

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
LOUISIANA

Zenus A. Fruge v. Apollo Freight Systems Inc. and Stephen Moore

Fruge · No. 25-716 · Decided January 8, 2026

SUMMARY

The United States District Court for the Eastern District of Louisiana denied ACE Property and Casualty Insurance Company’s Rule 12(b)(6) motion to dismiss claims arising from a motor vehicle accident. The court held that the plaintiff plausibly alleged an exception to Louisiana’s amended Direct Action Statute based on unsuccessful service on an insured defendant, and that the statute did not limit the relevant exception to the named insured. The court also concluded that pre-removal service efforts remained relevant and that ACE retained statutory safeguards concerning disclosure and participation in the litigation.

CASE DETAILS

COURT	United States District Court for the Eastern District of Louisiana
JURISDICTION	United States District Court for the Eastern District of Louisiana
DECIDED	January 8, 2026
DOCKET	25-716
DISPOSITION	other
PROCEDURAL POSTURE	Defendant ACE Property and Casualty Insurance Company moved under Federal Rule of Civil Procedure 12(b)(6) to dismiss plaintiff's claims under Louisiana's amended Direct Action Statute. The court denied the motion.
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the court accepts well-pleaded factual allegations as true and views the complaint in the light most favorable to the plaintiff, but disregards labels, conclusions, and formulaic recitations of the elements. The complaint must contain sufficient factual matter to state a facially plausible claim.
PRECEDENTIAL VALUE	Unpublished federal district court order; precedential status not identified in the source.

TOPICS

- motions to dismiss
- statutory interpretation
- service of process
- insurance coverage
- civil procedure

PRACTICE AREAS

civil procedure

insurance

torts

QUESTIONS PRESENTED

1. Whether Fruge stated a plausible claim for a direct action against ACE under the amended Louisiana Direct Action Statute, La. R.S. § 22:1269.
2. Whether unsuccessful pre-removal service efforts directed at Moore remained legally relevant after removal.
3. Whether the active litigation and service of Apollo, the named insured, eliminated Fruge's statutory right to pursue a direct action based on unsuccessful service of Moore, another insured.

HOLDINGS

1. Fruge alleged sufficient facts to state a plausible direct-action claim against ACE under the service-related exception in La. R.S. § 22:1269(B)(1)(c).
2. Removal did not render Fruge's pre-removal service efforts irrelevant; the court was required to take the case as it found it and treat state-court proceedings before removal as having occurred in federal court.
3. Apollo's status as the named insured and its active litigation did not eliminate the direct-action exception applicable to Moore, because La. R.S. § 22:1269 contains no limitation providing that service or defense by one insured relieves the insurer of liability for another insured.

KEY QUOTATIONS

“This Court should take this matter as it finds it on removal treating everything that occurred in state court as if it had occurred here.” (Law and Analysis, section C)

“To assume it does would be reading beyond the plain language of the statute by expanding its scope.” (Law and Analysis, section C)

“Accordingly, Fruge has asserted sufficient facts to support a plausible claim, entitling him to pursue a direct action against ACE.” (Law and Analysis, section C)

FACTUAL BACKGROUND

Fruge alleged that on April 2, 2024, a Peterbilt tractor-trailer driven by Moore collided with his vehicle, causing him to strike a metal guardrail and cement retainer wall and sustain personal injuries and related losses. Apollo was the vehicle-related defendant and was actively litigating the case, while Moore had not been successfully served before removal. ACE acknowledged that Moore was covered under its policy through his relationship with Apollo.

PROCEDURAL HISTORY

Fruge filed a personal-injury action against Stephen Moore and Apollo Freight Systems, Inc. in Louisiana state court. Apollo removed the action to federal court based on diversity jurisdiction. After leave to amend was

granted, Fruge filed an amended complaint naming Moore, Apollo, and Westchester Fire Insurance Company; ACE appeared for the limited purpose of challenging the claims against it under Rule 12(b)(6).

DISPOSITION

other

CASES CITED

- Snow Ingredients, Inc. v. SnoWizard, Inc., 833 F.3d 512, 520 (5th Cir. 2016)
- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555, 570 (2007)
- Whitley v. Hanna, 726 F.3d 631, 638 (5th Cir. 2013)
- Tellabs, Inc. v. Makor Issues & Rights, Ltd., 551 U.S. 308, 322 (2007)
- Collins v. Morgan Stanley Dean Witter, 224 F.3d 496, 498-99 (5th Cir. 2000)
- Lormand v. US Unwired, Inc., 565 F.3d 228, 251 (5th Cir. 2009)
- Viking Construction Group, LLC v. Satterfield & Pontikes Construction Group, LLC, No. 17-12838, 2018 WL 398751, at *4 n.18 (E.D. La. Jan. 12, 2018)
- Rantz v. Shield Coat, Inc., No. 17-3338, 2017 WL 3188415, at *5 (E.D. La. July 26, 2017)
- Shady Grove Orthopedic Associates, P.A. v. Allstate Insurance Co., 559 U.S. 393 (2010)
- Hanna v. Plumer, 380 U.S. 460, 465 (1965)
- Iberiabank Corp. v. Illinois Union Insurance Co., 953 F.3d 339, 344 (5th Cir. 2020)
- Riley v. Acadian Co., 25-308, p. 3 (La. App. 5 Cir. Sept. 3, 2025)
- Landry v. Great American Insurance Co., No. 6:24-CV-00039, 2025 WL 2205155, at *2 (W.D. La. July 17, 2025)
- Johnson v. City of Gulfport, Mississippi, No. CV:1:24-cv-106-HSO-BWR, 2025 WL 818282, at *3 (S.D. Miss. Mar. 14, 2025)
- Carr v. City of Spring Valley Village, No. 19-20373, 2022 WL 1553539, at *2 (5th Cir. May 17, 2022)
- River Healthcare, Inc. v. Baylor Miraca Genetics Laboratories, LLC, No. CV 22-135-JWD-SDJ, 2023 WL 2542332, at *7 (M.D. La. Mar. 16, 2023)
- Rushe v. NMTC, Inc., No. 01-3440, 2002 WL 575706, at *3 (E.D. La. Apr. 16, 2002)
- Butner v. Neustadter, 324 F.2d 783, 785 (9th Cir. 1963)
- Rogers v. Hartford Life & Accident Insurance Co., 167 F.3d 933, 937-38 (5th Cir. 1999)