Retroactivity and the Vested-Rights Doctrine in the Wake of Louisiana's Amended Direct Action Statute

By K. Jacob Ruppert

Act 275, the revision to Louisiana's Direct Action Statute, La. R.S. 22:1269, that took effect August 1, 2024, significantly reshaped the procedural landscape of insurance litigation in Louisiana. Previously known for enabling plaintiffs to sue insurers directly alongside or instead of tortfeasors, the statute now allows such actions only under seven conditions:

1. The insured files or faces bankruptcy proceedings,
2. The insured lacks sufficient assets to satisfy a judgment,
3. The insured cannot be served or fails to respond within 180 days,
4. The claim arises from domestic disputes or child-related harm,
5. The insurer is an uninsured motorist carrier,
6. The insured is deceased, or
7. The insurer reserves rights or denies coverage, limited to determining coverage eligibility.

The amendment also prohibits insurers' names in suit captions, tolls prescription for insurers when a suit is filed against the insured, and bars mention of insurance before juries except under La. C.E. art. 411.

However, the Legislature remained silent on whether these changes apply retroactively. In the absence of this guidance, litigants began advancing competing interpretations. In our court, over the past two months, we have encountered this issue, and I suspect it may be a concern in other trial courts in the wake of Act 275. Plaintiffs often argued that if the injury occurred before August 1, 2024, the old statute should govern even if the suit was filed after. But courts increasingly demand more than an injury's date to support retroactivity claims. Specifically, they ask whether a plaintiff had a *vested* right to sue under the prior version before the amendment took effect.

The Procedural/Substantive Divide

Article 6 of the Louisiana Civil Code is the interpretive foundation: substantive laws apply prospectively unless stated otherwise, while procedural laws apply retroactively unless legislated otherwise. The Direct Action Statute creates a procedural right to sue an insurer, but that doesn't mean its retroactive application is automatic or unlimited. Courts have drawn a distinction between procedural expectancy and vested rights. *Flowers v. Jena Band of Choctaw Indians*, 2023-728 (La. App. 3 Cir. 6/12/24), 396 So.3d 992, 995, reh'g denied (8/21/24), writ not considered, 24-01177 (La. 12/11/24), 396 So.3d 960; *Descant v. Adm'rs of Tulane Educ. Fund*, 93-3098, p. 3 (La. 7/5/94), 639 So.2d 246, 249. See also, *Soileau v. Smith True Value & Rental*, 12-1711 (La. 6/28/13), 144 So.3d 771.

Emerging Jurisprudence: Post-Amendment Cases

Maise v. River Ventures, L.L.C., No. CV 23-5186, 2024 WL 4266698 (E.D. La. Sep. 23, 2024)

The United States District Court for the Eastern District of Louisiana assumes a pivotal role here as it addressed the retroactivity issue repeatedly beginning a mere 54 days after the amendment became effective. In *Maise*, the plaintiff added insurers as defendants before August 1. The court acknowledged that procedural laws may apply retroactively but emphasized fairness and timing. Specifically, it recognized that a plaintiff may be entitled to rely on the procedural law in effect at the time a claim is filed, particularly where due notice and a meaningful opportunity to be heard have been provided. The court further noted that at least one Louisiana appellate court has employed this same approach to decline retroactive application of a procedural rule to suits already filed prior to the rule's effective date. On this basis, the district court denied the insurers' motion to dismiss, holding that the plaintiff's invocation of the Direct Action Statute, having occurred before the effective date of the amendment, fell outside the ambit of its retroactive reach. Maise thus set the stage for the growing body of authority that follows recognizing that retroactive application of procedural statutes, while doctrinally permissible, must yield where vested rights, due process or reasonable reliance are at stake.

Howard v. J&B Hauling, LLC, No. CV 22-993, 2024 WL 4647820 (E.D. La. Sept. 26, 2024) (slip opinion)

In contrast, three days after *Maise*, the same court dismissed claims against insurers based on the new statute. Although the plaintiff had named the insurer before August 1, the court did not perform a vested rights analysis, treating the amendment as a procedural rule fully subject to retroactive application. The court found that the amendment tinkered with the statute's procedural right of action thus suggesting a change in procedural law, not a substantive right, "as procedural laws are what 'prescribe[ ] a method for enforcing a substantive right[.]'" *Id*., at p.4, citing *Binkley v. Landry*, 2000-1710 (La. App. 1 Cir. 9/28/01), 811 So.2d 18, 23, *writ denied*, 01-2934 (La. 3/8/02), 811 So.2d 887. The court dismissed the claims against the insurer based on the newly enacted amendment even though plaintiff named the insurer as a defendant prior to the effective date of the amendment.

Baker v. Amazon Logistics, Inc., 751 F. Supp. 3d 666 (E.D. La. 2024)

Four days after the *Howard* decision, the Eastern District at last debuted its "vested right" analysis. The *Baker* plaintiffs, on the eve of the August 1, 2024, effective date, amended their complaint to include the defendants' insurers. This eleventh-hour procedural maneuver became the crucible in which

the retroactivity of the amendment would be tested. Defendants opposed the amendment, invoking the revised statute's more restrictive language, which they contended barred direct actions against insurers unless specific statutory preconditions were satisfied. They argued further that because the statute governs procedure rather than substance, its application could validly reach back to pending actions, including those in which the plaintiffs had not yet perfected their claims against insurers.

Plaintiffs countered with the procedural/substantive rights argument. While acknowledging that the Direct Action Statute confers a procedural right of action, plaintiffs contended that the amendment's revisions could not operate retroactively to divest them of a right they had already exercised. Relying on established Louisiana precedent, they argued that procedural rules may not be applied retroactively if doing so would disturb an already vested right. The court agreed.

Thus, the court rejected the defendants' assertion, namely, that the procedural character of the statute rendered the plaintiffs' direct action susceptible to legislative extinguishment, even post-invocation. The court underscored that while a procedural right may initially exist in a state of expectancy, once lawfully exercised, it crystallizes into a vested interest immune to retroactive abridgment:

"[W]hile the procedural right to bring a direct action against an insurer is a 'mere expectancy of a future benefit' until exercised, once that procedural right has been properly invoked, the plaintiff acquires a vested right in the pending action."

Id. at 771. The court further clarified that had the plaintiffs delayed until August 1, the amendment's effective date, they would have been subject to the new statutory restrictions, and no retroactive implications would arise.

Smith v. Fortenberry, No. CV 24-1647, 2024 WL 4462332 (E.D. La. Oct. 10, 2024)

Echoing its *Baker* rational rendered ten days earlier, the Eastern District reinforced that a plaintiff's procedural right vests when the insurer is named before the amendment's effective date. In *Smith*, the court emphasized that statutory classification alone cannot dictate retroactivity; whether a right has vested matters just as much. Thus, while the amendment may operate retroactively in a formal sense, applying to causes of action arising before its effective date, its reach is limited. Where suit was not yet filed as of August 1, the procedural right to direct action had not vested, and the amended statute governs. But where, as in *Baker*, *Smith* and *Maise*, the plaintiffs exercised their right to bring a direct action before the statutory amendment took effect, the Legislature is constitutionally constrained from retroactively revoking that right.

Taylor v. Elsesser, No. CV 24-2888, 2025 WL 471807 (E.D. La. Feb. 12, 2025)

In a final federal reaffirmation, greater clarity was again offered by the Eastern District. In *Taylor*, the plaintiff was involved in a motor vehicle accident on November 11, 2023, but did not file suit until November 9, 2024, over three months after Act 275 took effect. Though the accident predated the statute, the court emphasized that the vesting of the right to pursue a direct action is not governed by the date of the accident, but by the date on which suit is filed against the insurer. "Because Act 275 was effective before Plaintiffs filed suit against [the insurer], the Act applies prospectively to the facts of this case." *Id*., 2025 WL 471807, at p.5.

The court reasoned that retroactivity in procedural law allows a statute to govern all cases filed after its effective date, unless the procedural right has already vested through timely invocation. Since the plaintiff in *Taylor* had not named the insurer until after the statute's effective date, her procedural right had not matured, and thus could be retroactively extinguished. The court sustained the exception of no right of action and dismissed the insurer from the litigation.

State Court Approaches

Rogers v. Griffin, 24-537 (La. App. 5 Cir. 12/20/24), 2024 WL 5183219

The Louisiana Fifth Circuit Court of Appeal addressed the issue matter-of-factly. The court engaged in a thorough analysis of the recent *Maise*, *Baker* and *Smith* decisions and adopted their central holding: a plaintiff's right to proceed against an insurer under the pre-amendment statute *vests* upon the timely filing of an amended petition naming the insurer as a defendant.

In *Rogers*, the plaintiff filed such an amended petition before the amendment's August 1, 2024, effective date. The court held that this action invoked a procedural right in accordance with the law then in force, thereby vesting the plaintiff with a legally cognizable right that could not be retroactively divested. The court emphasized the longstanding principle that once a procedural right is exercised in reliance on existing law, the Legislature may not revoke it by retroactive legislation. Accordingly, the 5th Circuit preserved the plaintiff's right to proceed directly against the insurer.

Hurel v. National Fire & Marine Ins. Co., 2025-C-0049 (La. App. 4 Cir. 03/11/25), 2025 WL 762645 (unpublished opinion)

In contrast, the 4th Circuit Court of Appeal applied a stricter interpretation of retroactivity. There, the plaintiff filed suit on October 1, 2024, two months *after* the Direct Action Statute was amended, seeking damages arising from a 2023 motor vehicle accident. The defendant insurer filed a peremptory exception of no right of action asserting that the plaintiff had no statutory authority to bring suit against the insurer following the amendment. Initially, the trial court denied the exception on procedural grounds, reasoning that the exception was premature since the insurer had not yet been served. However, on appeal, the 4th Circuit reversed. It clarified that the exception of no right of action is peremptory in nature and may be raised at any time before the matter is

submitted for decision.

Crucially, the court held that a plaintiff's right to a direct action against an insurer is not triggered merely by the occurrence of an accident prior to the statutory amendment. Rather, that right becomes operative *only if* the plaintiff timely invokes the remedy, specifically, by naming the insurer in a suit before the amendment eliminated the procedural mechanism for doing so.

Because Ms. Hurel did not file her lawsuit until after August 1, 2024, she failed to timely invoke the pre-amendment procedural remedy. As a result, the court held that no right of action existed against the insurer, and the exception should have been sustained.

The Path Ahead and Practice Pointers

The revisions to the Direct Action Statute will require adjustments in strategies. On reflection of cases in my court and coffee-talk with leading litigators, I would offer the following:

For plaintiff's counsel, keep the practice of serving the petition on both the insurer and the insured to memorialize insurer notice in the record. Comb your facts for any hint of the seven statutory exceptions of R.S. 22:1269, and use discovery tools early to unearth them. Since direct action against the insurer is no longer the default, plaintiff's counsel should focus on building a strong case against the tortfeasor. (Defense counsel will have to focus on building a strong defense of the tortfeasor, too.)

For defense attorneys, have the peremptory exception of no right of action ready on the draw. If a plaintiff names the insurer in a suit filed after August 1, 2024, and no statutory exception allows it, play the peremptory exception.

For all counsel, at trial be conscious of the "I" word – insurance. The revisions prohibit revealing the existence of insurance coverage unless specifically required by law. Resist the muscle memory to mention insurance in the presence of the jury unless it is necessary to resolve specific issues such as indicating bias or coverage disputes. Also, your firm's protocols must reflect the new requirements, particularly regarding timelines for notifications and response strategies, to bolster compliance. Maintaining a cooperative dialogue with opposing counsel can be helpful as the direct-action dance steps have changed for both sides of the counsel table. And, most of all, stay informed. Ongoing court decisions and legislative fine-tuning are likely to continue.

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