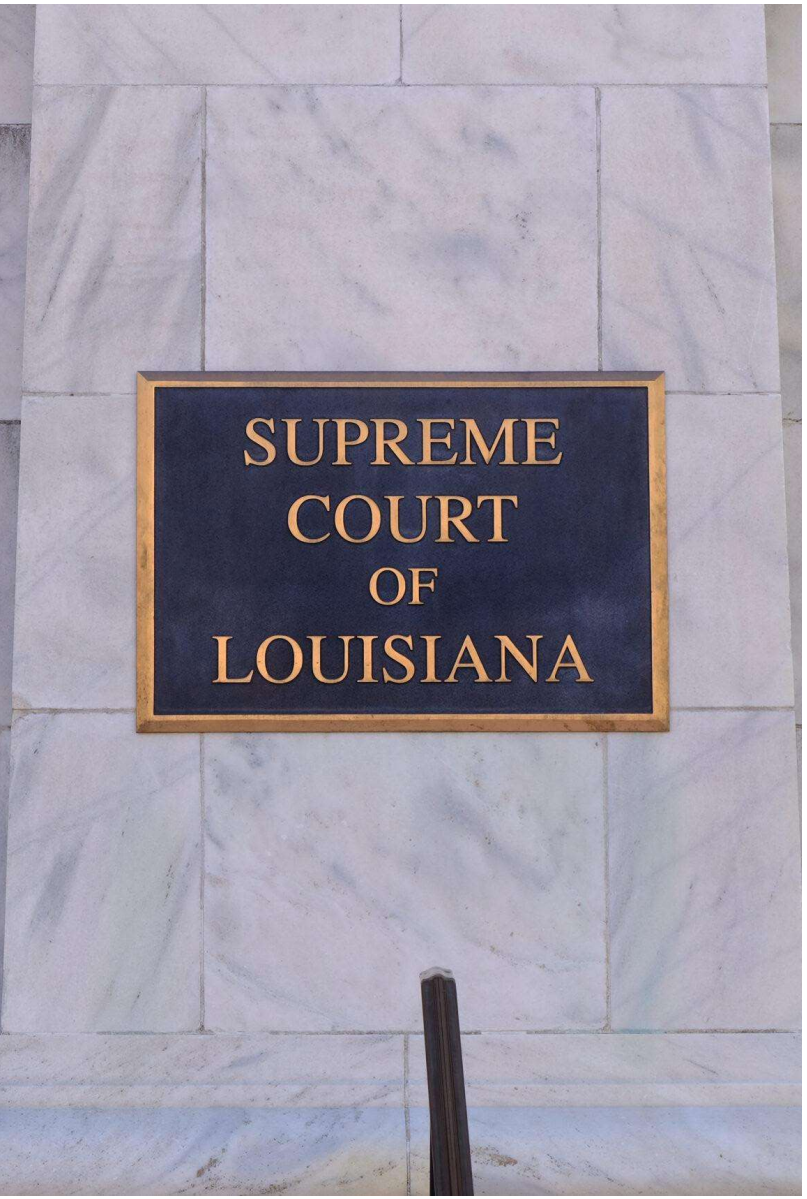
- An insurer shall not be included in the caption of any action brought against the insurer pursuant to this section.
  - Instead, the action shall be captioned only against the insured defendant or other non-insurance defendants (R.S. 22:1269 (B)(4)(a)).
- A court shall not disclose the existence of insurance coverage to the jury or mention such coverage in the jury's presence unless required by Code of Evidence Art. 411 (R.S. 22:1269 (B)(4)(b)).
- Notably, even where none of the specified circumstances exist so as to permit an insurer to initially be sued directly and joined as a defendant in an action, the insurer may be joined on motion of any party as a party defendant for the purposes of entering final judgment or enforcing a settlement. (R.S. 22:1269 (D)(1)(a)).
- Although a plaintiff may not be able to directly name an insurer at the commencement of a lawsuit, plaintiff may put the insurer on notice of a claim against its insured by serving the non-party insurer with a copy of the suit. (R.S. 22:1269 (D)(2)(b)).

Critical Changes on August 1, 2024

- **Subsection E** of the amended statute requires an insurer to provide its insured with written notice of any reservation of its right to assert a coverage defense within 90 days after determining the existence of the defense. In no case may such motion be given less than 30 days before trial (Subsection E (1)).
- The statute also requires that within 60 days after the receipt of notice of an insurers' reservation of rights to assert a coverage defense, and in no case later than 30 days before trial, the insured must notify all counsel of record in any suit against the insured, that the insurer has issued such a reservation of rights **(Subsection E (2)).**
- Finally, **Subsection (F)** of the new statute provides that the legislature finds the purpose of liability policies is to provide protection and coverage to all insureds, whether the insured is a named insured or an additional insured under the omnibus clause, for all legal liability the insured may have within the terms and limits of the policy.

La. R.S. 22:1269(4)(a) states:

An insurer **shall not** be included in the caption of *any* action brought against the insurer pursuant to this Section. The action **shall** instead be captioned only against the insured defendant or other noninsurance defendants. (Emphasis added.)



CASES DECIDED AFTER THE 08/01/2024 LEGISLATIVE CHANGES

Retroactive or prospective?

- *Maise* and *Howard* were two of the first decisions made after the amendment. Both reviewed the issue of whether the statute as amended was to be applied retroactively or prospectively.
- In *Maise*, the insurer filed a Motion to Dismiss relying on the changes to the Direct Action Statute. The insurers were named as defendants prior to the August 1, 2024, amendments. Judge Barbier held the claim as pled over three months before amendment to the Direct Action Statute was properly brought against the insurers. The Motion to Dismiss was denied.
- Three days later, in *Howard*, Chief Judge Brown found the Direct Action Statute to be a procedural right of action, and that any change to a procedural right of action reflects a change in procedural law, not substantive. The insurer's Motion to Dismiss was granted, even though the insurer was named prior to the August 1, 2024, amendments.

Riley v. Acadian Companies, 25-308 (La.App. 5 Cir. 9/3/25); 424 So.3d 141, *writ denied*, 2025-01253 (La. 12/9/25); 422 So.3d 298.

- On December 6, 2022, Plaintiff filed suit against Acadian Ambulance Services, Inc. ("Acadian"), two of its employees, and XYZ Insurance Company, the unidentified liability insurance carrier for Acadian.
- On November 6, 2024, nearly two years after filing the original petition, and two months after the Direct Action Statute was amended on August 1, 2024, Plaintiff filed a first supplemental and amending petition to substitute XYZ Insurance Company with the name of Arch Specialty Insurance Company ("Arch Specialty"), the actual liability carrier for Acadian.
- Arch Specialty filed a peremptory exception of no right of action, arguing that because Plaintiff did not amend her Petition to name it as a defendant until after August 1, 2024, her right to assert a direct action against it as Acadian's liability insurer was not timely vested prior to the effective date of the amendment, and therefore, the amended Direct Action Statute should be applied retroactively.

Riley v. Acadian Companies, 25-308 (La.App. 5 Cir. 9/3/25); 424 So.3d 141, *writ denied*, 2025-01253 (La. 12/9/25); 422 So.3d 298.

- In response, Plaintiff argued that her substantive right to bring an action against Arch Specialty was vested and timely invoked when she filed her original Petition naming XYZ Insurance Company prior to the August 1, 2024 amendment to the statute.
- Plaintiff further asserted that the only reason Arch Specialty wasn't named in the original Petition was because Acadian did not divulge the identity of Arch Specialty as its liability insurer until after the effective date of the amended Direct Action Statute.
- The trial court denied Arch Specialty's exception, and they filed a writ application to the Fifth Circuit.

Riley v. Acadian Companies, 25-308 (La.App. 5 Cir. 9/3/25); 424 So.3d 141, *writ denied*, 2025-01253 (La. 12/9/25); 422 So.3d 298.

- The Fifth Circuit denied Arch Specialty's writ application, holding that Plaintiff's right of action against the insurer had already been vested and invoked when she filed her original petition for damages on December 6, 2022. Specifically, the court stated:
  - "…because [Plaintiff] did not know the identity of Acadian's actual liability insurer when she filed her original petition, she exercised her right of action against Acadian's liability insurer in the only way that she could, by naming XYZ Insurance Company as the liability insurer for Acadian on the date of the accident…."
- The Fifth Circuit also noted that Plaintiff would have been able to properly name the liability insurer in her original petition had Acadian not refused to divulge its insurer's identity until after suit was filed and the amendment to the Direct Action Statute took effect.

Rogers v. Griffin, 24-537 (La.App. 5 Cir. 12/20/24); 410 So.3d 890.

- Plaintiffs filed a medical malpractice suit against two medical providers and their insurer on November 16, 2023, prior to the August 1, 2024 amendment to the Direct Action Statute.
- On August 29, 2024, in light of the new amendment, the insurer filed a peremptory exception of no cause of action, alleging that the Direct Action Statute is strictly procedural, thus, its amendment eradicating a direct cause of action against an insurer must be applied retroactively pursuant to Civil Code article 6.
- The Fifth Circuit upheld the trial court's denial of the insurer's exception, stating that while the amendment to the Direct Action Statute may apply retroactively to a cause of action that arose before August 1, 2024, this is only for causes of action for which suit had not yet been filed, and thus a plaintiff's right had not yet vested.
- In *Rogers*, because the plaintiffs exercised their procedural right to sue the insurer before the effective date of the statutory amendment, the Legislature cannot revoke that vested right. Thus, the Fifth Circuit held that the exception was properly denied, and the insurer was kept in the case as a defendant.

Couch v. Loya Ins. Co., 25-590 (La. App. 5 Cir. 1/22/26)

- Accident occurred May 4, 2024
- Plaintiff filed suit in the 24th JDC on May 2, 2025, naming Loya Insurance Company as a defendant along with John Doe.
- Loya filed an Exception of No Right of Action, arguing the Direct Action statute. Plaintiff opposed arguing that the courts have consistently incorrectly interpreted La. R.S. 22:1269 as conferring a procedural right rather than a substantive right.
- The Fifth Circuit reversed the ruling of the trial court, sustaining the exception, and found there to be no facts in the record indicating Plaintiff invoked this procedural right at any time prior to the filing of suit.
- The Court also granted the motion to strike and instructed the Clerk of Court to remove “Loya Insurance Company” from the case caption of any pleadings in the record.

Alexander v. Crossing I, LLC, 25-446 (La. App. 5 Cir. 12/2/25)

- Plaintiff filed suit on April 2, 2025, after the August 1, 2024 effective date of the amendments to the Direct Action Statute (La. R.S. 22:1269).
- Plaintiff attempted to sue the landlord's insurer (ABC Insurance Company) directly under the Direct Action Statute.
- Because the Petition was filed after the amendment's effective date, the amended version of La. R.S. 22:1269 applied, even if the underlying cause of action arose before August 1, 2024.
- Under the amended statute, a plaintiff may not bring a direct action against an insurer unless one of the enumerated statutory exceptions applies.
- Plaintiff's Petition did not fall within any of the statutory exceptions.

Alexander v. Crossing I, LLC, 25-446 (La. App. 5 Cir. 12/2/25)

- **The insureds** filed a Peremptory Exception of No Right of Action, asserting that Plaintiff lacked the right to sue the insurer directly.
- The Fifth Circuit held that the trial court erred in denying the exception.
- The Fifth Circuit reversed and dismissed the claims against the insurer without prejudice, holding that Plaintiff had no right of action against the insurer under the amended statute.
- The Court further held that the insureds had the right to file the exception of no right of action.

Vajas v. Morris, No. 2025-C-0675, (La. App. 4 Cir. 11/12/25).

On Application for Writs from Civil District Court, Orleans Parish:

- Suit was filed in February of 2025. Plaintiff did not name State Farm as a Defendant but pled that State Farm issued a policy of insurance to the Defendant in the body of the Petition. State Farm moved to strike all references to it from the case.
- Plaintiff attempted to serve State Farm's insured three times with no success. In August of 2025, Plaintiff amended the Petition and formally named State Farm as a party.
- Subsequently, the State Farm insured was served and filed an Answer. State Farm then filed an Exception of No Right of Action because its insured had been served, arguing the exception to the Direct Action Statute no longer applied.
- The district court sustained the Exception and dismissed State Farm without prejudice, striking any reference to it or insurance coverage from the case.
- The Fourth Circuit reversed, referencing the exception to the Direct Action statute that permits an insurer to be named if Plaintiff has attempted to serve the insured defendant without success.

Vajas v. Morris, No. 2025-C-0675, (La. App. 4 Cir. 11/12/25). (cont).

- The Fourth Circuit pointed out the statute does not specify the number of service attempts needed before a Plaintiff may take a direct action against an insurer. It only requires that some attempt be made to serve them before bringing a direct action.
- "[T]he direct action statute, as amended, is clear and unambiguous that Vajas has a right of direct action against State Farm under the exception outlined in La. R.S. 22:1269(B)(1)(c). There is nothing in the statute indicating that State Farm must be removed from the suit after it is joined through one of the authorized exceptions."
- Thus, if an exception to the Direct Action Statute applies warranting naming an insurer directly, and the exception later becomes inapplicable, in at least the Fourth Circuit, the insurer is stuck in the case as a defendant.

CASE CAPTION / MOTIONS TO STRIKE

***E S & H, Inc. v. Triche*, No. 2025-CC-01349, (La. 2025).**

- *On Supervisory Writ to the 24th J.D.C. Parish of Jefferson:*
  - "As written, La. R. S. 22:1269(B)(4)(a) is clear that an insurer shall not be included in the caption."
  - However, insurance/the names of insurers may be disclosed in the body of the Petition as there is no express prohibition of naming an insurer in such a manner under the amended law.
    - E S & H moved to strike a paragraph in the Petition that disclosed the name of an insurer.
      - The LASC affirmed the 24th J.D.C.'s denial of a motion to strike.





PRACTICAL IMPLICATIONS

COVERAGE

- **Exception (g)** to the statute states that the insurer can be named as a defendant when the insurer is defending the lawsuit under a reservation of rights or if the insurer denied coverage to the insured, but only for the purpose of establishing coverage.
- In practice, we have seen several cases where the insurer is not named as a defendant despite the existence of a coverage issue.
- There are 2 options to assert a coverage defense in these instances:
    1) Intervene in the suit via a **Petition of Intervention**, serve all parties, and then file a Motion for Summary Judgment on coverage.
    2) File a **Declaratory Action** in a court of proper jurisdiction, name the parties to the original suit as defendants, serve all parties, and then file a Motion for Summary Judgment on coverage.

SERVICE/CITATION

- One of the exceptions to the inability to name an insurer is lack of service on the insured.
- There has been no instruction from the legislature on how many attempts at service there must be.
- Is due diligence required?
- Arguably, could a Plaintiff amend to name the insurer after an original service attempt is unsuccessful?

Insolvency

- The Louisiana Supreme Court reviewed the issue of whether discovery directed to the ability of a defendant to satisfy a potential judgment is permissible under LA's statutory discovery procedure.
- Should a defendant raise the issue of his inability to pay a judgment, in defense or in mitigation, he has put his financial status at issue and the plaintiff is entitled to be prepared to present evidence in opposition. His financial status is otherwise irrelevant.
- However, since there is no requirement that inability to pay be pleaded affirmatively, and it might be raised by defendant at trial, plaintiff is within her rights to discover information to combat a possible defense. Defendant here represents that he is prepared to stipulate that he will not raise the defense; he is entitled to do so.
- The Court held that the order of the trial court must be amended to give the defendant the option of (1) declaring that he will not raise the issue of inability to pay, or (2) answering discovery inquiries pertaining to his ability to respond to a judgment.

Guy v. Tonglet, 379 So. 2d 744, 747 (La. 1980)

Vascocu v. Privilege Underwriters Reciprocal Exch., 2025-0343 (La. App. 1 Cir. 7/14/25)

- In a limited opinion, the Louisiana First Circuit granted writ for the limited purpose of remaining to the trial court with the instructions to grant an appeal.
- Judge Balfour "would reverse the trial court's February 28, 2025, judgment which granted the exceptions of no cause and no right of action. La. R.S. 22:1269(B)(1)(b) provides an exception to the limitation on direct actions against the insurer when the insured is insolvent. Plaintiff's petition made sufficient allegations as to insolvency of the insured. Accordingly, I would grant the writ and deny the exceptions of no cause and no right of action filed by the insurer, Privilege Underwriters Reciprocal Exchange."
- It is unclear what allegations were plead as to the insolvency of the insured.

REAL EXCERPTS OF PETITIONS FILED POST 08/01/2024



CASE CAPTIONS FILED POST-08/01/2024

24th JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON
STATE OF LOUISIANA

NO. [redacted] **DIVISION** [redacted]

[redacted]

VERSUS

[redacted] **AND PROGRESSIVE SECURITY INSURANCE COMPANY**(in its capacity *as uninsured/underinsured motorist carrier)*

FILED: _____ _____
DEPUTY CLERK

CASE CAPTIONS FILED POST-08/01/2024

24th JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. [redacted] **DIVISIO**[redacted]

[redacted]

VERSUS

[redacted] **and an additional party not named in the caption pursuant to La. R.S. 22:1269(B)(4)**

SERVICE INSTRUCTIONS
POST-08/01/2024

PLEASE SERVE:

[redacted]

United Financial Casualty Company
By serving its registered agent
[redacted]

Being served pursuant to La. R.S. 22:1269 (D)(2)(b) - Notice of the commencement of a civil action may be provided by plaintiff or its counsel to the nonparty insurer by service of the citation on the nonparty insurer by any method of service on (**defendant** [redacted] as provided by law…

SERVICE INSTRUCTIONS
POST-08/01/2024

PLEASE SERVE:

[redacted]

PLEASE SERVE FOR NOTICE PURPOSES ONLY WITHOUT CITATION
PROGRESSIVE PALOVERDE INSURANCE COMPANY
Through its registered agent for service of process:

[redacted]

PLEASE SERVE COURTESY COPY:

UNITED FIRE AND CASUALTY COMPANY
Through Agent for Service of Process
Louisiana Secretary of State
8585 Archives Drive
Baton Rouge, LA 70809

SERVICE INSTRUCTIONS
POST-08/01/2024

PROGRESSIVE PALOVERDE INSURANCE COMPANY
– for notification purposes only
pursuant to LA R.S. 22:1269(D)(1)(b)
Through its agent:
[redacted]

PLEASE SERVE:

[redacted]

PROGRESSIVE PALOVERDE INSURANCE COMPANY
a non-Party being served pursuant to La, R.S. 22:1269 (D)(2)(b) as the liability insurer of
[redacted]
Through its registered agent for service of process:
[redacted]

What has changed?

- You cannot name the insurer absent the existence of an exception.
- You cannot put the insurer in the case caption.

What has *not* changed?

- Discoverability of insurance coverage and policies
- Insurer and coverage can still be plead in the Petition (but shall not be brought up to the trier of fact)
- Ability to collect against insurance companies
- Ability to litigate the issue of insurance coverage in the main demand
- Duty of insurer to protect its insured
- Ability to sue the carrier in a first party action, i.e. UM/UIM claim
- Ability to sue the carrier in the event an insured cannot be located or does not cooperate



Thank you!

JEFFERSON BAR ASSOCIATION

JUDGE MICHAEL P. MENTZ OF THE 24TH JDC

AND DIANNA DUFFY WILLEM OF HEBBLER & GIORDANO, LLC