**SHREVEPORT BAR ASSOCIATION**

# RECENT DEVELOPMENTS BY THE JUDICIARY:

# LA. SUPREME COURT & SECOND CIRCUIT UPDATE

Wednesday, September 17, 2025, 11:10 am

Hon. Danny Ellender; Hal Odom Jr.[1]

## I. La. Supreme Court

A. ***Campbell v. Orient-Express Hotels of La. Inc.*****,** 24-00840 (La. 3/21/25), 403 So. 3d 573. This opinion restates the duty of an innkeeper (hotel) to take reasonable precautions to protect its guests from criminal acts of third parties. However, it criticizes the way some courts have used the five-part duty/risk analysis, laid out in *Farrell v. Circle K Stores Inc*., 22-00849 (La. 3/17/23), 359 So. 3d 467, when they meld the elements of duty and scope of duty. Opinion ultimately finds Windsor Court owed the plaintiff a duty to protect him, but the scope did not extend to the robbery and personal injuries that this particular plaintiff sustained. Opinion also shows that scope of duty may be resolved on summary judgment. (Opinion by McCallum; Crain concurred. No dissents.)

B. ***State v. Bracken*****,** 24-00375 (La. 6/27/25), 413 So. 3d 429. What can the judge do when the jury is deadlocked? The Supreme Court reversed a 50-year precedent and held that a trial judge may indeed give the jury a "dynamite" or "hammer" charge to break a potentially hung jury. Such a charge was approved by the U.S. Supreme Court over a century ago, *Allen v. United States*, 164 U.S. 492, 17 S. Ct. 154, 41 L. Ed. 528 (1896), but the La. Supremes later prohibited such a

[1] No AI (artificial intelligence) was used in the preparation of this outline.

charge because it could pressure minority jurors to conform to the majority's view, *State v. Nicholson*, 315 So. 2d 639 (La. 1975) (a 4-3 decision). Now the Supremes have abrogated *Nicholson*, approving a "modified *Allen* charge" for jurors to "consult with one another and consider each other's views." This may be a practical charge, considering the relatively new requirement (since 2019!) of unanimity for verdicts.[2]

C. ***Welch v. United Med. Healthwest-New Orleans LLC*****,** 24-00899 (La. 3/21/25), 403 So. 3d 554. This opinion addresses a COVID-era statute, the La. Health Emergency Powers Act ("LHEPA"), which says that during a state of public health emergency, no healthcare provider is civilly liable for death of, or injury to, any person "except in the event of gross negligence or willful misconduct." R.S. 29:771 (B)(2)(c)(i). The plaintiff had developed bedsores while staying at BridgePoint, a rehab center, and filed for MRP; the healthcare filed an exception of no cause, citing LHEPA and arguing the complaint raised only ordinary negligence. After district court sustained the exception, the plaintiff amended to argue LHEPA is unconstitutional; district court rejected this claim. A plurality Supreme Court affirms, finding LHEPA does not deny access to courts or due process, and it is not overbroad. (Opinion by Crain; McCallum concurred in result; Hughes, Griffin, and Knoll (ad hoc) all dissented.)

[2] The complete text of the charge is found in Pattern Jury Instructions (Criminal Cases), Fifth Circuit (2019 Ed.), § 1.53, and in 1A Fed. Jury Prac. & Instr. § 20.08 (7 ed.) (July 2025 update). The authors assume (hopefully) a pattern will be included in the next update of (the more familiar) Cheney C. Joseph Jr. & P. Raymond Lamonica, 17 La. Civ. L. Treatise § 3.10 (Thomson Reuters 2012, updated biennially).

D. ***Succession of Frabbiele*****,** 24-00091 (La. 12/13/24), 397 So. 3d 391. In this will challenge, the court interprets La. C.C. art. 1577 (1), which says the testator "shall sign his name at the end of the testament and on each other separate page." This testator executed a three-page notarial testament, signing the final page but only initialing the first two. A divided court finds this is a material deviation from statutory requirements and invalidates the will; the article's allowance for "substantially similar" language applies only to the wording of the attestation clause. (Opinion by Knoll (pro tem); Weimer and Griffin "additionally" concurred; Hughes, Crain, and McCallum dissented.)

E. ***State v. Diano*****,** 24-00888 (La. 3/21/25), 403 So. 3d 530. This case interprets a portion of the habitual offender law, R.S. 15:529.1 (C)(1), which excludes from the five-year cleansing period any period of "parole, probation, or incarceration by a person in a penal institution." This defendant's five-year period had definitely elapsed, except for 180 days he spent in jail for a misdemeanor conviction. The Supreme Court finds that "incarceration" does not include time in jail for a misdemeanor. (Opinion by Weimer; Crain and McCallum dissented.)

F. ***State v. Mangrum*****,** 23-01609 (La. 10/25/24), 395 So. 3d 765. This is a rare case in which the Supreme Court agreed that a sentence was excessive. The district court imposed a 40-year sentence for sexual battery of a minor under the age of 13, R.S. 14:43.1 (range is 25-99 years, at least 25 without benefits). A divided court finds 40 years is too much, for a 61-year-old first-felony offender. (Opinion is Per Curiam; Hughes "additionally concurs"; Weimer, Crain, and McCallum dissented.)

G. ***H&O Invs. LLC v. Parish of Jefferson*****,** 25-00086 (La. 5/20/25), 408 So. 3d 958. This terse per curiam holds that you cannot have a claim for unjust enrichment if there is a contract between the parties; it also rejects a claim of "negligent professional undertaking" if there is a contract between the parties. (Opinion is Per Curiam; Weimer "additionally concurs"; Griffin dissented.)

H. ***Hardisty v. Walker*****,** 25-00239 (La. 6/3/25), 410 So. 3d 774. On MSJ, the manufacturer's operation and maintenance manual is "undisputed evidence" warning users against a certain use of the product (here, using a chain to tow a bulldozer out of the mud); the plaintiff's expert's affidavit, citing "common knowledge" that operators would do exactly that thing, does not constitute "specific facts" showing a genuine issue for trial. Specific facts might include "reports of prior accidents." The Supremes note the difference, under La. Products Liability Act, between "normal use," "reasonably anticipated use," and "all reasonably foreseeable uses and misuses" of the product. Denial of manufacturer's MSJ is reversed. (Opinion is Per Curiam; no dissents.)

I. Abandonment: In ***Foundation Elevation & Repair LLC v. Miller*****,** 24-00810 (La. 5/9/25), 408 So. 3d 893, the Supremes hold that if the defendant (here, a third-party defendant) files an answer after the three-year abandonment period of La. C.C.P. art. 561 (A)(2), it's not a waiver of abandonment. However, the court says a defendant may take an action that "renunciates" (is this a word?) abandonment. (Opinion by Cole, with Griffin and Guidry concurring.) In ***Pinnacle Constr. Group LLC v. Devere Swepco JV LLC*****,** 24-00406 (La. 2/6/25), 400 So. 3d 878, the court holds that a defendant's motion to

continue and reset a hearing date constituted a "step in the prosecution or defense" that thwarted abandonment. The court suggests a continuance "without date" would reach a different result. (Opinion by Griffin; Hughes, Crain, McCallum, and Guidry concurred.)

## II. Second Circuit

A. Successions

1. ***Succession of Baggett*****,** 56,266 (La. App. 2 Cir. 5/21/25), 412 So. 3d 247. The court found multiple problems with this will, which was supplied by a "traveling notary": notary did not sign attestation clause, La. C.C. art. 1577 (2); and testator did not sign final page of codicil, Art. 1577 (1).[3] Will is found invalid.
2. ***Succession of Miller*****,** 56,139 (La. App. 2 Cir. 4/9/25), 409 So. 3d 486. Since forced heirship was all but abolished, in 1995, the testator does not have to state reasons for disinheriting a child. It's enough to say the child will "receive no portion of my estate." Will is found valid.
3. ***Succession of Braswell*****,** 56,133 (La. App. 2 Cir. 4/9/25), 409 So. 3d 522. Testator executed *two wills*, one to leave most of her estate to her sisters (she would show this one to the sisters), and the other to revoke the first will and then leave most of her estate to her caretaker (she intended this one to take effect). The district court found the testator lacked capacity to execute any will at all, so the estate went by intestacy. The Second Circuit affirms. Both wills are found invalid.

[3] See, also, *Succession of Frabbiele*, on page 2 of this outline.

4. ***Succession of Martin*****,** 56,115 (La. App. 2 Cir. 4/9/25), 408 So. 3d 1200. A succession representative is a fiduciary with respect to the succession and can be removed if he breaches his fiduciary duty or fails to collect, preserve, and manage the property. La. C.C.P. art. 3191 (A). He can also be removed for sitting on the estate for nine years without moving it forward; Second Circuit affirms. Succession rep is removed.
5. ***Succession of Lynch*****,** 56,052 (La. App. 2 Cir. 7/2/25) (on rehearing), __ So. 3d __. This case was about circumventing a will by using the testator's durable power of attorney to create a trust, then to transfer the testator's property (or most of it) into the trust, thereby lightening the estate. The district court approved this set of moves, as did the Second Circuit on original hearing, but a new majority on rehearing found the testator's handlers exceeded the authority granted in the POA. Trust and transfer instruments are found invalid.

B. Torts, malpractice, workers' compensation

1. ***Douglas v. Pathway Mgmt. of La. LLC*****,** 56,040 (La. App. 2 Cir. 4/9/25), 408 So. 3d 1186. Nursing home resident sustained two falls and filed tort suit against nursing home management company; company filed MSJ claiming the benefit of the La. Medical Malpractice Act ("LMMA"); issue was whether the plaintiff's claim of "administrative negligence" and "pursuit of profit" resulting in inadequate staffing fell outside LMMA and could proceed in district court. The district court found it sounded in malpractice and had to go through LMMA; Second Circuit affirmed. (This follows jurisprudence going back to about 2007.)

2. ***Dupree v. Bossier Parish Sch. Bd.*****,** 56,091 (La. App. 2 Cir. 2/26/25), 408 So. 3d 468, *writ denied*, 25-00368 (La. 6/3/25), 410 So. 3d 787. The plaintiff's daughter slipped and fell in a puddle of water on the floor of girls' bathroom at Plain Dealing Middle/High; the school board moved for summary judgment, attaching an impressive bundle of documents, including hallway video and an affidavit from a maintenance tech; district court granted summary judgment. Second Circuit affirmed, finding the water couldn't have been on the floor long enough to support the knowledge element of R.S. 9:2800 (D).
3. ***Green v. E. Carroll Parish Sch. Dist./Bd.*****,** 56,011 (La. App. 2 Cir. 12/18/24), 402 So. 3d 702, *writ denied*, 25-00153 (La. 4/15/25), 406 So. 3d 426. The plaintiff had a special-needs child in middle school in Lake Providence; one day, the school bus's wheelchair lift wasn't working, so it couldn't pick up the kid; instead of calling the Special Ed director for an alternative, the plaintiff took the kid to school herself, in her own car; when she got there, trying to lift the kid onto his wheelchair, she fell and hurt herself. She sued the school board for her injuries; the school board moved for summary judgment, which the district court granted. Second Circuit affirmed, bearing down heavily on the duty/risk analysis (*Farrell* factors), finding, in essence, a break in the chain of causation.
4. ***Galindo v. Castillo*****,** 56,202 (La. App. 2 Cir. 4/9/25), 409 So. 3d 1061. The facts are probably unique to the poultry producing/ processing industry, but principles could apply to any shared workspace. Here, the principal (Raeford Farms) contracted out a

small portion of the operation, catching and hauling chickens, to an independent contractor. The plaintiff, an employee of Raeford's, was physically attacked by an employee of the contractor; the plaintiff got workers' comp benefits from Raeford, but then sued Raeford in tort, urging his attacker was a "borrowed employee" who committed an intentional tort, taking the claim outside the exclusive remedy. The district court granted Raeford's MSJ; the Second Circuit affirmed. The opinion lays out the current law of "borrowed employee," stressing that "integral part" or "integral relation" do not bear on borrowed employee status.

5. ***City of Shreveport v. CDM Smith Inc.*****,** 56,154 (La. App. 2 Cir. 7/16/25), __ So. 3d __. An action against a professional engineer, whether for tort or breach of contract, is subject to the five-year peremptive period of La. R.S. 9:5607. Even though the engineer's conduct is alleged to be "gross negligence," it is not subject to the shorter prescriptive period of one year, under former La. C.C. art. 3492.[4] Other courts were split, but Second Circuit analogized the engineer statute to the LMMA, which applies a longer, peremptive period for med mal claims that are also torts, *Lomont v. Bennett*, 14-2483 (La. 6/30/15), 172 So. 3d 620.

C. Insurance

1. ***Troung v. Sanders*****,** 56,015 (La. App. 2 Cir. 12/18/24), 402 So. 3d 685, *writ granted*, 25-00169 (La. 4/23/25), 406 So. 3d 1157. In a case of first impression, the Second Circuit refused to enforce a "betterment" provision against a third party. The betterment

[4] Since 7/1/24, the prescriptive period for torts has been two years, under new La. C.C. art. 3493.1, but this case predated the amendment.

provision allowed the auto carrier to reduce the payout to the claimant if the repairs resulted in an enhanced value to the vehicle. The court said such a provision was valid against the policyholder, who presumably agreed to it, but against an injured third party it violated La. C.C. art. 2315 (full recovery). The court also found bad faith on part of insurer. Note: Supremes have granted a writ.

2. ***State Farm v. Chumley*****,** 56,157 (La. App. 2 Cir. 4/9/25), 409 So. 3d 502. The insureds, owners of a fish farm, initially notified the insurer that they wanted to add their son as a listed driver on their business auto policy, but then canceled that request; the son had multiple DWIs, traffic-related offenses, and no driver's license. However, his parents allowed him to drive the company truck anyway, and he rear-ended somebody. On MSJ, the district court found fraud sufficient to cancel the policy, La. R.S. 22:860 (A).
3. ***Bradford v. Great Amer. Assur. Group*****,** 55,893 (La. App. 2 Cir. 12/18/24), 400 So. 3d 1270. A corporate officer (CFO, in fact) initialed a UM rejection form; an employee later ran his truck off the road and sought UM benefits. The district court denied the insurer's MSJ on grounds that it failed to prove the CFO's authority to reject UM coverage. The Second Circuit granted a writ and reversed, finding the documents offered in support of MSJ adequately showed the CFO's status and authority. The court also found that a slight deviation from the language in LDI's UM waiver form (changing "Date" to "Eff. Date") did not negate the rejection, as it didn't affect any of the six factors for a valid rejection under *Berkley Assur. Co. v. Willis*, 21-0155 (La. 12/9/22), 355 So. 3d 591.

4. ***Safeway Ins. Co. of La. v. National Gen'l Ins. Co.*****,** 56,228 (La. App. 2 Cir. 5/21/25), 413 So. 3d 537. The insured had an auto policy that included a standard "temporary replacement vehicle" clause, La. R.S. 22:1296 (A). The covered auto, a Toyota 4Runner, had been out of service for two months, sitting in a shop somewhere (the insured didn't even know where), during which time a friend had allowed him to use a Ford F-150 truck, which he was driving when he struck a third party and injured her. The Second Circuit affirmed the city court's finding this amount of time removed the F-150 from "temporary" status, with the result that the insurer could not be considered primary.

D. Real property

1. ***Marina Homeowners Ass'n v. Cahill,*** 56,423 (La. App. 2 Cir. 8/27/25), __ So. 3d __. The Cahills bought a house in Willow Point subject to a 1982 homeowners association ("HOA") declaration of covenants restricting all property to "residential purposes"; about 18 months later they started listing the house on VRBO and Airbnb for short-term rentals, and the HOA sued to enjoin this. The Cahills countered that the declaration was no longer any good: it had a stated term of 20 years and "shall be automatically extended for successive period of ten (10) years"; they contended this meant *exactly one* 10-year extension, which would have ended in 2012. The HOA argued the declaration *meant to say* "successive periods" (plural), which would better fit the overall document and serve the rule of construction in the La. Planned Community Act, R.S. 9:1141.3 (E) ("The existence, validity, or extent of a building restriction affecting any association property shall be liberally

construed to give effect to its purpose and intent"). The district court agreed with the HOA and "fixed" the typo in the declaration. The Second Circuit affirmed, as a matter of interpretation, but also agreed (without much discussion) that renting your place on VRBO is not a residential use.

2. ***ETC Tiger Pipeline LLC v. La. Energy Gateway LLC,*** 56,073 (La. App. 2 Cir. 2/26/25), 408 So. 3d 341. The Second Circuit holds, for the fourth time, that the "exclusive servitude" in the standard-form permanent easement agreement in favor of ETC Tiger / Enable Midstream Partners is not absolutely exclusive; it does not automatically permit ETC Tiger to enjoin placing a pipeline under the exclusive servitude; if the other pipeline has a valid servitude and meets other safety guidelines, ETC Tiger must show irreparable loss, injury, or damage, La. C.C.P. art. 3601 (A).

E. Service of process

1. ***Franklin v. City of Bossier*****,** 56,192 (La. App. 2 Cir. 4/9/25), 409 So. 3d 1052. Service of an amended petition is required, under La. C.C.P. art. 1312, even if district court's prior ruling, which sustained an exception of vagueness and ordered the amendment, did not specify another service. The Second Circuit also affirmed the district court's finding of no good cause to excuse the failure to request service.

2. ***Robinson v. Morehouse Parish Sch. Bd.*****,** 56,289 (La. App. 2 Cir. 5/21/25), 413 So. 3d 516, and ***White v. Morehouse Parish Sch. Bd.*****,** 56,290 (La. App. 2 Cir. 5/21/25), 413 So. 3d 522. In these companion cases, the plaintiffs requested service on only one named defendant, the school superintendent, but not on any others;

after 90 days passed, the other defendants filed declinatory exceptions of insufficient service of process, which the district court granted. The Second Circuit affirmed, in light of the clear mandate of La. C.C.P. art. 1201 (C).

F. Action in nullity

1. ***Butler v. TOWD Point Master Funding Trust 2020-1*****,** 56,004 (La. App. 2 Cir. 1/15/25), 403 So. 3d 692. The lender sued to collect student loans; the borrowers did not answer or appear; the lender took a default judgment; the delays for new trial and appeal elapsed. The borrower then sued to nullify the default judgment; the lender raised an exception of no cause, which the district court granted. The Second Circuit affirmed. Nullity addresses only vices of form or substance, such as being rendered against a defendant "against whom a valid default judgment has not been taken," La. C.C.P. art. 2002 (A)(2); it cannot address the claim that default was taken without "any witness testimony, or affidavit testimony." That's a claim on the merits, and it must be raised by new trial or appeal.
2. ***Pentecost v. Grassi*****,** 56,113 (La. App. 2 Cir. 2/26/25), 408 So. 3d 1022. In a claim of legal malpractice, the defendants prevailed on an exception of peremption; the plaintiff appealed but the Second Circuit affirmed and the Supremes denied writs. The plaintiff then filed a new suit, to nullify the prior judgment. The defendants raised an exception of res judicata, which the district court granted. The Second Circuit affirmed, holding nullity cannot address the merits of the underlying claim.

G. Miscellaneous

1. ***Payne v. Lawrence,*** 56,416 (La. App. 2 Cir. 8/27/25), __ So. 3d ___. This is a factually intriguing case about legal representation of a PI client that went horribly wrong. The plaintiff, an attorney with a strong social media presence and persona for aggressively pursuing civil rights claims, sued the client's new attorney for defamation; the trial court designated the plaintiff a "limited-purpose public figure" in the sense of *Gertz v. Robert Welch Inc.*, 418 U.S. 323, 94 S. Ct. 2997 (1974); as such, she had to establish actual malice to win. The court found she failed to make this showing and rejected her claim. Also, it granted the defendants' claims for damages (over $50,000 total) on a special motion to strike, La. C.C.P. art. 971 (A). The Second Circuit affirmed; the unusual facts make for a riveting read.
2. ***SRP Env't LLC v. Burychka Enters. LLC*****,** 56,354 (La. App. 2 Cir. 7/16/25), __ So. 3d __. A case in which the parties (and the court) confused the concepts of *no right* and *no cause* of action. Analysis for no right is much more limited than for no cause, and Second Circuit declines to reevaluate the case under the law of no cause.
3. ***Young v. Horseshoe Ent.*****,** 55,749 (La. App. 2 Cir. 9/4/24), 399 So. 3d 768, *writ denied*, 24-01221 (La. 12/27/24), 397 So. 3d 1221, shows the analysis for no cause of action – and it's hard for a defendant to win one. The plaintiffs stated a cause of action in that the casino's cash-out kiosks did not dispense exact change but, instead, "rounded down," retaining anything under an even dollar amount.

4. ***Whatley v. Garrison*****,** 56,311 (La. App. 2 Cir. 7/16/25), __ So. 3d __. A protective order under the Protection from Family Violence Act can last no more than 18 months, La. R.S. 36:2331 (F). The court is not allowed to issue a blanket order until the youngest child turns 18 – this would have given the order a life of 11 years.
5. ***First Tower Loan LLC v. Combs*****,** 56,236 (La. App. 2 Cir. 5/21/25), 411 So. 3d 1010. When a lender sues to enforce a consumer loan, the borrower makes no appearance, and the lender takes a default, the district court has two options: (1) grant the judgment exactly as prayed for, or (2) direct that a hearing be held. La. C.C.P. art. 1702 (C). The court may not adjust the balance due, rate of contractual interest, or other details of the proposed judgment.

## III. Legislation

A. Amendment to La. C.C.P. art. 371 (B): it now provides that an attorney shall not knowingly encourage or produce false evidence, "including evidence that is artificially generated or altered by any means[.]" This seems to be addressing the spread of AI. Effective August 1, 2025.

B. Amendment to La. C.C. art. 3462: it now provides that if an action is commenced in a competent court "of improper venue, prescription is suspended for a period of seven days as to a defendant not served by process within the prescriptive period." So, if the action is filed in a court of competent jurisdiction but not of competent venue, the plaintiff gets another seven days of interruption. Effective August 1, 2025, and prospective only.

C. No amendment to La. C. Cr. P. arts. 930.4 (G) and 930.8 (E). This would have expanded postconviction relief to include claims that the

defendant was convicted by a non-unanimous jury. It's been offered every session since *Ramos v. La.*, 590 U.S. 83, 140 S. Ct. 1390, 206 L. Ed. 2d 583 (2020).