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Curing the Federal Infection: Restoring Louisiana Code of Civil Procedure Article 1915 to its Louisiana Form

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Curing the Federal Infection: Restoring Louisiana Code of Civil Procedure Article 1915 to its Louisiana Form

Haley Baker*

TABLE OF CONTENTS

Introduction	1524
I. Background of Federal Rule of Civil Procedure 54(b)	1531
A. The Context of Rule 54(b)	1531
B. The Emergence and Evolution of Rule 54(b)	1534
1. The Original Rule 54(b)	1535
2. The 1948 and 1961 Amendments to Rule 54(b): An Attempt at Clarity	1536
C. The Main Components of Rule 54(b) and the Continuing Flaws	1540
1. The Mechanics of Rule 54(b)	1540
2. Dissecting the Flaws of Rule 54(b)	1541
a. What Constitutes a Distinct Claim Under Rule 54(b)?	1542
b. No Just Reason for Delay—Or the Reason for the Delays?	1545
II. The Federal Infection of Rule 54(b) Into Louisiana’s Judicial System	1548
A. The Original Louisiana Code of Civil Procedure Article 1915	1549
1. <i>Everything on Wheels Subaru, Inc. v.</i> <i>Subaru South, Inc.</i> : the Driving Force of Louisiana’s Article 1915	1551
2. Alternative Route of Review: Supervisory Writs	1552

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B.	Evolution of Article 1915: Addition to the Article’s Exclusive List, the Federal Infection, and a Quest for Clarity	1553
C.	The Federal Infection of Louisiana’s Judicial System.....	1556
D.	The Spreading of Article 1915’s Federal Infection into the Other Louisiana Code of Civil Procedure Articles	1559
E.	Recent Attempts to Cure the Article 1915 Infection	1562
III.	Dissecting the Flaws of Article 1915	1563
A.	Uncertainty Regarding Article 1915(B)’s Application: Confusion in Applying the Article’s Objective and Subjective Components	1564
1.	The Objective Component: What is a Claim?.....	1565
2.	The Subjective Component: No Just Reason for Delay	1566
B.	No Just Reason for Delay—Or Inflicting Delays?	1568
C.	Article 1915(B) Leads to Unreasonable Situations	1571
IV.	Restoring Article 1915 to its Louisiana Form and Adding Wheels.....	1572
A.	Restoring Article 1915 to its Louisiana Form	1573
B.	Adding Wheels to the Restored Article	1574
	Conclusion.....	1575

INTRODUCTION

Is it fair, confusing, or wrong that a partial judgment may be overturned or amended at the last minute to the detriment of a litigating party? Suppose an attorney files a motion for partial summary judgment on his or her client’s behalf and the trial court grants the motion. The client is relieved to not pay the additional litigation costs regarding that particular claim. The partial summary judgment is secured; however, in light of the recent Louisiana Supreme Court case *Zapata v. Seal*, the attorney should request the partial summary judgment be finalized.¹ The attorney forgoes taking such a procedure, reasoning that the procedure is illogical: “Why would I appeal a partial summary judgment that I won?” However, after several months pass, the opposing party requests that the trial court overturn the partial summary judgment, and the trial court obliges. Now,

1. *Zapata v. Seal*, 330 So. 3d 175 (La. 2021).

the attorney is left to explain to the client that a partial summary judgment is not final, but instead it is subject to revision until it is certified by a trial judge.

The previous scenario is guided by the Louisiana Code of Civil Procedure article 1915(B), which provides that when a partial judgment is rendered, the immediate appealability is left to the discretion of the trial judge to make a determination and designation of finality.² If no such determination and designation is made, the partial judgment is subject to revision at any time prior to a final judgment of the entire lawsuit.³ From 1960 to 1997, article 1915 provided Louisiana's judicial system with a procedure to appeal partial judgments, which avoided the uncertainty and confusion that plagued its federal counterpart, Federal Rule of Civil Procedure 54(b).⁴ However, in 1997, the Louisiana legislature amended article 1915 to closely reflect Rule 54(b).⁵ This amendment exposed Louisiana's judicial system to Rule 54(b)'s ambiguous application.⁶

Although Rule 54(b) was amended several times to address its ambiguities, the amendments failed to address the fundamental problem that has "plagued the Rule since its earliest days: the difficulty in determining 'whether a particular order disposed of a separate claim for relief.'"⁷ The modern Rule 54(b) permits federal district courts to "direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay."⁸ This section of Rule 54(b) is broken down into two components.⁹ The first component requires a final judgment such that there is an "ultimate disposition of an individual claim entered in the course of a multiple claims action."¹⁰ The second component requires the exercise of the district court's discretion.¹¹ If the order completely resolves at least one claim, the district court must determine whether there "is any

2. LA. CODE CIV. PROC. art. 1915(B) (2024).

3. *Id.*

4. See generally Andrew S. Pollis, *Civil Rule 54(b): Seventy-Five and Ready for Retirement*, 65 FLA. L. REV. 711 (2013) (detailing the confusion and uncertainty that plagues Rule 54(b) leading to its misapplication).

5. See Act No. 483, 1997 La. Acts 483.

6. See generally Pollis, *supra* note 4.

7. Pollis, *supra* note 4, at 727 (quoting Note, *Appealability in the Federal Courts*, 75 HARV. L. REV. 351, 358 (1961)).

8. FED. R. CIV. P. 54(b).

9. Pollis, *supra* note 4, at 727.

10. *Curtiss-Wright Corp. v. Gen. Elec. Co.*, 446 U.S. 1, 7 (1980) (quoting *Sears, Roebuck & Co. v. Mackey*, 351 U.S. 427, 436 (1956)).

11. FED. R. CIV. P. 54(b); Pollis, *supra* note 4, at 718.

just reason for delay.”¹² If a court determines that there is “no just reason for delay,” then the partial summary judgment should become immediately appealable.¹³

The two components of Rule 54(b) are distinct from each other.¹⁴ The first component is an objective exercise to determine whether an order completely resolves one or more, but not all, of the claims in a single lawsuit.¹⁵ The second component is a subjective exercise requiring a balancing of factors to determine whether certification of an order for purposes of appeal is proper.¹⁶ For the objective component, the appellate court will make a *de novo*¹⁷ review of the district court’s determination.¹⁸ In contrast, the subjective component requires that the appellate court avoid reversal of the district court’s determination absent an abuse of discretion.¹⁹ This combination of giving no deference to the objective component but considerable deference to the subjective component is one cause of the confusion around and misapplication of Rule 54(b).²⁰

The objective component of Rule 54(b) requires a district court to resolve at least one claim in a multi-claim action.²¹ This component involves distinguishing the point at which one claim parts from another.²² The confusion over what is a *claim* is common throughout the various federal and state judicial systems.²³ However, when applying Rule 54(b), the confusion over what constitutes a claim imposes the question of

12. *Curtiss-Wright Corp.*, 446 U.S. at 8.

13. Pollis, *supra* note 4, at 728.

14. *See Curtiss-Wright Corp.*, 446 U.S. at 12; Pollis, *supra* note 4, at 728.

15. Pollis, *supra* note 4, at 728.

16. *Id.*

17. *De novo* is “a court’s nondeferential review of an administrative decision, usually through a review of the administrative record plus any additional evidence the parties present.” *De Novo Review*, BLACK’S LAW DICTIONARY (11th ed. 2019).

18. *Sears, Roebuck & Co. v. Mackey*, 351 U.S. 427, 437 (1956) (“[T]he District Court cannot, in the exercise of its discretion, treat as ‘final’ that which is not ‘final’ within the meaning of § 1291.”). *See also* *Gen. Acquisition, Inc. v. GenCorp, Inc.*, 23 F.3d 1022, 1027 (6th Cir. 1994) (“The determination that a particular order ultimately disposes of a separable claim is a question of law reviewed *de novo* . . .”).

19. *Curtiss-Wright Corp.*, 446 U.S. at 12.

20. Pollis, *supra* note 4, at 728.

21. *Id.* at 731.

22. *Id.*

23. *Torres v. Am. Emp. Ins. Co.*, 151 F. App’x 402, 408 (6th Cir. 2005) (reasoning that *claim* has various meanings, and the court must look to the context of the term’s usage to understand the intent).

whether appellate jurisdiction is proper.²⁴ The original Rule 54(b) referred to claim determination as “issues material to a particular claim and all counterclaims arising out of the transaction or occurrence which is the subject matter of the claim.”²⁵ The uncertainty over whether a district court adjudicated a distinct claim was one of the reasons for the 1948 amendment to Rule 54(b).²⁶ However, the 1948 amendment removed the guiding language for determining what are separate and distinct claims, thus frustrating the courts’ claim-differentiation analysis.²⁷

The subjective component of Rule 54(b) grants a trial judge discretion for determining whether there is “no just reason for delay.”²⁸ The phrase at first seems ambiguous; however, using Rule 54(b)’s history and application, the phrase precisely means no just reason for delay *of an entry of final judgment* for purposes of an appeal.²⁹ Rule 54(b) itself does not offer an explanation on how the federal district courts should apply this component, and the United States Supreme Court has refrained from setting guidelines.³⁰ The 1948 Advisory Committee expressed a desire to limit Rule 54(b) to the “infrequent harsh case.”³¹ However, the language of Rule 54(b) suggests a different emphasis.³² Rule 54(b) provides that the certification of a judgment is appropriate *except* when the district court finds just reason for delay.³³ This language presumes finality.³⁴ Courts have constructed various approaches to apply the subjective component of Rule 54(b); however, no approach seems to adequately apply the procedure.³⁵

24. Pollis, *supra* note 4, at 732.

25. FED. R. CIV. P. 54(b) (1938).

26. ADVISORY COMM. ON RULES FOR CIV. PROC., REPORT OF PROPOSED AMENDMENTS TO RULES OF CIVIL PROCEDURE FOR THE DISTRICT COURTS OF THE UNITED STATES 72 (1946) [hereinafter 1946 ADVISORY COMMITTEE REPORT].

27. Compare FED. R. CIV. P. 54(b) (1938), with FED. R. CIV. P. 54(b) (1948). The 1948 amendment *removed* the “arising out of the transaction or occurrence” language from Rule 54(b).

28. FED. R. CIV. P. 54(b).

29. *Id.*

30. *Curtiss-Wright Corp. v. Gen. Elec. Co.*, 446 U.S. 1, 10–11 (1980).

31. 1946 ADVISORY COMMITTEE REPORT, *supra* note 26; *In re Gentiva Sec. Litig.*, 2 F. Supp. 3d 384, 387, 390 (E.D.N.Y. 2014) (explaining that an infrequent harsh case is where there exists some danger of hardship or injustice through delay that an immediate appeal would alleviate).

32. Pollis, *supra* note 4, at 750.

33. FED. R. CIV. P. 54(b).

34. *Id.* See also Pollis, *supra* note 4, at 750.

35. Pollis, *supra* note 4, at 718.

Prior to 1997, Louisiana followed its own rule for the appeal of partial judgments.³⁶ The original Louisiana Code of Civil Procedure article 1915 set forth an exclusive list of immediately appealable partial final judgments.³⁷ Although the original article provided a rigid approach, the article “was well balanced by what it provided in terms of certainty and uniformity.”³⁸ The original article largely eliminated the problems experienced in the federal system by avoiding appeals taken out of caution due to uncertainty.³⁹ Additionally, the article provided trial judges very little discretion, which resulted in even more consistent rulings.⁴⁰ However, in 1997, Louisiana rewrote article 1915 to closely parallel Rule 54(b), and the amendment began eroding the policies of other civil procedure articles in Louisiana.⁴¹

In September 2021, the Louisiana Supreme Court held in *Zapata v. Seal* that a trial court was within its discretion when it considered an untimely opposition in its decision to revise a prior grant of partial summary judgment.⁴² Reading directly from Louisiana Code of Civil Procedure article 1915(B), the Court emphasized that a partial summary judgment which is granted but not designated as final may “be revised at any time prior to the rendition of the judgment adjudicating all the claims and the rights and liabilities of all the parties.”⁴³ The dissent in *Zapata* reasoned that

[a] motion to vacate may not be used as a “back door” means of circumventing the mandatory filing requirements of La.Code Civ.P. art. 966, such that untimely filed evidence may later be used to reverse and defeat a partial summary judgment lawfully granted to a party duly entitled thereto.⁴⁴

36. Mark Tatum & William Norris II, *Summary Judgment and Partial Judgment in Louisiana: The State We're In*, 59 LA. L. REV. 131, 153 (1998); LA. CODE CIV. PROC. art. 1915 (1960).

37. See LA. CODE CIV. PROC. art. 1915 (1960).

38. Tatum & Norris, *supra* note 36, at 153.

39. *Id.* (illustrating that the 1960 version of art. 1915 provided enumerated situations that eliminated uncertainty regarding which orders were final partial judgments for purposes of immediate appeal).

40. *Id.*

41. *Id.*

42. *Zapata v. Seal*, 330 So. 3d 175, 182 (La. 2021).

43. *Id.* (Genovese, J., dissenting).

44. *Id.* See also LA. CODE CIV. PROC. art. 966(B)(2) (2024) (“Any opposition to the motion and all documents in support of the opposition shall be filed and

Months later, the Louisiana Supreme Court in *Auricchio v. Harriston* contradictorily held that summary judgment deadlines provided for in Louisiana Code of Civil Procedure article 966 were *mandatory* and were not subject to a trial judge's discretion.⁴⁵

The Louisiana Supreme Court's decisions in *Zapata* and *Auricchio* create a conflict in applying partial summary judgment rules.⁴⁶ The *Zapata* ruling disregards mandatory deadlines to file summary judgment documents, which "thwart[s] the efficacy and core of procedure."⁴⁷ The Court provides unsound logic suggesting that for a prevailing party to ensure finality in a partial summary judgment, the trial judge must designate the judgment as final.⁴⁸ Typically, such a procedure is used only when a losing party wants to appeal an adverse decision on a motion for partial judgment.⁴⁹ Additionally, a party is exposed to several other issues arising from the use of article 1915(B) that are not illustrated in *Zapata*, such as the uncertainty and confusion that stems from Rule 54(b).⁵⁰

This Comment will establish that the Louisiana legislature should amend article 1915 to return to the article's pre-1997 application. The return to the pre-1997 article 1915 will eliminate section (B), which incorporates Rule 54(b)'s approach into Louisiana's judicial system.⁵¹ Additionally, the proposed amendment will include a provision reflecting the Louisiana Supreme Court's logic in *Everything on Wheels Subaru, Inc.*

served in accordance with Article 1313 not less than fifteen days prior to the hearing on the motion.").

45. *Auricchio v. Harriston*, 332 So. 3d 660, 664 (La. 2021); LA. CODE CIV. PROC. art. 966.

46. *Compare Zapata*, 330 So. 3d at 175, *with Auricchio*, 332 So. 3d at 660.

47. *Zapata*, 330 So. 3d at 182 (Genovese, J., dissenting) (quoting *Celestine v. Boyd Gaming Corp.*, 261 So. 3d 762, 762 (La. 2019) (Genovese, J., dissenting)).

48. *Id.*

49. LA. CODE CIV. PROC. art. 1915. *See also* *Keeslar v. McHugh*, 24 So. 3d 933, 935 (La. Ct. App. 2d Cir. 2009); *Kosak v. La. Farm Bureau Cas. Ins. Co.*, 316 So. 3d 522, 525–28 (La. Ct. App. 1st Cir. 2020); *Panichella v. Pa. R.R. Co.*, 252 F.2d 452, 455 (3d Cir. 1958) (Rule 54(b) certification "should not be entered routinely or as a courtesy or accommodation to counsel." Because art. 1915(B) is based off of the federal rule, such a rationale that the determination and designation of the partial final judgment should be used conservatively should apply to Louisiana's application of article 1915(B)).

50. *See* discussion *infra* Part I (emphasizing the improper application of the rule by collapsing its two components, thus allowing district courts to inconsistently exercise their discretion to confer appellate jurisdiction).

51. Act No. 483, 1997 La. Acts 483.

*v. Subaru South, Inc.*⁵² The *Everything on Wheels Subaru* rationale provides a solution to the fundamental problem of both article 1915(B) and its federal counterpart, Rule 54(b): “whether a particular order disposed of a separate claim for relief.”⁵³ In *Everything on Wheels Subaru*, the Court reasoned that if two or more claims for damages or theories of recovery arise out of a single transaction or occurrence, a partial judgment is inappropriate.⁵⁴ However, if an action is based on separate and distinct transactions or occurrences, a partial judgment on one of the separate and distinct causes of action may be rendered.⁵⁵ Louisiana courts repeatedly use the logic of *Everything on Wheels Subaru* since the decision, thus providing the Louisiana legislature with significant jurisprudence for implementing the restored article 1915.⁵⁶

Part I of this Comment will examine the history and flaws of Rule 54(b) and how it creates confusion when litigating parties attempt to appeal partial judgments. Part II will provide the background and history of article 1915 and discuss the current implications of the article’s federal influence. Part III will analyze the flaws of article 1915, which include the uncertainty, confusion, and delays that the current application of the procedure produces. Part III will also argue that such application of the article produces unreasonable and unnecessary results that impinge on the policies of other Louisiana Code of Civil Procedure articles. Part IV will argue that the current article 1915 should be amended to return to the pre-1997 article by removing the federal infection of subsection (B). Additionally, Part IV will propose adding the rationale of *Everything on Wheels Subaru, Inc.* to the proposed amendment of article 1915.⁵⁷

52. See generally *Everything on Wheels Subaru, Inc. v. Subaru S., Inc.*, 616 So. 2d 1234 (La. 1993).

53. Note, *Appealability in the Federal Courts*, 75 HARV. L. REV. 351, 357–63 (1961) [hereinafter *Appealability in the Federal Courts*].

54. *Everything on Wheels Subaru, Inc.*, 616 So. 2d at 1234.

55. *Id.*

56. *Douglass v. Alton Ochsner Med. Found.*, 695 So. 2d 953, 955 (La. 1997); *Resol. Tr. Corp. v. Fid. & Guar. Co.*, 27 F.3d 122, 125 (La. Ct. App. 5th Cir. 1994); *Bd. of Supervisors of La. State Univ. & Agric. & Mech. Coll. v. 2330 Palmyra St., LLC*, 80 So. 3d 1234, 1239 (La. Ct. App. 4th Cir. 2011).

57. *Everything on Wheels Subaru, Inc.*, 616 So. 2d at 1241 (stating the rationale that should be applied to the restored art. 1915: whether a claim is separate and distinct from the remaining lawsuit).

I. BACKGROUND OF FEDERAL RULE OF CIVIL PROCEDURE 54(B)

Understanding the problems with Federal Rule of Civil Procedure 54(b) requires a look into its history. The original theory of Rule 54(b) in 1938 was a response to concerns about the way the Federal Rules of Civil Procedure expanded civil litigation and potentially delayed finality.⁵⁸ Rule 54(b) was subsequently amended to address the changing perceptions regarding the need for finality and the ambiguities that cloud Rule 54(b)'s application.⁵⁹

A. *The Context of Rule 54(b)*

Prior to the enactment of the Federal Rules of Civil Procedure, an appeal could not proceed in segments.⁶⁰ The final judgment rule, codified in 28 U.S.C. § 1291, required that a judgment terminate a case “not only as to all the parties, but as to the whole subject-matter and as to all the causes of action involved.”⁶¹ The common law system prior to the Federal Rules heavily restricted multi-party and multi-claim litigation.⁶² The rules at common law permitted only single-issue pleadings, which reduced each lawsuit to a single issue of law or fact.⁶³ Thus, a case was appealable only when the district court fully adjudicated the single issue raised in the pleadings.⁶⁴

The enactment of the Federal Rules of Civil Procedure in 1938 introduced the policy of a liberal pleading regime in the United States' judicial system.⁶⁵ The new Federal Rules allowed for increased joinder of

58. Elwood Hutcheson, *The New Federal Rules of Civil Procedure [Part 1]*, 13 WASH. L. REV. & ST. B.J. 198, 203–04 (1938).

59. The 1948 amendment was promulgated on December 27, 1946, and made effective as of March 19, 1948. The 1961 amendment was promulgated on April 17, 1961, and made effective as of July 19, 1961.

60. Pollis, *supra* note 4, at 718.

61. 28 U.S.C. § 1291 (“The courts of appeals . . . shall have jurisdiction of appeals from all final decisions of the district courts of the United States”); *Sears, Roebuck & Co. v. Mackey*, 351 U.S. 427, 431 (1956) (providing commentary that prior to the Federal Rules of Civil Procedure, the presence of unresolved claims was generally regarded as leaving the appellate court without jurisdiction over an appeal).

62. Jacqueline Gerson, *The Appealability of Partial Judgments in Consolidated Cases*, 57 U. CHI. L. REV. 169, 174 (1990).

63. *Id.*

64. Pollis, *supra* note 4, at 720; *Sears, Roebuck & Co.*, 351 U.S. at 431–32.

65. Hutcheson, *supra* note 58, at 203–04.

claims and parties.⁶⁶ Plaintiffs could bring multiple claims against a single defendant in a single action, where appropriate.⁶⁷

Plaintiffs could also name multiple defendants in the same action.⁶⁸ Defendants could: assert related and unrelated counterclaims against

66. *Id.*

67. FED. R. CIV. P. 18 advisory committee's note to 1966 amendment; FED. R. CIV. P. 18:

(a) IN GENERAL. A party asserting a claim, counterclaim, crossclaim, or third-party claim may join, as independent or alternative claims, as many claims as it has against an opposing party.

(b) JOINDER OF CONTINGENT CLAIMS. A party may join two claims even though one of them is contingent on the disposition of the other; but the court may grant relief only in accordance with the parties' relative substantive rights. In particular, a plaintiff may state a claim for money and a claim to set aside a conveyance that is fraudulent as to that plaintiff, without first obtaining a judgment for the money.

68. FED. R. CIV. P. 20:

(a) PERSONS WHO MAY JOIN OR BE JOINED.

(1) *Plaintiffs*. Persons may join in one action as plaintiffs if:

(A) they assert any right to relief jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and

(B) any question of law or fact common to all plaintiffs will arise in the action.

(2) *Defendants*. Persons—as well as a vessel, cargo, or other property subject to admiralty process in rem—may be joined in one action as defendants if:

(A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and

(B) any question of law or fact common to all defendants will arise in the action.

(3) *Extent of Relief*. Neither a plaintiff nor a defendant need be interested in obtaining or defending against all the relief demanded. The court may grant judgment to one or more plaintiffs according to their rights, and against one or more defendants according to their liabilities.

(b) PROTECTIVE MEASURES. The court may issue orders—including an order for separate trials—to protect a party against embarrassment, delay, expense, or other prejudice that arises from including a person against whom the party asserts no claim and who asserts no claim against the party.

plaintiffs;⁶⁹ assert crossclaims against other defendants;⁷⁰ and bring additional parties into the lawsuit.⁷¹ The newly enacted Federal Rules were sure to enlarge the length and complexity of lawsuits.⁷²

69. FED. R. CIV. P. 13(a):

(1) *In General.* A pleading must state as a counterclaim any claim that—at the time of its service—the pleader has against an opposing party if the claim:

(A) arises out of the transaction or occurrence that is the subject matter of the opposing party’s claim; and

(B) does not require adding another party over whom the court cannot acquire jurisdiction.

(2) *Exceptions.* The pleader need not state the claim if:

(A) when the action was commenced, the claim was the subject of another pending action; or

(B) the opposing party sued on its claim by attachment or other process that did not establish personal jurisdiction over the pleader on that claim, and the pleader does not assert any counterclaim under this rule.

See also FED. R. CIV. P. 13(b) (“A pleading may state as a counterclaim against an opposing party any claim that is not compulsory.”).

70. FED. R. CIV. P. 13(g):

A pleading may state as a crossclaim any claim by one party against a coparty if the claim arises out of the transaction or occurrence that is the subject matter of the original action or of a counterclaim, or if the claim relates to any property that is the subject matter of the original action. The crossclaim may include a claim that the coparty is or may be liable to the crossclaimant for all or part of a claim asserted in the action against the crossclaimant.

71. FED. R. CIV. P. 14:

(a) *When a Defending Party May Bring in a Third Party.*

(1) *Timing of the Summons and Complaint.* A defending party may, as third-party plaintiff, serve a summons and complaint on a nonparty who is or may be liable to it for all or part of the claim against it. But the third-party plaintiff must, by motion, obtain the court’s leave if it files the third-party complaint more than 14 days after serving its original answer.

(2) *Third-Party Defendant’s Claims and Defenses.* The person served with the summons and third-party complaint—the “third-party defendant”:

(A) must assert any defense against the third-party plaintiff’s claim under Rule 12;

(B) must assert any counterclaim against the third-party plaintiff under Rule 13a, and may assert any counterclaim against the third-party plaintiff under Rule 13(b) or any crossclaim against another third-party defendant under Rule 13(g);

(C) may assert against the plaintiff any defense that the third-party plaintiff has to the plaintiff’s claim; and

The anticipated increase in a lawsuit's length and complexity prompted fears of drawn-out litigation and unachievable finality for litigating parties.⁷³ The drafters worried that some claims within an action would become ripe for review by an appellate court before the resolution of the entire lawsuit.⁷⁴ Many feared that to deny immediate appeal from a partial judgment of an identifiable and separate portion of a highly complex action would result in injustice.⁷⁵

B. The Emergence and Evolution of Rule 54(b)

To combat the fears of unachievable finality, hardship, and denial of justice, the drafters created Federal Rule of Civil Procedure 54(b)

(D) may also assert against the plaintiff any claim arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff.

(3) *Plaintiff's Claims Against a Third-Party Defendant.* The plaintiff may assert against the third-party defendant any claim arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The third-party defendant must then assert any defense under Rule 12 and any counterclaim under Rule 13(a), and may assert any counterclaim under Rule 13(b) or any crossclaim under Rule 13(g).

(4) *Motion to Strike, Sever, or Try Separately.* Any party may move to strike the third-party claim, to sever it, or to try it separately.

(5) *Third-Party Defendant's Claim Against a Nonparty.* A third-party defendant may proceed under this rule against a nonparty who is or may be liable to the third-party defendant for all or part of any claim against it.

(6) *Third-Party Complaint In Rem.* If it is within the admiralty or maritime jurisdiction, a third-party complaint may be in rem. In that event, a reference in this rule to the "summons" includes the warrant of arrest, and a reference to the defendant or third-party plaintiff includes, when appropriate, a person who asserts a right under Supplemental Rule C(6)(a)(i) in the property arrested.

(b) *When a Plaintiff May Bring in a Third Party.* When a claim is asserted against a plaintiff, the plaintiff may bring in a third party if this rule would allow a defendant to do so.

72. Pollis, *supra* note 4, at 720. *See also* Ind. Harbor Belt R.R. Co. v. Am. Cyanamid Co., 860 F.2d 1441, 1443 (7th Cir. 1988) ("drafters recognized that the liberal joinder rules . . . would lead to more complex lawsuits").

73. Pollis, *supra* note 4, at 720–21.

74. *Id.* at 721. *See also* Gerson, *supra* note 62, at 174.

75. 10 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE: CIVIL § 2653 (4th ed. 1983) [hereinafter Wright & Miller].

(Rule 54(b)).⁷⁶ Rule 54(b) was enacted in 1938 with the Federal Rules of Civil Procedure.⁷⁷ As the United States judicial system adapted to more complex civil actions, the earlier fears of delayed finality were no longer a pressing concern.⁷⁸ Subsequent amendments aligned Rule 54(b) with changing attitudes and attempted to provide clarity in the rule's application.⁷⁹

1. The Original Rule 54(b)

Rule 54(b) was created in response to the expansion of the civil action occasioned by the enactment of the Federal Rules of Civil Procedure.⁸⁰ The initial purpose of Rule 54(b) was to divide these newer, larger lawsuits into the more familiar single unit.⁸¹ If the court adjudicated the material issues to a distinct claim and all related counterclaims, the court could enter a judgment disposing of the distinct claim.⁸² This would essentially terminate the action with respect to the disposed claim.⁸³

The original Rule 54(b) allowed the courts to treat segments of these newer, larger lawsuits as smaller subunits by expressly empowering the district court to “stay enforcement of these partial judgments and to take steps to secure their benefits.”⁸⁴ Parties were no longer required to wait for a final judgment of an entire case before they could appeal claims that may

76. FED. R. CIV. P. 54(b) (1938). The entirety of the original rule provided: JUDGMENT AT VARIOUS STAGES. When more than one claim for relief is presented in an action, the court at any stage, upon a determination of the issues material to a particular claim and all counterclaims arising out of the transaction or occurrence which is the subject matter of the claim, may enter a judgment disposing of such claims. The judgment shall terminate the action with respect to the claim so disposed of and the action shall proceed as to the remaining claims. In case a separate judgment is so entered, the court by order may stay its enforcement until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party whose favor the judgment is entered.

77. Wright & Miller, *supra* note 75.

78. Pollis, *supra* note 4, at 721.

79. *Id.* at 721–22.

80. *Id.* at 721.

81. Gerson, *supra* note 62, at 174–76.

82. FED. R. CIV. P. 54(b) (1938).

83. *Id.*

84. Gerson, *supra* note 62, at 174–76; Pollis, *supra* note 4, at 721.

have been partially decided.⁸⁵ Rule 54(b)'s application permitted appellate courts to apply the familiar "standard of finality" even under the newly expanded civil-litigation system.⁸⁶

The original Rule 54(b) balanced two policies: (1) avoiding the danger of hardship or injustice of delay by allowing immediate appeals; and (2) avoiding piecemeal appeals.⁸⁷ However, the balance was skewed.⁸⁸ The original Rule 54(b) erred on the side of immediate appeal when a district court fully adjudicated a distinct and separate claim in a multi-claim action.⁸⁹ This fear-based reasoning led to several problems with the application of the original Rule 54(b).⁹⁰

2. The 1948 and 1961 Amendments to Rule 54(b): An Attempt at Clarity

The judicial system swiftly grew accustomed to the more complex civil causes of action.⁹¹ Now that the large civil lawsuits were reasonably managed, the original concerns of delayed finality and the danger of hardship were alleviated.⁹² Thus, the strength of the original Rule 54(b) was no longer necessary.⁹³

Although the original concerns were alleviated, Rule 54(b)'s procedure still created complications.⁹⁴ Many people were confused on the proper application of the rule.⁹⁵ Rule 54(b)'s broad grant of discretion to federal district court judges created inconsistent determinations of partial final judgments for purposes of an immediate appeal.⁹⁶ Additionally,

85. See generally *Curtiss-Wright Corp. v. Gen. Elec. Co.*, 446 U.S. 1, 7 (1980) (illustrating that where a partial judgment was rendered on the undisputed balance that was due, the Court suggested that if there were delays in the finality of the partial judgment and thus receiving the benefit of that judgment, the losing party could unjustly face precarious financial troubles which would impair the winning party's ability to collect on the judgment).

86. 28 U.S.C. § 1291; *Pollis*, *supra* note 4, at 721; *Sears, Roebuck & Co. v. Mackey*, 351 U.S. 427, 432 (1956).

87. *Pollis*, *supra* note 4, at 722.

88. *Id.*

89. *Id.*

90. *Id.*

91. Scott Dodson, *Comparative Convergences in Pleading Standards*, 158 U. PA. L. REV. 441, 450 (2010).

92. *Id.*

93. *Id.* See also *Pollis*, *supra* note 4, at 722.

94. *Pollis*, *supra* note 4, at 722.

95. *Id.*

96. *Id.* See also FED. R. CIV. P. 54(b) (1938).

federal district courts were not always clear when a partial judgment met the definition of Rule 54(b).⁹⁷

Litigating parties were confused on when an entered judgment was final such that the “determination of the issues material to a particular claim and all counterclaims arising out of the transaction or occurrence which [was] the subject matter of the claims.”⁹⁸ Litigants did not know their appeal rights because district courts issued partial judgments without discussing finality.⁹⁹ A party’s right to review could be forfeited if he or she mistakenly considered the partial judgment as not final and waited for the entire litigation to end before appealing.¹⁰⁰ To avoid this, parties began appealing whenever the finality of a partial judgment was unclear.¹⁰¹ Thus, Rule 54(b)’s policy of preventing piecemeal appeals was thrown to the wayside.¹⁰² The new approach of “when in doubt, appeal” increased the number of piecemeal appeals as litigating parties initiated an appeal while a trial remained on other claims that were similar or identical to those claims in the partial judgment.¹⁰³

Rule 54(b) was amended in 1948 to remove the ambiguity regarding partial judgment finality.¹⁰⁴ The amended Rule 54(b) provided that a district court “may direct the entry of a final judgment upon one or more but less than all of the claims only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment.”¹⁰⁵ The trial judge’s finality designation served as an

97. Pollis, *supra* note 4, at 722.

98. FED. R. CIV. P. 54(b) (1938).

99. Gerson, *supra* note 62, at 174–75.

100. Pollis, *supra* note 4, at 723. Failing to properly label a partial judgment as final could lead a party to not appeal in a timely manner. *Id.* Thus, a party would wait until the entire litigation was adjudicated to appeal and find that the time to appeal the partial judgment passed. *Id.*

101. *Id.* See *Appealability in the Federal Courts*, *supra* note 53, at 357–63.

102. Pollis, *supra* note 4, at 723.

103. *Id.* See also 1946 ADVISORY COMMITTEE REPORT, *supra* note 26.

104. *Appealability in the Federal Courts*, *supra* note 53, at 358.

105. FED. R. CIV. P. 54(b) (1948). The full text of the amended rule provided:

JUDGMENT UPON MULTIPLE CLAIMS. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, the court may direct the entry of a final judgment upon one or more but less than all of the claims only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such a determination and direction, any order or other form of decision, however designated, which adjudicates less than all the claims shall not terminate the action as to any of the claims, and the order or other form

“unambiguous signal” that the partial judgment was ready for appeal.¹⁰⁶ When the district court did not give such a signal, litigating parties knew that the partial judgment was not final and therefore not appealable.¹⁰⁷

Additionally, the 1948 amendment emphasized two other important changes.¹⁰⁸ First, the addition of the “no just reason for delay” requirement reflected a change in the perception of the urgency of an appeal.¹⁰⁹ The rule drafters were no longer worried that the expanded civil suits would create “hardship and denial of justice through delay” in *all* cases involving multiple claims and parties.¹¹⁰ Instead, the amended Rule 54(b) granted district courts discretion to determine which adjudicated claims should qualify as partial final judgments.¹¹¹ The 1946 Advisory Committee Report advised district courts to use their discretion and to grant finality only in the “infrequent harsh case.”¹¹² The 1948 amendment illustrated that the original view, that every large and complex lawsuit would cause hardship and injustice, was now inappropriate.¹¹³ Instead, the opposite was now true: litigants could only appeal a partial judgment if they demonstrate that they would experience unusual hardships.¹¹⁴

The second important change involved the allocation of judicial power to decide and confer appellate jurisdiction.¹¹⁵ The district courts now held the power to confer appellate jurisdiction on the appellate courts through a determination of finality.¹¹⁶ The original Rule 54(b) allowed a categorical determination that adjudications of some, but not all, distinct claims in multi-claim suits were always appealable.¹¹⁷ The 1948

of decision is subject to revision at any time before the entry of judgment adjudicating all the claims.

See 1946 ADVISORY COMMITTEE REPORT, *supra* note 26.

106. Pollis, *supra* note 4, at 724; Local P-171, *Amalgamated Meat Cutters & Butcher Workmen v. Thompson Farms Co.*, 642 F.2d 1065, 1072 (7th Cir. 1981) (Judge Wisdom’s observations of Rule 54(b) (1948)).

107. Pollis, *supra* note 4, at 724.

108. *Id.*

109. *Id.*

110. *Id.* at 724–25.

111. *Id.* at 724; *Curtiss-Wright Corp. v. Gen. Elec. Co.*, 446 U.S. 1, 7 (1980) (quoting *Sears, Roebuck & Co. v. Mackey*, 351 U.S. 427, 435 (1956)).

112. 1946 ADVISORY COMMITTEE REPORT, *supra* note 26, at 69–72 (advising district courts to use their discretionary power sparingly and only in the infrequent harsh case).

113. Pollis, *supra* note 4, at 725.

114. *Id.*

115. *Id.*

116. *Id.*

117. *Id.*

amendment granted “district-court judges the power to make that determination on a case-by-case basis.”¹¹⁸ Consequently, the 1948 amendment required the appellate court to assume jurisdiction only when a partial judgment was designated as final pursuant to Rule 54(b).¹¹⁹ There are no other avenues of discretionary appellate jurisdiction that *remove* the appellate court from determining when its jurisdiction to review is exercised.¹²⁰ Due to such a novel procedure, there is some concern that appellate courts have tried to interpret Rule 54(b) in ways that allow them to second guess the district courts’ determinations of finality.¹²¹

Several years after the 1948 amendment, courts began to hold that Rule 54(b) applied to multi-party litigations.¹²² The language of Rule 54(b) at the time did not clearly provide for such an application.¹²³ Therefore, in 1961, Rule 54(b) was amended to clarify whether it applied to plaintiffs asserting an individual claim against multiple defendants.¹²⁴ The 1961

118. *Id.*

119. *Id.* See also 28 U.S.C. § 1291 (circuit courts “shall have jurisdiction” over final orders).

120. Other sources of discretionary appellate jurisdiction include: FED. R. CIV. P. 23(f) (providing for discretionary appeals from orders granting or denying class certification); 28 U.S.C. § 1292(a)(1) (creating mandatory appellate jurisdiction over orders relating to injunctions); 28 U.S.C. § 1292(b) (establishing a mechanism for district courts to certify certain orders relating to dispositive issues of law for discretionary appeal); 28 U.S.C. § 1453(c) (permitting discretionary appeals of orders granting or denying remand of class actions removed from state to federal court). However, in the listed circumstances above, the district court exercises discretion in determining whether to grant the requested relief, not whether to permit an immediate appeal. See also Pollis, *supra* note 4, at 725.

121. Pollis, *supra* note 4, at 726; *S. Parkway Corp. v. Lakewood Park Corp.*, 273 F.2d 107, 108 (D.C. Cir. 1959); *New Mexico v. Trujillo*, 813 F.3d 1308, 1317–21 (10th Cir. 2016) (a district court’s certification of an order as a final appealable judgment did not clearly articulate “finality” or “no just reason for delay” and therefore fell short of proper certification); *Stockman’s Water Co., LLC v. Vaca Partners, L.P.*, 425 F.3d 1263 (10th Cir. 2005) (a district court’s certification order under Rule 54(b) failed to provide the appellate court with appellate jurisdiction when the order offered no analysis of the factors relevant for certification, failed to abide by the rule’s requirement that a final judgment be entered only by an express determination that there is no just reason for delay, and instead merely incorporated by reference appellant’s arguments and conclusions).

122. Pollis, *supra* note 4, at 726; Benjamin Kaplan, *Amendments of the Federal Rules of Civil Procedure, 1961–63 (I)*, 77 HARV. L. REV. 601, 614 (1964).

123. FED. R. CIV. P. 54(b) (1948).

124. ADVISORY COMM. ON RULES FOR CIV. PROC., REPORT OF PROPOSED AMENDMENTS TO THE RULES OF CIVIL PROCEDURE FOR THE DISTRICT COURTS OF THE UNITED STATES 55 (1955).

amendment clarified that Rule 54(b) applies to “one or more but fewer than all of the claims *or parties*.”¹²⁵ Rule 54(b) continued to grant the district court discretion in its determination of finality and the power to confer appellate jurisdiction on the appellate courts.¹²⁶

C. The Main Components of Rule 54(b) and the Continuing Flaws

Although Rule 54(b) was amended several times, the amendments failed to address the fundamental problem that has “plagued the Rule since its earliest days: the difficulty in determining ‘whether a particular order disposed of a separate claim for relief.’”¹²⁷ Despite the uncertainty regarding how to apply Rule 54(b) properly, the United States Supreme Court has never adequately addressed the problem.¹²⁸ In the handful of Rule 54(b) cases, the Supreme Court has heightened the confusion surrounding Rule 54(b) and the application of its dual components.¹²⁹

1. The Mechanics of Rule 54(b)

The modern Rule 54(b) permits district courts to “direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay.”¹³⁰ This section of Rule 54(b) can be broken down into two components.¹³¹ First, there must be a *judgment*, that is “a decision upon a cognizable claim for relief,” and the judgment must be final such that there is an “ultimate disposition of an individual claim entered in the course of a multiple claims action.”¹³² The second component requires the exercise of the district court’s discretion.¹³³ If the judgment completely resolves at least one claim, the district court must determine whether there “is any just reason for delay.”¹³⁴ The “no just reason for delay” is the basis for

125. FED. R. CIV. P. 54(b) (1961) (emphasis added).

126. See Pollis, *supra* note 4, at 726.

127. *Id.* at 727 (quoting *Appealability in the Federal Courts*, *supra* note 53, at 358).

128. *Id.* at 716.

129. *Id.* See also *Cold Metal Process Co. v. United Eng’g & Foundry Co.*, 351 U.S. 445, 452 (1956). See generally *Sears, Roebuck & Co. v. Mackey*, 351 U.S. 427 (1956); *Curtiss-Wright Corp. v. Gen. Elec. Co.*, 446 U.S. 1, 8 (1980).

130. FED. R. CIV. P. 54(b).

131. Pollis, *supra* note 4, at 727.

132. *Curtiss-Wright Corp.*, 446 U.S. at 7 (quoting *Sears, Roebuck & Co.*, 351 U.S. at 436).

133. Pollis, *supra* note 4, at 727.

134. *Curtiss-Wright Corp.*, 446 U.S. at 8.

distinguishing between judgments that should be immediately appealable and those that should not be.¹³⁵ Although the two components operate alongside each other, there is a distinct difference between them.¹³⁶

The first component's requirement of a final judgment is an *objective* exercise to determine whether an order completely resolves at least one claim.¹³⁷ However, the second component is a *subjective* exercise requiring a balancing of factors to determine whether certification of an order for purposes of appeal is proper.¹³⁸ For the first component, or the objective component, the appellate court will review *de novo* the district court's objective determination.¹³⁹ In contrast, the second component's subjective nature gives the district court considerable deference in determining whether there is no just reason for delay, and an appellate court should avoid reversal absent an abuse of discretion.¹⁴⁰ This mingling of no deference to the objective component and considerable deference to the subjective component is one of the causes of confusion and misapplication of Rule 54(b).¹⁴¹

2. *Dissecting the Flaws of Rule 54(b)*

Rule 54(b) is plagued with confusion regarding the proper application of the rule.¹⁴² Many courts and scholars apply Rule 54(b)'s dual standards inaccurately.¹⁴³ Additionally, the proper certification of finality creates mandatory appellate jurisdiction, while an improper certification will result in a dismissal of the appeal.¹⁴⁴ Parties continue to appeal when there is uncertainty as to the correctness of the certification, something that the

135. Pollis, *supra* note 4, at 728.

136. *Id.* See also *Curtiss-Wright Corp.*, 446 U.S. at 12.

137. Pollis, *supra* note 4, at 728.

138. *Id.*

139. *Sears, Roebuck & Co. v. Mackey*, 351 U.S. 427, 437 (1956) (“The District Court cannot, in the exercise of its discretion, treat as ‘final’ that which is not ‘final’ within the meaning of § 1291.”); *Gen. Acquisition, Inc. v. GenCorp, Inc.*, 23 F.3d 1022, 1027 (6th Cir. 1994) (“The determination that a particular order ultimately disposes of a separable claim is a question of law reviewed *de novo* . . .”).

140. *Curtiss-Wright Corp.*, 446 U.S. at 12.

141. Pollis, *supra* note 4, at 728.

142. Craig E. Stewart, *Multiple Claims Under Rule 54(b): A Time for Reexamination?*, 1985 BYU L. REV. 327, 341–46 (1985).

143. *NAACP v. Am. Family Mut. Ins. Co.*, 978 F.2d 287, 292 (7th Cir. 1992) (determining that the severability of claims falls within the “zone of shadings traditionally committed to a district judge’s discretion”).

144. *Liberty Mut. Ins. Co. v. Wetzel*, 424 U.S. 737, 745–46 (1976).

prior amendments were supposed to address.¹⁴⁵ The root of the confusion stems from the improper application of Rule 54(b)'s two components: (1) what constitutes a distinct claim under Rule 54(b) and (2) whether there is no just reason for delay.¹⁴⁶

a. What Constitutes a Distinct Claim Under Rule 54(b)?

The objective component of Rule 54(b) requires a district court to resolve at least one claim but not all claims in a multi-claim action.¹⁴⁷ This component involves highlighting the point at which one claim parts from another.¹⁴⁸ The approach can be easily applied when a single lawsuit has two or more undeniably distinct claims.¹⁴⁹ For example, if a plaintiff sues the same defendant for negligence resulting from an accident and for breach of a contract, each claim is indisputably the subject of a separate adjudication pursuant to Rule 54(b).¹⁵⁰ Such cases fit within the familiar definition of *claim* that is used in the res judicata context.¹⁵¹ However, not all cases allow for such an easy determination.¹⁵² Some plaintiffs may allege several different and unrelated breaches of one contract or may assert common law claims along with overlapping statutory claims.¹⁵³

The difficulty of determining what is a *claim* imposes the question of whether jurisdiction is proper in every case where a party requests a certification of finality.¹⁵⁴ The original Rule 54(b) referred to claim determination as “issues material to a particular claim and all counterclaims arising out of the transaction or occurrence which is the subject matter of the claim.”¹⁵⁵ Although the original Rule 54(b) provided guiding language regarding what was a *distinct claim* for purposes of

145. Gerson, *supra* note 62, at 175.

146. Pollis, *supra* note 4, at 730–31.

147. *Id.* at 731.

148. *Id.*

149. *Id.*

150. *Id.*

151. *Id.* See also *Res Judicata*, BLACK'S LAW DICTIONARY (11th ed. 2019) (“An issue that has been definitively settled by judicial decision; An affirmative defense barring the same parties from litigating a second lawsuit on the same claim, or any other claim arising from the same transaction or series of transactions and that could have been—but was not—raised in the first suit.”).

152. Pollis, *supra* note 4, at 731; *Torres v. Am. Emps. Ins. Co.*, 151 F. App'x 402, 408 (6th Cir. 2005) (reasoning that “claim” has various meanings, and the court must look to the context of the term's usage to understand the intent).

153. Pollis, *supra* note 4, at 731–32.

154. *Id.* at 732.

155. FED. R. CIV. P. 54(b) (1938).

Rule 54(b), the courts' inconsistent application of Rule 54(b) confused litigating parties as to what are *distinct claims*.¹⁵⁶ Such inconsistency and uncertainty were the reasons for the 1948 amendment.¹⁵⁷ However, the 1948 amendment removed the language that provided guidance on the claim-differentiation question.¹⁵⁸ This elimination made it even more difficult to distinguish between claims or determine if a single action contained multiple claims.¹⁵⁹

To close the gap left by the 1948 amendment's removal of claim-differentiation language, the United States Supreme Court decided both *Sears, Roebuck & Co. v. Mackey* and *Cold Metal Process Co. v. United Engineering & Foundry Co.* in 1956.¹⁶⁰ In *Sears*, the Supreme Court held that a district court correctly certified an order under Rule 54(b) in a business dispute when the court resolved two of the four pleaded complaints.¹⁶¹ The Supreme Court failed to provide reasoning regarding how the complaints were separate claims and only expressed there was "no doubt that each of the claims dismissed is a 'claim for relief' within the meaning of Rule 54(b)."¹⁶² In the same year, the United States Supreme Court in *Cold Metal Process* held that a claim could be designated as a partial final judgment pursuant to Rule 54(b) even though the adjudicated claims arise out of the same transaction or occurrence as pending claims in the same lawsuit.¹⁶³

The *Sears* and *Cold Metal Process* holdings are a stark departure from the Supreme Court's original interpretation of Rule 54(b), which maintained that differing transactions or occurrences formed the basis of separate units of judicial action.¹⁶⁴ Under the original Rule 54(b), a partial judgment was final only if it determined a particular claim along with the counterclaims that arose from the same transaction or occurrence as that

156. 1946 ADVISORY COMMITTEE REPORT, *supra* note 26.

157. *Id.*

158. *Id.*

159. Pollis, *supra* note 4, at 733; compare FED. R. CIV. P. 54(b) (1938), with FED. R. CIV. P. 54(b) (1948) (the 1948 amendment removed the "arising out of the transaction or occurrence" language from Rule 54(b)).

160. See generally *Sears, Roebuck & Co. v. Mackey*, 351 U.S. 427 (1956); *Cold Metal Process Co. v. United Eng'g & Foundry Co.*, 351 U.S. 445 (1956).

161. *Sears, Roebuck & Co.*, 351 U.S. at 427.

162. *Id.* at 436 (quoting FED. R. CIV. P. 54(b) (1948)).

163. *Cold Metal Process Co.*, 351 U.S. at 452 (emphasizing that the 1938 rule treated counterclaims, whether compulsory or permissive, differently than other multiple claims. The 1948 version of Rule 54(b) treated counterclaims like other multiple claims).

164. *Reeves v. Beardall*, 316 U.S. 283, 285 (1942) (Clark, J., concurring).

claim.¹⁶⁵ The subsequent amendments that excised the guiding language of claim-differentiation did not intend to significantly change what constituted a separate and distinct claim for purposes of a Rule 54(b) certification.¹⁶⁶ However, *Sears* and *Cold Metal Process* suggest that claims over the same basic dispute are severable for Rule 54(b) purposes.¹⁶⁷

The United States Supreme Court continues to uphold the claim-differentiation interpretation from *Sears* and *Cold Metal Process*; however, the Supreme Court has never created a test for such an interpretation.¹⁶⁸ Further, the Supreme Court missed the opportunity to create such a test when it decided *Curtiss-Wright Corp. v. General Electric Co.*¹⁶⁹ In *Curtiss-Wright*, the Supreme Court held that severability of resolved claims and pending counterclaims “turns on their interrelationship.”¹⁷⁰ This was not a backtrack of the *Sears* and *Cold Metal Process* holdings.¹⁷¹ The Supreme Court retained the interpretation that counterclaims, whether compulsory or permissive, pose no unique problems for Rule 54(b) determinations.¹⁷² *Curtiss-Wright* focused on the subjective component of Rule 54(b) dealing with the discretionary determination that there is no just reason for delay.¹⁷³ Under Rule 54(b)’s subjective component, the Supreme Court held that the district court properly “consider[ed] such factors as whether the claims under review were separable from the other claims remaining to be adjudicated.”¹⁷⁴ However, the separability analysis should have already taken place with the objective determination of whether the adjudicated claim constitutes a separate claim.¹⁷⁵ The *Curtiss-Wright* decision has led many district courts

165. Pollis, *supra* note 4, at 734.

166. 1946 ADVISORY COMMITTEE REPORT, *supra* note 26.

167. *Cold Metal Process Co.*, 351 U.S. at 452–53; *Sears, Roebuck & Co.*, 351 U.S. at 427. This is a major concern because compulsory counterclaims “arise out of the transaction or occurrence that is the subject matter” of the original cause of action. FED. R. CIV. P. 13(a)(1)(A). Allowing a compulsory counterclaim to become a final partial judgment for purposes of an appeal would allow piecemeal litigation of a single cause of action. *See* FED. R. CIV. P. 13; Pollis, *supra* note 4, at 732–38.

168. Pollis, *supra* note 4, at 735–36.

169. *See generally* *Curtiss-Wright Corp. v. Gen. Elec. Co.*, 446 U.S. 1 (1980).

170. *Id.* at 9.

171. *See Sears, Roebuck & Co.*, 351 U.S. at 436; *Cold Metal Process Co.*, 351 U.S. at 445.

172. *Curtiss-Wright Corp.*, 446 U.S. at 9.

173. *Id.*

174. *Id.* at 1.

175. Pollis, *supra* note 4, at 736.

to erroneously exercise discretion in both the objective and subjective components of Rule 54(b).¹⁷⁶

Courts have not settled on a single test for determining when claims are “separate” for purposes of Rule 54(b).¹⁷⁷ Courts find the claim-differentiation analysis obscure and complain that judges rarely articulate a basis for their decisions in this area.¹⁷⁸ Other courts cite *Sears* for the idea that claim-differentiation does not mandate a rigid approach.¹⁷⁹ While the 1948 amendment to Rule 54(b) was intended to provide a clear course, courts instead have forged their own paths due to ambiguous applications of Rule 54(b).¹⁸⁰ Courts either invoke claim preclusion rules, look to the possibility of separate recoveries, or concentrate on the underlying facts.¹⁸¹ No method has emerged as a sufficiently workable test for purposes of clarity and uniformity.¹⁸²

b. No Just Reason for Delay—Or the Reason for the Delays?

The subjective component of Rule 54(b) grants a trial judge discretion for determining whether there is no just reason for delay.¹⁸³ The phrase at a glance seems ambiguous; however, using Rule 54(b)’s history and application, the phrase clearly means that there is no just reason for delay of an entry of final judgment for purposes of appeal.¹⁸⁴ Rule 54(b) itself does not offer an explanation about how the district courts are expected to apply this component, and the United States Supreme Court has refrained

176. *Id.* (the first component of Rule 54(b) determining whether there is a distinct and separable claim is an objective test and does not involve the district judge’s discretion); *Sears, Roebuck & Co.*, 351 U.S. at 441.

177. *Local P-171, Amalgamated Meat Cutters & Butcher Workmen v. Thompson Farms Co.*, 642 F.2d 1065, 1070 (7th Cir. 1981); *Allegheny Cnty. Sanitary Auth. v. EPA*, 732 F.2d 1167, 1172 (3d Cir. 1984).

178. *In re Se. Banking Corp.*, 69 F.3d 1539, 1547 (11th Cir. 1995).

179. *Gas-A-Car, Inc. v. Am. Petrofina, Inc.*, 484 F.2d 1102, 1104 (10th Cir. 1973).

180. *Pollis*, *supra* note 4, at 738; *Eldredge v. Martin Marietta Corp.*, 207 F.3d 737, 741 (5th Cir. 2000) (stating that there are various methods throughout the circuits to determine what is a *separate claim for relief* for purposes of Rule 54(b)).

181. *Pollis*, *supra* note 4, at 738; *Tubos de Acero de Mexico, S.A. v. Am. Int’l Investing Corp.*, 292 F.3d 471, 485 (5th Cir. 2002).

182. *Eldredge*, 207 F.3d at 741 (recognizing that there is no generally accepted test for determining what constitutes a separate claim); *Pollis*, *supra* note 4, at 738–49 (detailing each test that courts have applied and their shortcomings).

183. FED. R. CIV. P. 54(b).

184. *Id.*

from setting guidelines.¹⁸⁵ The 1948 Advisory Committee expressed a desire to limit Rule 54(b) to the “infrequent harsh case.”¹⁸⁶ However, the language of Rule 54(b) suggests a broader approach.¹⁸⁷

Rule 54(b) provides that a certification is appropriate *except* when the district court finds “just reason for delay.”¹⁸⁸ This language suggests a presumption of finality, which fails to reflect the Advisory Committee’s intent to limit Rule 54(b) certifications to the infrequent harsh case.¹⁸⁹ Additionally, in *Curtiss-Wright*, the United States Supreme Court rejected the infrequently harsh case approach.¹⁹⁰ The Court explained that the “phrase ‘infrequent harsh case’ in isolation is neither workable nor entirely reliable as a benchmark for appellate review.”¹⁹¹ Although the Court rejected the infrequent harsh case standard, some appellate courts continue to use it for evaluating Rule 54(b) certifications.¹⁹² Other courts continue to accept Rule 54(b) appeals with limited analysis and repeat the desire to avoid the possibility of injustice of a delay by frequently granting immediate appeals.¹⁹³ Rule 54(b) uniquely limits an appellate court’s power to prevent an appeal from proceeding if the claim passes the claim-differentiation test.¹⁹⁴ The determination to permit appellate jurisdiction is largely within the district court’s discretion.¹⁹⁵ Despite the differing policy considerations on whether to allow Rule 54(b) certifications frequently or infrequently, several courts use problematic factors to assess whether inefficiencies of an immediate appeal are offset by its benefits.¹⁹⁶

These problematic factors originated in *Allis-Chalmers Corporation v. Philadelphia Electric Company*.¹⁹⁷ The laundry list of factors originating from the decision is meant to aid courts in their determination

185. *Curtiss-Wright Corp. v. General Elec. Co.*, 446 U.S. 1, 10–11 (1980).

186. 1946 ADVISORY COMMITTEE REPORT, *supra* note 26.

187. FED. R. CIV. P. 54(b).

188. *Id.*

189. *Id.* See Pollis, *supra* note 4, at 750.

190. *Curtiss-Wright Corp.*, 446 U.S. at 7–8.

191. *Id.* at 10.

192. *Williams v. County of Dakota*, 687 F.3d 1064, 1067 (8th Cir. 2012); *Citizens Accord, Inc. v. Town of Rochester*, 235 F.3d 126, 128–29 (2d Cir. 2000); *Gen. Acquisition, Inc. v. GenCorp, Inc.*, 23 F.3d 1022, 1027 (6th Cir. 1994).

193. Pollis, *supra* note 4, at 751; *Wright & Miller*, *supra* note 75.

194. Pollis, *supra* note 4, at 751.

195. *Id.* (explaining that appellate courts review the district courts’ decisions under the abuse of discretion standard; therefore, there is not a total deference to the district courts).

196. *Allis-Chalmers Corp. v. Phila. Elec. Co.*, 521 F.2d 360, 364 (3d Cir. 1975).

197. *Id.*

of whether there is no just reason for delay.¹⁹⁸ Several of the factors are logically connected to the district judge's discretionary power.¹⁹⁹ However, the listed factors allow a district judge to exercise discretion in evaluating non-discretionary factors.²⁰⁰ The result is a blend of the objective and subjective components of Rule 54(b).²⁰¹ This overlap of Rule 54(b)'s dual components creates confusion when determining the appropriate standard of review that an appellate court should apply.²⁰²

The subjective component also creates inconsistent holdings over the precise words a federal district court must use when finding no just reason for delay.²⁰³ Some courts focus on the term *express* in Rule 54(b) to support their dismissal of appeals that fail to use the actual words "no just reason for delay."²⁰⁴ Some courts impose an additional requirement that the federal district court must provide its rationale.²⁰⁵ Other circuits take an inverse approach and permit an appeal to go forward if the language reflects the district court's intent to enter a partial judgment pursuant to

198. *Id.* The *Allis-Chalmers* Factors:

(1) the relationship between the adjudicated and the unadjudicated claims; (2) the possibility that the need for review might or might not be mooted by future developments in the district court; (3) the possibility that the reviewing court might be obliged to consider the same issue a second time; (4) the presence or absence of a claim or counterclaim which would result in a set-off against the judgment sought to be made final; (5) miscellaneous factors such as delay, economic and solvency considerations, shortening the time of trial, frivolity of competing claims, expense and the like.

Id.

199. Pollis, *supra* note 4, at 752–53 (listing that factors such as the particular harm to the parties of a delayed judgment and the potential that an early appeal may promote settlement logically abide by the discretion granted to the trial judge to make a Rule 54(b) certification).

200. *Id.* at 753.

201. *Id.*

202. *Id.* See also *In re Se. Banking Corp.*, 69 F.3d 1539, 1546 (11th Cir. 1995) (explaining that the standard of review for the first determination approaches de novo review but allows some room for deference "particularly where the district court has made its reasoning clear").

203. Pollis, *supra* note 4, at 754.

204. *Nat'l Ass'n of Home Builders v. Norton*, 325 F.3d 1165, 1167–68 (9th Cir. 2003) (remanding the case where a district court had expressly determined that there was no just reason for delay in an amended Rule 54(b) certification but had done so after adequacy of original certification was already the subject of appellate scrutiny, thus depriving the district court of jurisdiction to amend the Rule 54(b) certification).

205. *Akers v. Alvey*, 338 F.3d 491, 495 (6th Cir. 2003).

Rule 54(b).²⁰⁶ In these instances, the courts simply convert the standard of review from abuse of discretion to de novo.²⁰⁷ Rule 54(b) provides no guidance on whether a district court must explain its rationale in certifying a partial final judgment.²⁰⁸ Thus, the circuits are continually divided on this issue, which is yet another jurisdictional uncertainty that plagues Rule 54(b).²⁰⁹

The uncertainty surrounding Rule 54(b)'s application has led many courts to construct their own tests, further leading to inconsistent results throughout the circuits.²¹⁰ Such an application of Rule 54(b) leads to inconsistent and improper grants of appellate jurisdiction.²¹¹ Rule 54(b)'s confusing application has persisted in the federal system, creating "decades of jurisdictional uncertainty."²¹² Despite these deficiencies, Louisiana adopted Rule 54(b) and its federal infection in 1997.²¹³

II. THE FEDERAL INFECTION OF RULE 54(B) INTO LOUISIANA'S JUDICIAL SYSTEM

In the 1930s, Louisiana experienced a movement to revive its civil law tradition.²¹⁴ In 1938, the state legislature established the Louisiana State Law Institute (LSLI) to revise and modernize Louisiana's public, private, and procedural laws to fit within the civil law tradition.²¹⁵ The LSLI then drafted and produced the modern Louisiana Code of Civil Procedure ten years later.²¹⁶ In 1960, Louisiana enacted the Louisiana Code of Civil

206. Pollis, *supra* note 4, at 754; *Kelly v. Lee's Old Fashioned Hamburgers, Inc.*, 908 F.2d 1218, 1220 (5th Cir. 1990).

207. Pollis, *supra* note 4, at 755.

208. *Id.* See also FED. R. CIV. P. 54(b).

209. *Lee's Old Fashioned Hamburgers, Inc.*, 908 F.2d at 1220 (Smith, J., dissenting) ("[T]here is a clean split among the circuits on this discrete issue of appellate jurisdiction.").

210. See Pollis, *supra* note 4, at 731–56 (providing the no-just-reason-for-delay analysis and the circuit courts' differing applications of the rule).

211. *Id.*

212. *Id.* at 715. See also FED. R. CIV. P. 54(b). Enacted in 1938 and still in effect today, the rule provides us with 84 years of its problematic application.

213. Act No. 483, 1997 La. Acts 483.

214. Kenneth M. Murchinson, *The Judicial Revival of Louisiana's Civilian Tradition: A Surprising Triumph for the American Influence*, 29 LA. L. REV. 1, 3–5 (1988).

215. *Id.* See also Henry G. McMahon, *The Louisiana Code of Civil Procedure*, 21 LA. L. REV. 1, 2–3 (1960).

216. McMahon, *supra* note 215, at 17.

Procedure to follow the conventional pattern of structure and organization of codes of other civilian jurisdictions.²¹⁷

A. The Original Louisiana Code of Civil Procedure Article 1915

Through the drafting of the Louisiana Code of Civil Procedure, the Louisiana Law Institute sought to accomplish several objectives, such as: eliminating unnecessarily technical rules; improving the efficiency of several procedural devices; and borrowing newer and more effective procedural devices from the federal system and neighboring jurisdictions.²¹⁸ Prior to the civil law revival, civil procedure in Louisiana was an amalgamation of civil law and common law procedures.²¹⁹ Due to the earlier enactment of the Federal Rules of Civil Procedure, Louisiana courts adopted many of the federal common law procedures to supplement Louisiana's old code of procedure, the Code of Practice.²²⁰

When drafting the new procedural code, the LSLI intended to preserve the basic Louisiana civil procedure rather than default to the Federal Rules of Civil Procedure.²²¹ Louisiana procedural devices originating in the

217. *Id.* at 18.

218. *Id.* at 19–20. The LSLI utilized the following objectives during the drafting of the modern Louisiana Code of Civil Procedure:

(1) The consolidation of all procedural rules relating generally to civil actions and proceedings . . . (2) The elimination of many unnecessarily technical rules and results which served more to defeat than to further the ends of justice . . . (3) The revision and reformation of those procedural devices and concepts of some efficacy and workability, which could be improved either through simplification or expansion, so as to operate more efficiently under modern economic or social conditions . . . (4) The borrowing of some of the newer and more effective procedural devices in Anglo-American and Continental procure which could be assimilated by and integrated into our adjective law . . . (5) The granting of more power, authority, and discretion to the trial judge . . . the new code has adopted the approach of the Federal Rules of Civil Procedure in granting necessary power, authority, and discretion to the trial judge . . . (6) The statement of procedural rules in clear, simple English. The Code of Practice of 1825 was drafted in French, with the English version an imperfect translation.

Id.

219. *Id.* at 19.

220. *Id.* at 14–15.

221. *Id.* at 20 (“ . . . there would be no discarding of the basic Louisiana procedure to accept a new system based upon either the Federal Rules of Civil Procedure or the procedural code of another American state.”).

common law were replaced with the latest and most advanced procedures from the Federal Rules of Civil Procedure.²²² The LSLI reviewed each procedural concept and compared it to its common law counterpart.²²³ If the common law rule proved more workable and useful, it was incorporated into the new code.²²⁴ Throughout the drafting process, the Louisiana Law Institute followed one paramount policy: “there would be no change for the mere sake of change.”²²⁵ Therefore, no change was made to the new code unless convincing evidence proved that another rule would be more “useful and workable than its Louisiana counterpart.”²²⁶

Prior to the adoption of the original Louisiana Code of Civil Procedure article 1915,²²⁷ Louisiana provided no procedure for rendering partial judgements.²²⁸ The LSLI thought Federal Rule of Civil Procedure 54(b) and other jurisdictions’ rules regarding partial judgments and subsequent appeals were too broad and resulted in “piecemeal litigation and . . . multiplicity of appeals.”²²⁹ The LSLI decided to limit the signing of a partial judgment to four specific situations,²³⁰ and only in these

222. *Id.*

223. *Id.* at 20–21.

224. *Id.*

225. *Id.* at 21 (emphasis added).

226. *Id.* (“No matter how appealingly novel or intriguing the suggestions, no matter what its theoretical appeal”).

227. LA. CODE CIV. PROC. art. 1915 (1960):

A final judgment may be rendered and signed by the court, even though it may not grant the successful party all of the relief prayed for, or may not adjudicate all of the issues in the case, when the court:

(1) Dismisses the suit as to less than all of the plaintiff, defendants, third party plaintiffs, third party defendants, or intervenors.

(2) Grants a motion for judgment on the pleadings, as provided by Articles 965, 968, and 969.

(3) Grants a motion for summary judgment, as provided by Articles 966 through 969.

(4) Renders judgment on either the principal or incidental demand, when the two have been tried separately, as provided by Article 1038.

If an appeal is taken from such a judgment, the trial court nevertheless shall retain jurisdiction to adjudicate the remaining issues in the case.

228. John T. Hood, *Judgments: Book II, Title VI*, 35 TUL. L. REV. 578, 582 (1961); Ira S. Flory & Henry G. McMahon, *The New Federal Rules and Louisiana Practice*, 1 LA. L. REV. 45, 72 (1938) (“Differently from Louisiana practice of the federal court may render judgment as to one or more of a plurality of claims, thus terminating the action with respect to such claim, but proceeding therewith with respect to all remaining claims.”).

229. Hood, *supra* note 228, at 582.

230. LA. CODE CIV. PROC. art. 1915 (1960):

enumerated situations was a trial judge granted discretion to determine if a partial judgment was appropriate.²³¹ Additionally, due to the LSLI's extensive studies of Federal Rule of Civil Procedure 54(b) and other jurisdictions' rules, the Louisiana Law Institute was able to solve problems not yet addressed by the Federal Rules.²³²

The original article 1915 set forth an exclusive list of immediately appealable partial final judgments.²³³ The strict approach in the original article was well balanced by what it offered in terms of certainty and uniformity.²³⁴ The original article largely eliminated the problems experienced in the federal system by avoiding appeals taken merely out of caution due to uncertainty.²³⁵ The article only allowed the trial judge to exercise discretion in limiting partial judgment finality even if it fell within one of the four enumerated situations in the article.²³⁶ Consequently, trial judges lacked discretion to add to the article's enumerated situations, which largely eliminated potential inconsistency for immediate appeals of partial judgments.²³⁷

1. Everything on Wheels Subaru, Inc. v. Subaru South, Inc.: the Driving Force of Louisiana's Article 1915

Application of article 1915—prior to its federal infection by Rule 54(b)—is best illustrated in *Everything on Wheels Subaru, Inc. v. Subaru*

Final judgment may be rendered when: (1) dismissing the suit as to less than all of the parties; (2) granting a motion for judgment on the pleadings provided in Articles 965, 968, and 969; (3) granting a motion for summary judgment provided by Articles 96 through 969; and (4) rendering a judgment on the principle or incidental demand when they are tried separately.

231. Hood, *supra* note 228, at 582.

232. Jack P. Brook, *Symposium on Civil Procedure: Rendition of Judgments*, 21 LA. L. REV. 228, 232–34 (1960). Prior to the 1961 amendment to Federal Rule 54(b), there was confusion on whether the federal rule applied to dismissal of parties in multi-party litigations. *Id.* Louisiana's adoption of the original article 1915 provided a remedy to this confusing situation found in the federal cases. *Id.*

233. See LA. CODE CIV. PROC. art. 1915 (1960).

234. Tatum & Norris, *supra* note 36, at 153.

235. *Id.* The 1960 version of article 1915 provided enumerated situations that eliminated uncertainty regarding which orders were final partial judgments for purposes of immediate appeal. *Id.*

236. *Id.*

237. *Id.*

*South, Inc.*²³⁸ On April 12, 1993, the Louisiana Supreme Court addressed the issue regarding the grant of partial judgments on exceptions of no cause of action.²³⁹ The Court held that if two or more claims of damages or theories of recovery arise out of a single transaction or occurrence, a partial judgment is not appropriate.²⁴⁰ However, if an action is based on separate and distinct transactions or occurrences, a partial judgment on one of the separate and distinct causes of action may be rendered.²⁴¹ The partial judgment is appealable only if it results in the dismissal of a party.²⁴² Otherwise, it is not appealable absent a potential for irreparable injury, although parties may apply for supervisory writs.²⁴³ Additionally, the court in *Everything on Wheels Subaru, Inc.* observed that article 1915 was “designed to limit a court’s authority to render an appealable partial final judgment, and that if all such judgments were immediately appealable, ‘there would be intolerable problems of multiple appeals and piecemeal litigation.’”²⁴⁴ The court emphasized the LSLI’s intent to preserve a procedural device that was more limiting to the trial judge to avoid piecemeal litigation and provide litigating parties with certainty.²⁴⁵

2. Alternative Route of Review: Supervisory Writs

The Court in *Everything on Wheels Subaru, Inc.* suggested that while a particular partial judgment was not final for purposes of immediate appeal, the litigating parties could apply for supervisory writs to review a partial judgment.²⁴⁶ Louisiana appellate courts may exercise appellate and supervisory jurisdiction.²⁴⁷ A litigant may seek review by the court of

238. *Everything on Wheels Subaru, Inc. v. Subaru S., Inc.*, 616 So. 2d 1234 (La. 1993).

239. *Id.*

240. *Id.* at 1242.

241. *Id.* at 1239–42.

242. *Id.* at 1241 (explaining that in multi-party litigation, a judgment that adjudicates the rights and liabilities of one or more, but not all, of the litigating parties to an incidental action and results in the dismissal of one or more of these parties is a partial final judgment pursuant to article 1915).

243. *Id.* at 1240–41; LA. CODE CIV. PROC. art. 2201 (2024) (“writs may be applied for and granted in accordance with the constitution and rules of the supreme court and other courts exercising appellate jurisdiction.”).

244. Tatum & Norris, *supra* note 36, at 157 (quoting *Everything on Wheels Subaru, Inc.*, 616 So. 2d at 1241).

245. *Everything on Wheels Subaru, Inc.*, 616 So. 2d at 1241.

246. *Id.* at 1240–41; LA. CODE CIV. PROC. art. 2201.

247. FRANK L. MARAIST, CIVIL PROCEDURE § 14:17, in 1 LOUISIANA CIVIL LAW TREATISE (2d ed. 2021).

appeal in the exercise of its supervisory jurisdiction through an application for supervisory writ.²⁴⁸ In response to the application for supervisory writ, a court of appeal can intervene at any stage in the proceeding in a lower court and reverse or modify the judgment or ruling of the lower court.²⁴⁹ However, appellate courts exercise supervisory jurisdiction sparingly, often waiting to correct errors on appeal.²⁵⁰ The court of appeal should only grant a supervisory writ application when a trial court's judgment or ruling will cause irreparable injury.²⁵¹

B. Evolution of Article 1915: Addition to the Article's Exclusive List, the Federal Infection, and a Quest for Clarity

As illustrated in *Everything on Wheels Subaru, Inc.*, Louisiana's judicial system grew accustomed to the new procedural device of article 1915.²⁵² Throughout article 1915's lifetime, the article underwent several amendments.²⁵³ The first amendment occurred in 1983 when article 1915's exclusive list of immediately appealable partial judgments was expanded.²⁵⁴ In 1997, article 1915 underwent its most controversial amendment when the article was reconstructed to reflect its federal counterpart, Rule 54(b).²⁵⁵ Subsequent amendments followed, hoping to correct the ambiguity that clouded the article after the 1997 amendment.²⁵⁶

Several years after the enactment of the Louisiana Code of Civil Procedure, Louisiana's judicial system required an addition to

248. *Id.* See also LA. CODE CIV. PROC. art. 2201; LA. CT. APP. R. 4.

249. MARAIST, *supra* note 247, § 14:17.

250. *Id.*

251. *Id.* See generally Favrot v. Favrot, 68 So. 3d 1099 (La. Ct. App. 4th Cir. 2011) (illustrating that when an action by an appellate court terminates the litigation and there is no factual dispute to be resolved, judicial efficiency and fundamental fairness to the litigant dictate how the merits of applications for supervisory writs should be decided, although there is no timely appeal and the partial summary judgment is not designated as final under Louisiana Code of Civil Procedure article 1915).

252. See generally *Everything on Wheels Subaru, Inc. v. Subaru S., Inc.*, 616 So. 2d 1234 (La. 1993).

253. Act No. 534, 1983 La. Acts 534; Act No. 483, 1997 La. Acts 483; Act No. 89, 1999 La. Acts 89; Act No. 1263, § 1, 1999 La. Acts 89, *effective* Jan. 1, 2000; Act No. 553, 2001 La. Acts 553; Act No. 391, 2013 La. Acts 391.

254. Act No. 534, 1983 La. Acts 534.

255. Act No. 483, 1997 La. Acts 483.

256. Act No. 89, 1999 La. Acts 89; Act No. 1263, § 1, 1999 La. Acts 89, *effective* Jan. 1, 2000; Act No. 553, 2001 La. Acts 553; Act No. 391, 2013 La. Acts 391.

article 1915's enumerated list of partial final judgments.²⁵⁷ In 1983, article 1915²⁵⁸ was amended to add a fifth section that authorized entry of separate final judgments on the issues of liability and damages when the issues were tried separately.²⁵⁹ The amendment allowed an appeal of a partial judgment, which decided liability while the issue of damages was reserved for trial at a later date.²⁶⁰

In 1997, the Louisiana legislature significantly altered article 1915 again when it passed Act 483 (Act).²⁶¹ The Act rewrote article 1915 to reflect the Federal Rule of Civil Procedure 54(b).²⁶² The 1997 amendment

257. Act No. 534, 1983 La. Acts 534.

258. LA. CODE CIV. PROC. art. 1915 (1983):

A final judgment may be rendered and signed by the court, even though it may not grant the successful part all of the relief prayed for, or may not adjudicate all of the issues in the case, when the court:

(1) Dismisses the suit as to less than all of the plaintiff, defendants, third party plaintiffs, third party defendants, or intervenors.

(2) Grants a motion for judgment on the pleadings, as provided by Articles 965, 968, and 969.

(3) Grants a motion for summary judgment, as provided by Articles 966 through 969.

(4) Renders judgment on either the principal or incidental demand, when the two have been tried separately, as provided by Article 1038.

(5) Signs a judgment on the issue of liability when that issue has been tried separately by the court, or when, in a jury trial, the issue of liability has been tried before the jury and the issue of damages is to be tried before a different jury.

If an appeal is taken from such a judgment, the trial court nevertheless shall retain jurisdiction to adjudicate the remaining issues in the case.

259. William R. Forrester Jr., *Civil Procedure*, 48 LA. L. REV. 233, 244 (1987).

260. *Ducote v. City of Alexandria*, 670 So. 2d 1378, 1383 (La. Ct. App. 3d Cir. 1996).

261. Act No. 483, 1997 La. Acts 483.

262. Tatum & Norris, *supra* note 36, at 132–33; Act No. 483, 1997 La. Acts 483; LA. CODE CIV. PROC. art. 1915 (1997):

(1) When a court renders a partial judgment or partial summary judgment or sustains an exception in part, as to one or more but less than all of the claims, demands, issues, theories, or parties, whether in an original demand, reconventional demand, cross-claim, third party claim, or intervention, the judgment shall not constitute a final judgment unless specifically agreed to by the parties or unless designated as a final judgment by the court after an express determination that there is no just reason for delay.

(2) In the absence of such a determination and designation, any order or decision which adjudicates fewer than all claims or the rights and

granted considerable discretion to the trial courts to govern the finality and appealability of partial judgments.²⁶³ Although the new version of article 1915 continued to include the exclusive list of partial final judgments, the amendment largely abandoned the old approach in favor of one reflecting Rule 54(b).²⁶⁴ Under the federal approach, the immediate appealability of a partial final judgment is left to the discretion of the trial judge.²⁶⁵ Essentially, article 1915(A) is examined first to determine if a partial judgment falls within one of the enumerated situations.²⁶⁶ If the partial judgment meets one of subsection (A)'s situations, then a litigating party is not required to request a trial judge to make a determination and designation for purposes of appeal.²⁶⁷ However, if a partial judgment does not fall within one of the enumerated situations, then the litigating party wanting to appeal the partial judgment must request to the trial judge to make a determination and designation under article 1915(B).²⁶⁸

The amendment to article 1915 surprised many judges and provided no guidance on how to apply the new approach.²⁶⁹ Commentators expressed that “the parallels between Article 1915 and Rule 54 indicate a legislative intent for courts to seek guidance from the federal provisions and jurisprudence.”²⁷⁰ This rationale is undercut by the discrepancies between state and federal law concerning the certification of partial judgments for immediate appeal and the scope in which a partial summary judgment is appropriate.²⁷¹

liabilities of fewer than all the parties, shall not terminate the action as to any of the claims or parties and shall not constitute a final judgment for the purpose of an immediate appeal. Any such order or decision issue may be revised at any time prior to the rendition of the judgment adjudicating all the claim and the rights and liabilities of parties.

263. Tatum & Norris, *supra* note 36, at 133.

264. FED. R. CIV. P. 54(b).

265. *Id.* Tatum & Norris, *supra* note 36, at 153.

266. Tatum & Norris, *supra* note 36, at 153; Act No. 483, 1997 La. Acts 483; LA. CODE CIV. PROC. art. 1915 (1997).

267. Tatum & Norris, *supra* note 36, at 153; Act No. 483, 1997 La. Acts 483; LA. CODE CIV. PROC. art. 1915 (1997).

268. Tatum & Norris, *supra* note 36, at 153; Act No. 483, 1997 La. Acts 483; LA. CODE CIV. PROC. art. 1915 (1997).

269. Tatum & Norris, *supra* note 36, at 153.

270. *Id.*

271. *Id.* Although the subsequent years after the 1997 amendment allowed Louisiana to handle the initial shock of changing approaches, the current article 1915 is still plagued by the inconsistent results and confusion that stem from the federal rule. *See generally* Zapata v. Seal, 330 So. 3d 175 (La. 2021); Auricchio v. Harriston, 332 So. 3d 660 (La. 2021).

Like Rule 54(b), the new article 1915 required a trial judge to perform a two-part analysis considering whether there is: (1) a separate and distinct claim for relief; and (2) “no just reason for delay.”²⁷² Under this analysis, trial judges have considerable discretion in designating partial judgments as immediately appealable.²⁷³ The new article also allowed the partial judgment to be revised at any time prior to a determination and designation of the judgment by the trial court.²⁷⁴

Shortly after the 1997 amendment, commentators expressed concern that article 1915(B)’s amended language allowed parties to grant certification for immediate appeals for partial final judgments.²⁷⁵ In 1999, the language of article 1915(B)(1) was amended to eliminate the confusion around the first paragraph of section (A) by eliminating “parties” from subsection (B)(1).²⁷⁶ After the 1999 amendment, a partial final judgment under article 1915(B) is appealable only if designated by the court.²⁷⁷

C. The Federal Infection of Louisiana’s Judicial System

After the amendments to article 1915, Louisiana’s legal system allowed the article to remain unchanged in order to view how the approach was utilized in practice.²⁷⁸ However, Louisiana’s courts experienced confusion in applying the new article 1915.²⁷⁹ Like its federal counterpart, article 1915(B) provides little explanation on how trial courts are expected to apply the objective and subjective components of the article.²⁸⁰

272. LA. CODE CIV. PROC. art. 1915 (1997).

273. Tatum & Norris, *supra* note 36, at 162; LA. CODE CIV. PROC. art. 1915(B)(2) (1997).

274. Tatum & Norris, *supra* note 36, at 162.

275. *Id.* at 161.

276. LA. CODE CIV. PROC. ANN. art. 1915 cmt. (1999).

277. *Id.*

278. Tatum & Norris, *supra* note 36, at 169 (advocating that the area of law required a rest from further legislative change to allow the jurisprudence time to establish equilibrium through a process of reexamination for any future attempts to strike a proper balance in applying the new article).

279. *Narcise v. Jo Ellen Smith Hosp.*, 729 So. 2d 748, 751 (La. Ct. App. 4th Cir. 1999) (stating that since the 1997 amendments to article 1915, the appellate courts repeatedly considered the issues of what constitutes a proper certification of a partial summary judgment when a party attempts to appeal an uncertified judgment).

280. LA. CODE CIV. PROC. art. 1915(B) (2024).

One of the first decisions to address the revised article 1915 was *Banks v. State Farm Insurance Co.*²⁸¹ In *Banks*, the trial court granted a partial summary judgment only on the issue of liability in favor of the plaintiff and rejected all comparative fault defenses.²⁸² Both parties agreed that the partial judgment was final pursuant to article 1915(B)(1).²⁸³ The trial court signed the order but did not expressly determine that there was no just reason for delay.²⁸⁴ The Louisiana Second Circuit Court of Appeal held that the Louisiana legislature did not intend to provide parties the power to determine finality for purpose of an immediate appeal for a particular judgment and the trial court must provide written reasons for certification to “facilitate appellate review.”²⁸⁵ In *Banks*, the appellate court directed trial courts to use factors from federal courts to determine if a partial judgment should be certified as immediately appealable.²⁸⁶ Shortly after the *Banks* decision, the Louisiana Fifth Circuit Court of Appeal held that written reasons by a trial court were not required for certification pursuant to article 1915(B).²⁸⁷ The resulting circuit split in Louisiana highlighted the disagreement regarding what standard of review an appellate court should apply when determining whether article 1915(B) certification was proper.²⁸⁸

In *R.J. Messinger, Inc. v. Rosenblum*, the Louisiana Supreme Court addressed whether the appellate court has jurisdiction over partial judgments designated as final regardless of the trial court giving explicit reasons as to why no just reason for delay exists.²⁸⁹ The Court turned to the federal courts’ interpretation of Rule 54(b), noting that article 1915(B) is based on its federal counterpart.²⁹⁰ The Court held that while a trial court

281. See generally *Banks v. State Farm Ins. Co.*, 708 So. 2d 523 (La. Ct. App. 2d Cir. 1998).

282. *Id.*

283. *Id.* After the *Banks* decision, article 1915 was amended to remove the provision allowing parties to agree that a partial judgment is final. See LA. CODE CIV. PROC. ANN. art. 1915 cmt. (1999).

284. *Banks*, 708 So. 2d at 523.

285. *Id.* at 525.

286. *Id.* at 523 (adopting the factors provided in *Allis-Chalmers Corp. v. Phila. Elec. Co.*, 521 F.2d 360, 364 (3d Cir. 1975)).

287. *Berman v. DeChazal*, 717 So. 2d 658, 660–61 (La. Ct. App. 5th Cir. 1998) (illustrating that the Fifth Circuit followed the factors in *Banks* but refused to require written reasons for no just reason for delay).

288. See generally *R.J. Messinger, Inc. v. Rosenblum*, 894 So. 2d 1113 (La. 2005).

289. *Id.*

290. *Id.* at 1120 (explaining that while the federal courts’ interpretations were not controlling, they provided persuasive interpretations that could be used for guidance).

should provide written reasons for its determination that there is no just reason for delay, written reasons are not *required*.²⁹¹ The Court emphasized that if a trial court failed to provide written reasons for its determination, the appellate court should not automatically dismiss the appeal.²⁹² However, the appellate court could issue a rule to show cause to the parties requiring them to show why the appeal should not be dismissed for failure to comply with article 1915.²⁹³

Additionally, the Louisiana Supreme Court provided the proper standard of review for certified judgments pursuant to article 1915(B).²⁹⁴ When the certification of article 1915(B) is accompanied by written reasons, the standard of review is whether the trial judge abused his discretion.²⁹⁵ However, when the trial court provides no reasons the appellate court should review the certification de novo and consider the factors provided in the federal system, including:

1. The relationship between the adjudicated and unadjudicated claims;
2. The possibility that the need for review might or might not be mooted by future developments in the trial court;
3. The possibility that the reviewing court might be obliged to consider the same issue a second time; and
4. Miscellaneous factors such as delay, economic and solvency consideration, shortening the time of trial, frivolity of competing claims, expense, and the like.²⁹⁶

Although a trial court's failure to provide written reasons for its certification under article 1915(B) does not render the appeal defective, the court emphasized that a trial court *should* utilize the above factors to assist the appellate court in its review of designated final partial judgments.²⁹⁷

A more recent application of article 1915(B) and the *R.J. Messinger* factors is illustrated in *Chevis v. Rivera*.²⁹⁸ In *Chevis*, the Louisiana First Circuit Court of Appeal held that a trial court properly certified a partial

291. *Id.* at 1122.

292. *Id.*

293. *Id.*

294. *Id.* at 1118.

295. *Id.*

296. *Id.* at 1122 (quoting *Allis-Chalmers Corp. v. Phila. Elec. Co.*, 521 F.2d 360, 364 (3d Cir. 1975)).

297. *Id.*

298. *See generally* *Chevis v. Rivera*, 329 So. 3d 831 (La. Ct. App. 1st Cir. 2021), *cert. denied*, 330 So. 3d 317 (La. 2021).

summary judgment as final.²⁹⁹ The dispute arose between two employees working on scaffolding when the defendant became disgruntled with the plaintiff.³⁰⁰ The defendant hit the plaintiff on his hardhat with scaffolding to get his attention.³⁰¹ The plaintiff then sued alleging an intentional tortious act.³⁰² The trial court granted partial summary judgment in favor of the plaintiff, finding an intentional act and holding the employer vicariously liable.³⁰³ The trial court also designated the judgment as final pursuant to article 1915(B).³⁰⁴ The defendants subsequently appealed.³⁰⁵

The Louisiana First Circuit Court of Appeal considered the *R.J. Messinger* factors to determine whether the partial summary judgment was final for purposes of appeal.³⁰⁶ The court held that the trial court considered all the appropriate facts and thus the partial summary judgment was properly certified as final.³⁰⁷ Although the article 1915(B) certification was proper procedurally, the First Circuit reversed the summary judgment on substantive grounds.³⁰⁸ The First Circuit reasoned that the record reflected two conflicting versions of the incident at issue and thus a genuine issue of material fact existed.³⁰⁹

D. The Spreading of Article 1915's Federal Infection into the Other Louisiana Code of Civil Procedure Articles

On September 30, 2021, the Louisiana Supreme Court issued a surprising decision in *Zapata v. Seal* regarding article 1915(B)'s application in relation to other procedural rules.³¹⁰ In *Zapata*, J. Benjamin Zapata, a motor vehicle accident victim, filed suit against the other driver, Stephen Wayne Seal, and Seal's employer, DWL.³¹¹ Zapata alleged new

299. *Id.*

300. *Id.*

301. *Id.*

302. *Id.*

303. *Id.*

304. *Id.* at 834.

305. *Id.*

306. *Id.* at 831. *See also* *R.J. Messinger, Inc. v. Rosenblum*, 894 So. 2d 1113, 1122 (La. 2005) (listing the factors adopted from the federal jurisprudence).

307. *Chevis*, 329 So. 3d at 834.

308. *Id.* at 835–38.

309. *Id.* (holding that the plaintiff described the alleged intentional act as a “hitting or jabbing” while the defendant described it as a “tapping,” which led the First Circuit to find that there was a genuine issue as to a material fact).

310. *Zapata v. Seal*, 330 So. 3d 175, 179–80 (La. 2021).

311. *Id.*

injuries and aggravation of pre-existing lower back injuries.³¹² Zapata's physician, who performed lower back surgery on Zapata after the accident, opined that the surgery was not related to the accident.³¹³ DWL filed a motion for partial summary judgment seeking to dismiss Zapata's claim that the vehicle accident necessitated his lower back surgery.³¹⁴ Twelve days before the hearing, Zapata filed an opposition to the motion for partial summary judgment with an attached report from another physician that alleged that the accident caused Zapata to undergo the surgery.³¹⁵ DWL replied, stating that the opposition was untimely³¹⁶ and contained improper documentation.³¹⁷ The trial court did not allow the opposition and granted DWL's motion for partial summary judgment.³¹⁸

Nine months later, Zapata filed a motion to vacate the partial summary judgment and attached an affidavit that contained the same information that was filed with the previous untimely opposition.³¹⁹ The court vacated its prior grant of partial summary judgment, reasoning that pursuant to Louisiana Code of Civil Procedure article 1915(B)(2), the partial summary judgment was not a final judgment and could be revised at any time.³²⁰ DWL filed a supervisory writ for review of the trial court's decision; however, the appellate court denied the request.³²¹ DWL subsequently filed a writ application to the Louisiana Supreme Court, which was granted.³²²

312. *Id.*

313. *Id.* at 176–77.

314. *Id.* at 177.

315. *Id.*

316. *Id.* See also LA. CODE CIV. PROC. art. 966(B)(2) (2024) (providing that any opposition to the motion and all supporting documents of the opposition shall be filed and served in accordance with article 1313 “*not less than fifteen days prior to the hearing on the motion*”) (emphasis added).

317. *Zapata*, 330 So. 3d at 177; LA. CODE CIV. PROC. art. 966(A)(4) (providing that the only documents that may be filed in support or opposition to the motion for summary judgment are “pleadings, memoranda, affidavits, depositions, answers to interrogatories, certified medical records, written stipulations, and admissions.” Zapata filed a report that was not signed by the physician, which was improper documentation filed with the opposition pursuant to LA. CODE CIV. PROC. art. 966(A)(4)).

318. *Zapata*, 330 So. 3d at 177.

319. *Id.*

320. *Id.*

321. *Id.*

322. *Id.*

The Louisiana Supreme Court affirmed the trial court's ruling to vacate its prior grant of partial summary judgment.³²³ The Court reasoned that the grant of partial summary judgment was neither final nor designated as final under article 1915(B)(1).³²⁴ Additionally, the Court found that the trial court adhered to article 966(B)(2) when it struck the untimely opposition and granted the partial summary judgment.³²⁵ At the same time, the Court reasoned that the trial court was statutorily empowered to exercise its discretion under article 1915(B)(2) and vacate the previous grant.³²⁶ The Court emphasized that if DWL wanted to ensure that the grant of partial summary judgment was final, it should have requested that the trial court make a determination and designation pursuant to article 1915(B)(1).³²⁷

Justice Genovese authored a strong dissent to the *Zapata* majority, stating that “[s]uch an abolition of the La.Code Civ.P. art. 966 timelines defeats the very core and purpose of La.Code Civ.P. art. 966(A)(2), i.e. ‘The summary judgment procedure is designed to secure the just, speedy, and inexpensive determination of every action.’”³²⁸ Justice Genovese emphasized that the majority's interpretation of article 1915(B) renders the summary judgment timelines indefinite.³²⁹ Additionally, Justice Genovese stated that the majority's opinion placed more importance on article 1915(B) than article 966(B)(2) and such reasoning negated the requisite constraint within article 966(B)(2).³³⁰ Justice Genovese emphasized that the majority's opinion ignored the Louisiana legislature's latest expression of will that article 966 contains mandatory provisions.³³¹ Justice Genovese stated that the most recent expression of legislative intent effectively elevates the requisite timelines governing motions for summary judgment over those of article 1915.³³²

Three months later, the Louisiana Supreme Court decided another case regarding the mandatory deadline provided in article 966(B)(2).³³³ In

323. *Id.* at 180.

324. *Id.* at 179.

325. *Id.*

326. *Id.*

327. *Id.*

328. *Id.* at 182 (Genovese, J., dissenting).

329. *Id.*

330. *Id.*

331. *Id.* See also Act No. 422, 2015 La. Acts 422 (amending LA. CODE CIV. PROC. art. 966(B)(2) (2024) to require an opposition be filed no later than 15 days before the hearing).

332. *Zapata*, 330 So. 3d at 182 (Genovese, J., dissenting).

333. See generally *Auricchio v. Harriston*, 332 So. 3d 660 (La. 2021).

Auricchio v. Harriston, the Louisiana Supreme Court held that the trial court lacked the ability to extend a 15-day deadline for filing an opposition to a motion for summary judgment.³³⁴ The Court reasoned that the clear and unambiguous language of article 966(B)(2) provides that “an opposition *shall* be filed within the fifteen-day deadline established by the article.”³³⁵ The Court emphasized that summary judgments are intended to “secure the just, speedy, and inexpensive determination of every action,” and limiting judicial discretion by setting firm deadlines furthers this policy.³³⁶ It is difficult to rationalize the *Zapata* holding with that of *Auricchio*.³³⁷ Although *Auricchio* correctly upheld the mandatory deadlines of article 966(B)(2), the article’s mandatory deadlines carried little effect in *Zapata* when a trial judge accepted an untimely opposition to change a party’s grant of partial summary judgment.³³⁸

E. Recent Attempts to Cure the Article 1915 Infection

Recently in the 2023 Regular Session of the Louisiana legislature, Governor John Bel Edwards signed into law Act No. 317, which amended several provisions in Louisiana Code of Civil Procedure article 966.³³⁹ These amendments were the product of the LSLI’s study on Louisiana’s summary judgment procedure.³⁴⁰ After much consideration, the LSLI recommended several amendments which were introduced during the 2023 Regular Session as House Bill No. 196.³⁴¹ One amendment adds language to article 966 to address the problematic application of the *Zapata v. Seal* holding.³⁴² The specific amendment is the addition of subsection (B)(5), which states:

(5) Notwithstanding Article 1915(B)(2), the court shall not reconsider or revise the granting of a motion for partial summary judgment on motion of a party who failed to meet the deadlines imposed by this Paragraph, nor shall the court consider any documents filed after those deadlines.³⁴³

334. *Id.*

335. *Id.* (“The word ‘shall’ is mandatory.”).

336. *Id.* at 663.

337. *Compare Zapata*, 330 So. 3d at 175, with *Auricchio*, 332 So. 3d at 663.

338. *Compare Zapata*, 330 So. 3d at 175, with *Auricchio*, 332 So. 3d at 663.

339. Act No. 317, 317 West La. Sess. Law Serv. No. 196 (2023).

340. La. S. Con. Res. 18, 2022 Leg., Reg. Sess. (La. 2022).

341. *See* H.B. 196, 2023 Leg., Reg. Sess. (La. 2023).

342. *Id.* *See also Zapata*, 330 So. 3d 175.

343. Act No. 317, 317 West La. Sess. Law Serv. No. 196 (2023).

To avoid any ambiguity, the Law Institute provided a comment to the article that explicitly states that the addition of article 966(B)(5) is to “change the result reached by the Louisiana Supreme Court in *Zapata v. Seal*” by prohibiting the trial court from reconsidering the granting of a partial summary judgment when documents are not filed within the delays prescribed by article 966.³⁴⁴ The passage of Act 317 legislatively overturns *Zapata*.³⁴⁵ However, this amendment is only a partial solution to the overall infection of the current article 1915(B).³⁴⁶

III. DISSECTING THE FLAWS OF ARTICLE 1915

The Louisiana Supreme Court’s decisions in *Zapata* and *Auricchio* create a discrepancy in applying partial summary judgment rules.³⁴⁷ The *Zapata* ruling disregards mandatory deadlines to file, which “thwart[s] the efficacy and core of the procedure.”³⁴⁸ Although the discretion granted in article 1915(B) allows trial judges to revise partial summary judgments at any time prior to a designation of finality, the rationale behind this argument impinges on the authority of article 966(B)(2) and the Louisiana legislature’s recent expression of intent in regards to summary judgment procedures.³⁴⁹ The *Zapata* opinion provides unsound logic by suggesting that for a prevailing party to ensure finality in a partial summary judgment, it must be designated by the trial judge as a final judgment under article 1915(B).³⁵⁰ However, such a procedure is typically used by a losing party hoping to appeal an adverse decision.³⁵¹

344. *Id.* cmt. e.

345. *Id.*

346. *See* Act No. 317, 317 West La. Sess. Law Serv. No. 196 (2023). Act 317 addresses the major procedural dilemma created by the *Zapata v. Seal* holding. *Id.* However, the proposed amendment does not address the main source of the *Zapata* dilemma, article 1915(B) itself. *Id.*

347. *Zapata*, 330 So. 3d at 175; *Auricchio*, 332 So. 3d at 664.

348. *Zapata*, 330 So. 3d at 182 (Genovese, J., dissenting) (quoting *Celestine v. Boyd Gaming Corp.*, 261 So. 3d 762, 762 (Genovese, J., dissenting)); Act No. 422, 2015 La. Acts 422 (amending LA. CODE CIV. PROC. art. 966(B)(2) to require an opposition be filed no later than 15 days before the hearing).

349. *Zapata*, 330 So. 3d at 182.

350. *Id.*

351. LA. CODE CIV. PROC. art. 1915 (2024); *Keeslar v. McHugh*, 24 So. 3d 933, 935 (La. Ct. App. 2d Cir. 2009); *Kosak v. La. Farm Bureau Cas. Ins. Co.*, 316 So. 3d 522, 526–28 (La. Ct. App. 1st Cir. 2020); *Panichella v. Pa. R.R. Co.*, 252 F.2d 452, 455 (3d Cir. 1958) (Rule 54(b) certification “should not be entered routinely or as a courtesy or accommodation to counsel.” Article 1915(B) borrows this certification standard or rationale from the federal rule such that the

Recent developments in the 2023 Regular Session of the Louisiana legislature suggests a desire to limit article 1915(B)'s procedural application.³⁵² The Louisiana Governor's passage of Act 317 legislatively overturns the problematic *Zapata* holding.³⁵³ The addition of subsection (B)(5) to article 966 "prohibit[s] a trial court from reconsidering the granting of a partial summary judgment because a document was not timely filed and served with an opposition" within the delays of article 966.³⁵⁴ Thus, the amendment effectively limits the reach of article 1915(B)'s application and influence on only *one* Louisiana civil procedure article.³⁵⁵ Although this is a sufficient start to address one of the problems of article 1915(B)'s application, the solution provided by Act 317 only partially addresses the federal infection. Additionally, the amendment does not address several other issues arising from the use of article 1915(B) that are not illustrated in *Zapata*, such as the uncertainty and confusion that originates from Rule 54(b).³⁵⁶ Therefore, a more complete solution is required.

A. Uncertainty Regarding Article 1915(B)'s Application: Confusion in Applying the Article's Objective and Subjective Components

Prior to the enactment of the Louisiana Code of Civil Procedure in 1960, the LSLI studied Federal Rule of Civil Procedure 54(b) to determine whether the rule should be adopted into Louisiana's Code of Civil Procedure.³⁵⁷ The LSLI thought that Rule 54(b) was too broad and would lead to "piecemeal litigation and to a multiplicity of appeals."³⁵⁸ Today, article 1915(B) has yielded precisely this problem.³⁵⁹ Similar to its federal counterpart, article 1915(B) contains both objective and subjective components that are regularly

determination and designation of the partial final judgment should be used conservatively).

352. See Act No. 317, 317 West La. Sess. Law Serv. No. 196 (2023). See also Final Passage, Roll Call, H.B. 196, 2023 Leg., Reg. Sess. (La. 2023) (illustrating that as of April 20, 2023, House Bill 196 passed through the Louisiana House with a total of 97 yeas and zero (0) nays).

353. See Act No. 317, 317 West La. Sess. Law Serv. No. 196 (2023).

354. *Id.*

355. *Id.* Act 317 *only* addresses the implications of article 1915(B)'s effect on article 966. *Id.*

356. See discussion *infra* Part I (analyzing the improper application of collapsing the Federal Rule's two components, thus allowing district courts to inconsistently exercise their discretion to confer appellate jurisdiction).

357. Hood, *supra* note 228, at 582.

358. *Id.*

359. See generally LA. CODE CIV. PROC. art. 1915(B) (2024).

combined together, creating misunderstandings about how to properly apply the procedural device.³⁶⁰

1. The Objective Component: What is a Claim?

The similar language of article 1915 and Rule 54(b) illustrates the Louisiana legislature's goal to have article 1915(B) parallel the general application of Rule 54(b).³⁶¹ The first part of article 1915(B) is its objective component, which determines whether a claim is separate and distinct from the rest of a lawsuit.³⁶² Like Rule 54(b), article 1915(B) provides little guidance on what is a *claim*.³⁶³ This ambiguous term allows courts to adopt differing interpretations as to what constitutes a claim.³⁶⁴ Some courts apply a more liberal definition of *claim* that favors certification of finality.³⁶⁵ Other courts apply a more restrictive view that favors certification only in harsh cases.³⁶⁶ The various interpretations for what is a "separate and distinct claim" create immediate uncertainty as to whether the trial court's interpretation meets that of the appellate court's

360. Compare LA. CODE CIV. PROC. art. 1915(B), with FED. R. CIV. P. 54(b).

361. Tatum & Norris, *supra* note 36, at 153 ("the parallels between Article 1915 and Rule 54 indicate a legislative intent for courts to seek guidance from the federal provisions and jurisprudence.").

362. Pollis, *supra* note 4, at 731–49.

363. See LA. CODE CIV. PROC. art. 1915(B).

364. Leray v. Nissan Motor Corp. in U.S.A., 916 So. 2d 260, 262–64 (La. Ct. App. 1st Cir. 2005) (the trial judge erred in certifying a partial summary judgment for immediate appeal under article 1915(B) when the defendants alleged that the fault of medical malpractice tortfeasors could be presented to the jury and quantified in the victim's suit against non-medical malpractice tortfeasors); Fakier v. State of La. Bd. of Supervisors for Univ. of La. Sys., 983 So. 2d 1024, 1027–30 (La. Ct. App. 3d Cir. 2008) (Plaintiff alleged various claims, and the trial court granted an exception of no cause or right of action on one of the claims and certified the partial judgment as final. The appellate court found that the judgment was improperly certified and dismissed the appeal; the claim was not separate and distinct from the claims remaining to be adjudicated.).

365. Daigle & Assoc., APLC v. Lafayette Ins. Co., 916 So. 2d 1078, 1080–81 (La. Ct. App. 1st Cir. 2005) (the trial judge designated as final and appealable under article 1915(B) a summary judgment finding coverage under one section of the insurance policy by denying summary judgment under an alternate provision; the appellate court reversed: "A determination on appeal of coverage based on one provision in the policy will not necessarily moot the need for review of a subsequent decision by the trial court based on different provisions of the same policy.").

366. See generally Waiters v. DeVille, 313 So. 3d 1249 (La. Ct. App. 4th Cir. 2020), *cert. denied*, 313 So. 3d 1249 (La. 2021).

interpretation.³⁶⁷ If the trial court's and the appellate court's interpretations do not reflect each other, the appellate court may refuse to exercise its appellate jurisdiction as a precaution to avoid piecemeal appeals.³⁶⁸

2. *The Subjective Component: No Just Reason for Delay*

The second part of article 1915(B) is its subjective component, which grants the trial judge discretion to determine whether there is no just reason for delay.³⁶⁹ In the *R.J. Messinger* holding, the Louisiana Supreme Court adopted the laundry list of factors from the federal system to determine whether there is no just reason for delay.³⁷⁰ Several of these “[m]iscellaneous factors such as delay, economic and solvency considerations, shortening the time of trial, frivolity of competing claims, expense, and the like” are relevant to the question posed by the subjective component.³⁷¹ However, the other factors analyzing the “relationship between the adjudicated and unadjudicated claims; [t]he possibility that the need for review might or might not be mooted by future developments in the trial court; [and] [t]he possibility that the reviewing court might be

367. *Fakier*, 983 So. 2d at 1024 (illustrating that the plaintiff brought claims against her employer for wrongful termination, retaliatory discharge, violations of state whistle blower statutes, and violation of the First Amendment. The trial court granted an exception of no cause or right of action on the First Amendment claim and certified that partial judgment was final. The appellate court found that the judgment was improperly certified and dismissed the appeal. “[T]he partial judgment . . . will not terminate the suit, and the same parties will continue to litigate the remaining issues . . . [A]ll claims arise out of the same operative facts. Therefore, the same witnesses, evidence, and facts will be introduced, resulting in duplicate trials of the issues . . . Likewise, there is a possibility that we may have to consider the same issue a second time.”).

368. *Williams v. Litton*, 865 So. 2d 838, 841–42 (La. Ct. App. 3d Cir. 2003) (illustrating that a judgment refusing to order arbitration is an appealable interlocutory ruling, and the trial judge's certification under article 1915 was not required); *Longwell v. Jefferson Par. Hosp. Serv. Dist. No. 1*, 919 So. 2d 736 (La. Ct. App. 5th Cir. 2005) (emphasizing that the trial judge erred in certifying an appeal under article 1915(B) involving a summary judgment that adjudged defendant negligent for having lost evidence needed for the plaintiff's malpractice suit when the remaining unadjudicated issues were whether that negligence caused harm to plaintiff and, if so, what were the plaintiff's damages); *Daigle & Assoc.*, 916 So. 2d at 1078; *Leray*, 916 So. 2d at 260.

369. LA. CODE CIV. PROC. art. 1915(B) (2024); Pollis, *supra* note 4, at 749–56.

370. *R.J. Messinger, Inc. v. Rosenblum*, 894 So. 2d 1113, 1122 (La. 2005).

371. *Id.*

obliged to consider the same issue a second time” involve an analysis of the objective component.³⁷²

Like Rule 54(b), the *R.J. Messinger* factors collapse the two components of article 1915(B); however, the holding does so in a different way.³⁷³ Rule 54(b)’s application of the factors is intended to be utilized in the subjective component, which allows a trial judge’s discretion and review of this discretion to focus on an abuse of discretion standard.³⁷⁴ However, the factor approach mixes the objective and subjective components of Rule 54(b).³⁷⁵ The factors involving the objective component of Rule 54(b) should not grant the trial judge’s discretion and thus require a de novo standard for review.³⁷⁶ The mixing of such factors allows the trial court to exercise discretion in evaluating non-discretionary factors.³⁷⁷ Additionally, the mixed standards of review cause confusion as to which standard the appellate court should apply.³⁷⁸

Pursuant to the *R.J. Messinger* holding, the factors are used during an appellate court’s de novo review of the trial court’s article 1915(B) certification.³⁷⁹ Such an approach differs from the federal judicial system review of the factors under an abuse of discretion standard.³⁸⁰ This seemingly resolves the discrepancy regarding the factors that draw upon the objective component of the article and thus require a de novo review.³⁸¹ However, the factors that draw upon the subjective component, which requires an abuse of discretion standard of review, are still combined with the factors that require a de novo standard of review.³⁸² Thus, *R.J. Messinger*’s application of the factors perpetuates the erroneous collapse of article 1915(B)’s components together.³⁸³ Such an overlap creates

372. *Id.*

373. *See generally* Pollis, *supra* note 4, at 752–53 (describing how the application of Rule 54(b) determination of certification through factors is incorrect). Because article 1915 was revised to reflect Federal Rule 54(b), the issues of the rule generally apply to the article. *Id. But see R.J. Messinger, Inc.*, 894 So. 2d at 1122–23.

374. Pollis, *supra* note 4, at 752–53.

375. *Id.*

376. *Id.*

377. *Id.*

378. *Id.*

379. *R.J. Messinger, Inc. v. Rosenblum*, 894 So. 2d 1113, 1122–23 (La. 2005).

380. *Id. But see* Pollis, *supra* note 4, at 752–53.

381. *R.J. Messinger, Inc.*, 894 So. 2d at 1122–23. *But see* Pollis, *supra* note 4, at 752–53.

382. *R.J. Messinger, Inc.*, 894 So. 2d at 1122–23. *But see* Pollis, *supra* note 4, at 752–53.

383. *R.J. Messinger, Inc.*, 894 So. 2d at 1122–23.

misunderstandings in how a trial judge should exercise his or her discretion and which standard of review an appellate court should apply.³⁸⁴ Judges will apply such factors differently based on the amount of discretion given, which counteracts the objective component of article 1915(B).

B. No Just Reason for Delay—Or Inflicting Delays?

Article 1915(B)'s intended purpose is to allow actions to proceed swiftly and efficiently after a partial summary judgment.³⁸⁵ However, the confusion inherited from Rule 54(b) has inflicted more delays instead of curing old ones.³⁸⁶ As illustrated in *Auricchio*, the language of article 966(B)(2) is clear.³⁸⁷ It states, “[a]ny opposition to the motion and all documents in support of the opposition shall be filed and served in accordance with Article 1313 not less than fifteen days prior to the hearing on the motion.”³⁸⁸ To dismiss or ignore mandatory deadlines erodes the

384. Pollis, *supra* note 4, at 752–53 (the first component of the rule provides that a district judge must objectively determine whether there is a separate and distinct claim for relief. The second component of the rule provides that a district judge may exercise his or her discretion in determining whether there is no just reason for delay).

385. *R.J. Messinger, Inc.*, 894 So. 2d at 1118 (quoting *MARAIST*, *supra* note 247, § 14:3).

386. *See generally* Pollis, *supra* note 4, at 752–53 (detailing the delays and confusions inflicted by Rule 54(b)). The delays and confusion derived from Rule 54(b) were inherited when Louisiana adopted article 1915(B) to reflect the federal procedure. *See generally* Tatum & Norris, *supra* note 36. This is evidenced in *Zapata v. Seal*, 330 So. 3d 175 (La. 2021), when the Louisiana Supreme Court disregarded the mandatory timelines of article 966(B)(2). *Auricchio v. Harriston*, 332 So. 3d 660, 663 (La. 2021), emphasized that the summary judgment timelines are mandatory to “secure the just, speedy, and inexpensive determination of every action,” and attempting to limit judicial discretion by setting firm deadlines furthers this policy. *See also id.* at 663.

387. *Auricchio*, 332 So. 3d at 662.

388. LA. CODE CIV. PROC. art. 966(B)(2):

B. Unless extended by the court and agreed to by all of the parties, a motion for summary judgment shall be filed, opposed, or replied to in accordance with the following provisions: . . . (2) Any opposition to the motion and all documents in support of the opposition *shall* be filed and served in accordance with Article 1313 not less than fifteen days prior to the hearing on the motion. (Emphasis added).

See also id. art. 1313 (2024):

A. Except as otherwise provided by law, every pleading subsequent to the original petition, and every pleading which under an express

Louisiana legislature's unambiguously stated policy that summary judgments provide a "just, speedy, and inexpensive determination."³⁸⁹ Ignoring the mandatory deadlines effectively makes summary judgment deadlines indefinite.³⁹⁰

Additionally, due to the ambiguous meaning of *claim* in article 1915(B)³⁹¹ and the inconsistent certifications of finality to partial

provision of law may be served as provided in this Article, may be served either by the sheriff or by:

(1) Mailing a copy thereof to the counsel of record, or if there is no counsel of record, to the adverse party at his last known address, this service being complete upon mailing.

(2) Delivering a copy thereof to the counsel of record, or if there is no counsel of record, to the adverse party.

(3) Delivering a copy thereof to the clerk of court, if there is no counsel of record and the address of the adverse party is not known.

(4) Transmitting a copy by electronic means to counsel of record, or if there is no counsel of record, to the adverse party, at the number or addresses expressly designated in a pleading or other writing for receipt of electronic service. Service by electronic means is complete upon transmission but is not effective and shall not be certified if the serving party learns the transmission did not reach the party to be served.

B. When service is made by mail, delivery, or electronic means, the party or counsel making the service shall file in the record a certificate of the manner in which service was made.

C. Notwithstanding Paragraph A of this Article, if a pleading or order sets a court date, then service shall be made by registered or certified mail or as provided in Article 1314, by actual delivery by a commercial courier, or by emailing the document to the email address designated by counsel or the party. Service by electronic means is complete upon transmission, provided that the sender receives an electronic confirmation of delivery.

D. For purposes of this Article, a "commercial courier" is any foreign or domestic business entity having as its primary purpose the delivery of letters and parcels of any type, and that:

(1) Acquires a signed receipt from the addressee, or the addressee's agent, of the letter or parcel upon completion of delivery.

(2) Has no direct or indirect interest in the outcome of the matter to which the letter or parcel concerns.

389. *Id.* art. 966(A)(2) ("(2) The summary judgment procedure is designed to secure the just, speedy, and inexpensive determination of every action, except those disallowed by Article 969. The procedure is favored and shall be construed to accomplish these ends.").

390. *See generally* Zapata v. Seal, 330 So. 3d 175, 182 (La. 2021) (Genovese, J., dissenting).

391. *See* discussion *infra* Part III.A.

judgments, appellate courts may refuse to exercise appellate jurisdiction altogether.³⁹² Because the trial court exercises discretion, the appellate court should review such decisions under an abuse of discretion standard.³⁹³ Due to the lack of uniformity in the trial court's interpretation of a claim, appellate courts have room to exercise their own discretion and to refuse to exercise their own jurisdiction.³⁹⁴ The appellate court should make certain that the conclusions derived from the trial court's assessments are sound and supported by the record.³⁹⁵ The consequence is that the appeal as of right outlined in article 1915(B) is more discretionary than an automatic right to appeal.³⁹⁶ When a district court certifies a partial judgment as final, the appellate court should review that finality to ensure that the appellate jurisdiction is proper.³⁹⁷ This standard of review will vary such that: (1) if an order certifying judgment for appeal is accompanied by reasons, it is reviewed under an abuse of discretion standard; but (2) if the trial court provided no reasons, then the appellate court reviews *de novo* whether the certification was proper under certain criteria.³⁹⁸

Such an approach grants an appellate court the *discretion* to reverse a trial court's determination and designation. The reversal of a trial court's determination and designation is even more profound when an appellate court's docket is full.³⁹⁹ The review of the certification of finality allows appellate courts a chance to maximize their ability to decrease their workloads.⁴⁰⁰ This also illustrates how article 1915(B)'s appeal as of right

392. Williams v. Litton, 865 So. 2d 838, 841–42 (La. Ct. App. 3d Cir. 2003). See generally Longwell v. Jefferson Par. Hosp. Serv. Dist. No. 1, 919 So. 2d 736 (La. Ct. App. 5th Cir. 2005); Daigle & Assoc., ALPC v. Lafayette Ins. Co., 916 So. 2d 1078, 1080–81 (La. Ct. App. 1st Cir. 2005); Leray v. Nissan Motor Corp. in U.S.A., 916 So. 2d 260, 262–64 (La. Ct. App. 1st Cir. 2005).

393. Tatum & Norris, *supra* note 36, at 162.

394. See Pollis, *supra* note 4, at 731–33.

395. Tatum & Norris, *supra* note 36, at 162.

396. See generally LA. CODE CIV. PROC. art. 1915(B).

397. ROGER A. STETTER, ESQ., COURTS OF APPEAL § 10:2, in LOUISIANA CIVIL APPELLATE PRACTICE (2022).

398. See R.J. Messinger, Inc. v. Rosenblum, 894 So. 2d 1113, 1122 (La. 2005) (listing the federally influenced factors that determine the reasons for certifying a partial judgment as final for purposes of appeal).

399. Compare Pollis, *supra* note 4, at 729–33, with LA. CODE CIV. PROC. art. 1915(B).

400. Walker v. Archer, 203 So. 3d 330, 335–37 (La. Ct. App. 4th Cir. 2016) (involving a protracted community property settlement, the special master found that certain reimbursement claims by one spouse should be deemed abandoned and prescribed. The trial court adopted the finding and found that there was no

process increases delay.⁴⁰¹ Although the article was meant to furnish another avenue for swift finality, it has evolved into a multi-step analysis that provides appellate courts with enough opportunity to attempt to regain control over their appellate jurisdiction.

C. Article 1915(B) Leads to Unreasonable Situations

Due to the stated uncertainty and confusion surrounding article 1915(B)'s application, the article also creates avenues for parties to establish clarity for themselves, which leads to unreasonable results.⁴⁰² The Louisiana Supreme Court in *Zapata* suggested to the defendant that “finality may be achieved by requesting a trial court to designate a partial summary judgment as final.”⁴⁰³ The Court reasoned that the plain language of the article provided such a remedy to defendants and declined to adopt an alternative interpretation of the article.⁴⁰⁴ However, this is not the type of application that the drafters of article 1915 intended.⁴⁰⁵

Additionally, in his dissent, Justice Genovese reflected on the consequences of the *Zapata* holding.⁴⁰⁶ Justice Genovese explained that a

just reason for delay. The appellate court determined that the partial judgment does not merit certification as final for purpose of immediate appeal *based on the court's apprehension* about the meaning and effect of a partial judgment that finds a claim abandoned but not prescribed).

401. *Zapata v. Seal*, 330 So. 3d 175, 182 (La. 2021) (Genovese, J., dissenting) (“[H]aving to seek/request certification of the judgment as a final judgment for purposes of appeal, which the trial court may or may not grant, and with no guarantee that the court of appeal will agree as to its finality. Obviously, this will take a longer period of time for resolution, is more expensive, and dilutes the party’s right to file a writ in lieu of an appeal.”).

402. *Id.* at 179 (suggesting a way a prevailing party may ensure finality).

403. *Id.*

404. *Id.*

405. Article 1915 and Federal Rule 54(b) were designed to allow litigating parties to divide a multi-claim and multi-party litigation such that finality of the entire lawsuit may be achieved quickly. Pollis, *supra* note 4, at 721. The article and the federal rule do not provide litigating parties the option to finalize the partial judgment for the sake of finalizing. *See id.* *See* James A. Matthews III, *Federal Civil Procedure – Fed R. Civ. P. 54(b) – A Proposed Two-Part Analysis for the Exercise of a Trial Judge’s Discretionary Certification of a Claim as Final under Rule 54(b) When a Counterclaim Remains Pending*, 25 VILL. L. REV. 179, 185–86 (1979) (citing *Panichella v. Pa. R.R. Co.*, 252 F.2d 452, 455 (3d Cir. 1958) (Rule 54(b) certification “should not be entered routinely or as a courtesy or accommodation to counsel.”)).

406. *Zapata*, 330 So. 3d at 182 (Genovese, J., dissenting).

plaintiff has no reason to agree to certification of the judgment as final because it would take the matter out of the “parameters of La.Code Civ.P. art. 1915 and re-establish[] the timelines of La.Code Civ.P. art. 966, which would be to [the plaintiff’s] detriment.”⁴⁰⁷ The *Zapata* plaintiff did not want a final judgment because the plaintiff could no longer revise the partial judgment in his favor.⁴⁰⁸ Justice Genovese also argued that the defendant is “relegated to having to seek/request certification of the judgment as a final judgment for purposes of appeal, which the trial court may or may not grant, and with no guarantee that the court of appeal will agree as to its finality.”⁴⁰⁹ Justice Genovese found that this will take “a longer period of time for resolution, is more expensive, and dilutes the party’s right to file a writ in lieu of an appeal.”⁴¹⁰ Alternatively, the party may apply for a supervisory writ, which is more quickly resolved, less expensive, and does not leave a partial judgment open to revision.⁴¹¹ Allowing a prevailing party to request certification solely to ensure finality “impinges upon the right of the unsuccessful party to freely choose between certifying or not certifying the judgment as final in order to decide whether to [apply for] a writ or an appeal.”⁴¹²

IV. RESTORING ARTICLE 1915 TO ITS LOUISIANA FORM AND ADDING WHEELS

Twenty-six years of Rule 54(b)’s federal infection has misled Louisiana courts into embracing jurisdictional uncertainty.⁴¹³ The confusion regarding the application of Louisiana Code of Civil Procedure article 1915(B) produces inconsistent results and piecemeal litigation.⁴¹⁴ The broad grant of discretion afforded to trial courts permits a lack of uniformity in the exercise of appellate jurisdiction, which in turn creates unnecessary delays in finality. The only certain way to eradicate this confusion is to eliminate section (B) of article 1915 and return the article to its pre-1997 form.

407. *Id.*

408. *Id.*

409. *Id.*

410. *Id.*

411. *Id.* See LA. CODE CIV. PROC. art. 2201 (2024).

412. *Zapata*, 330 So. 3d at 182 (Genovese, J., dissenting).

413. See *id.* at 175. See generally *Auricchio v. Harriston*, 332 So. 3d 660 (La. 2021).

414. See *Zapata*, 330 So. 3d at 175; *Auricchio*, 332 So. 3d at 660.

A. Restoring Article 1915 to its Louisiana Form

The Louisiana legislature should amend article 1915 to its pre-1997 version. The elimination of section (B) rids Louisiana's judicial system of Rule 54(b)'s federal infection. The resulting article would provide the enumerated situations illustrating when a partial judgment is final for purposes of an appeal. The restored article 1915 would provide that:

(A) A final judgment may be rendered and signed by the court, even though it may not grant the successful party all of the relief prayed for, or may not adjudicate all of the issues in the case, when the court:

(1) Dismisses the suit as to less than all of the parties defendants, third party plaintiffs, third party defendants, or intervenors.

(2) Grants a motion for judgment on the pleadings, as provided by Articles 965, 968, and 969.

(3) Grants a motion for summary judgment, as provided by Articles 966 through 969.

(4) Signs a judgment on either the principal or incidental demand, when the two have been tried separately, as provided by Article 1038.

(5) Signs a judgment on the issue of liability when that issue has been tried separately by the court, or when, in a jury trial, the issue of liability has been tried before a jury and the issue of damages is to be tried before a different jury.

(B) If an appeal is taken from such a judgment, the trial court nevertheless shall retain jurisdiction to adjudicate the remaining issues in the case.⁴¹⁵

A return to the enumerated list would not preclude litigating parties whose partial judgment does not meet one of the provided situations in the article from obtaining appellate review. The procedure of supervisory writs continues to be available to parties who desire to have non-final partial judgments reviewed by the appellate courts.⁴¹⁶ Additionally, the amendment would not eliminate an appeal as of right because the current article 1915(B) is more discretionary in nature rather than an automatic right to appeal.⁴¹⁷ Rather, a return to the pre-1997 article would simplify

415. LA. CODE CIV. PROC. art. 1915 (1983).

416. LA. CODE CIV. PROC. art. 2201 (2024).

417. See discussion *supra* Part III.B.

the process and remove the current multi-step discretionary analysis of the trial and appellate courts.⁴¹⁸

Such an amendment would reallocate power. The appellate courts would have the power to decide their appellate jurisdiction without the discretion of the trial courts. However, the trial courts will continue to wield the power to withhold certification even if a motion seeking a partial judgment falls within one of the article's enumerated situations.⁴¹⁹ The amendment will eliminate the power struggle between the trial and appellate courts that has led to inconsistent and confusing results. Additionally, the amendment will provide a solution not yet addressed in Rule 54(b)'s jurisprudence.⁴²⁰

B. Adding Wheels to the Restored Article

In addition to restoring article 1915 to its Louisiana form, the legislature should also adopt the logic from *Everything on Wheels Subaru, Inc.*, regarding what is a separate and distinct claim.⁴²¹ The Louisiana Supreme Court in *Everything on Wheels Subaru, Inc.*, held that if there are two or more items of damages or theories of recovery which arise out of a single transaction or occurrence, a partial judgment should not be rendered to dismiss one item of damages or theory of recovery.⁴²² However, if a party cumulates two or more actions which could have been brought separately because they are based on the operative facts of separate and distinct transactions or occurrences, a partial judgment may be rendered while leaving the other actions for later.⁴²³ This logical analysis can be employed to provide guidance to litigating parties and courts on whether a partial judgment fits within one of the enumerated situations and ensures that the claim is a separate and distinct claim for purposes of an immediate appeal.

418. See discussion *supra* Part III.B.

419. *Everything on Wheels Subaru, Inc. v. Subaru S., Inc.*, 616 So. 2d 1234, 1242 (La. 1993).

420. Pollis, *supra* note 4, at 727; *Appealability in the Federal Courts*, *supra* note 53, at 358 (explaining that the Rule 54(b) amendments failed to address the fundamental problem of whether a particular order disposes of a separate claim for relief).

421. *Everything on Wheels Subaru, Inc.*, 616 So. 2d at 1234.

422. *Id.* at 1239.

423. *Id.*

CONCLUSION

The goal of article 1915 is to provide litigating parties the opportunity to reach finality *quickly* by severing a multi-claim or multi-party litigation into small units.⁴²⁴ The article and its federal counterpart straddle a very fine line between certainty and uncertainty. However, Louisiana was able to balance the two when it enacted the original article 1915 in 1960. The Louisiana Law Institute studied the applications of Rule 54(b) and found that it was too broad, was plagued with uncertainty, and produced inconsistent results.⁴²⁵ The article drafters wisely limited the trial courts' discretion and set out a structured system that provided litigating parties and courts with certain results.⁴²⁶

The 1997 amendment to article 1915 drastically changed the procedure to appeal a partial judgment.⁴²⁷ The adoption of Rule 54(b) infected Louisiana with federal issues regarding the appealability of partial judgments.⁴²⁸ The 1997 amendment to article 1915 seemed to be a change for the sake of change, a policy that the Louisiana Law Institute avoided when drafting the 1960 Louisiana Code of Civil Procedure.⁴²⁹ Restoring article 1915 to its Louisiana form would align the procedure with its original intent of protecting against piecemeal litigation by limiting the trial judge's discretion and clearly listing what is immediately appealable.⁴³⁰ The addition of the *Everything on Wheels Subaru, Inc.*'s logic of defining what is a separate and distinct claim will also provide clear guidance to Louisiana's judicial system, something the federal rule has failed to do. Although it is occasionally beneficial for Louisiana's procedural rules to reflect the federal system, this is not a sufficient reason alone to continue using a procedural device that causes more harm than good to our judicial system.

The recent passage of Act 317 in the 2023 Regular Sessions illustrates Louisiana's judicial system and scholars' intent to limit the current application of article 1915(B).⁴³¹ Although the amendment in Act 317 solves the problem created by the *Zapata v. Seal* holding, a more complete

424. See generally Pollis, *supra* note 4, at 721; Act No. 483, 1997 La. Acts 483.

425. Hood, *supra* note 228, at 582.

426. *Id.* See also LA. CODE CIV. PROC. art. 1915 (2024).

427. Act No. 483, 1997 La. Acts 483.

428. *Id.*

429. Hood, *supra* note 228, at 582.

430. LA. CODE CIV. PROC. art. 1915 (1983).

431. See Act No. 317, 317 West La. Sess. Law Serv. No. 196 (2023).

solution is required to address the additional issues that originate from Rule 54(b). Thus, restoring article 1915 to its Louisiana form would provide Louisiana's judicial system with the most effective cure to this federal infection.