



Insurance Law: Recent Updates

Richard J. Petre, Jr.

Kelly v. State Farm Fire & Casualty Company, 169 So.3d 328 (La. 2015)

- November 2005
- Car accident
- State Farm insured apparently at fault.
- \$25,000 policy limits
- January 2006
- Plaintiff's attorney advises insurer that fractured femur.
- Medical expenses of \$27,000.
- I can "recommend" to my clients settlement for the policy limits.
- Contact me about settlement.
- State Farm did nothing.
- Did not respond to settlement overture.
- Did not advise insured of settlement proposal and the information provided.
- March 2006
- State Farm finally offered policy limit.
- Refused
- At trial \$176,000 damages
- Assignment of rights against State Farm.
- Case removed to federal court.
- U.S. Fifth Circuit certified two questions.
 - 1) Can an insurer be liable under 1973(A) for breach of duty to settle even though there was no firm settlement demand?
 - 2) Can insurer's failure to disclose facts not related to insurance coverage violate 1973(B)(1)?

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 - Subsection (B) constitutes exclusive list of types of conduct that violate statute
 - Case involved third party claimant, but court's language on scope of statute clearly covered both insureds and third-party claimants
- *Kelly*
 - 1) Insureds may have general cause of action under 22:1973(A), even with violation of one of the six specific duties in (B), and can sue for breach of duty to settle under 1973
 - 2) Insurer can violate (B)(1)—misrepresenting pertinent facts or insurance policy provisions relating to any coverages at issue—by failing to disclose settlement communications

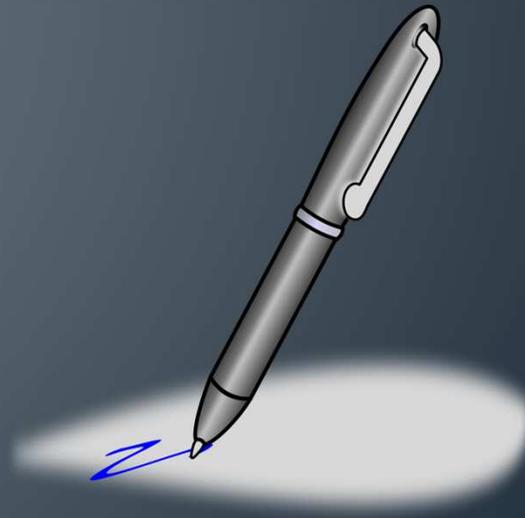
INSURER DUTIES

Contractual and Fiduciary Duties

- Defend
- Settle
- Keep insured advised

Statutory Duties

- R.S. 22:1892
- R.S. 22:1973



FIDUCIARY DUTY

- "The insurance company is held to a high fiduciary duty to discharge its policy obligations to its insured in good faith."

Parreti v. Sentry Indem. Co., 536 So.2d 471, 423 (La. 1988)

- "That the insurer is the champion of its insured's interests," that the insured's interests are "paramount to those of the insurer," and that "the insurer may not gamble with the funds and resources of its policyholders."

Heath v. Comco Ins. Co., 574 So.2d 1270, 1277 (La. App. 3 Cir. 1991)

DUTY TO DEFEND

- The duty to defend is broader than the duty to provide coverage.
- Louisiana uses the "eight-corners" test—under this test, the duty is determined by examining the "four corners" of the lawsuit and the "four corners" of the insurance policy.
- The test: Assuming the factual allegations in the lawsuit are true, is there liability to the insured and some coverage to the insurer.
- If the eight-corners test is met, the insurer has the duty to defend the insured, regardless of what information outside the pleadings the insurer might have showing that coverage does not exist and regardless of whether the insurer later can obtain a judicial determination that coverage does not exist.
- The insurer can disregard blanket contentions of coverage; the duty depends on the factual allegations in the pleadings.
- Example: Homeowner's insurer does not owe defense in automobile accident case—insurer has duty to defend if there is at least one allegation in the petition under which coverage is not clearly excluded.
- Duty to defend policy strangers is same as duty owed to insureds actually named in the policy (additional insureds, omnibus insureds).
- Outside Louisiana, some states in notice-pleading jurisdictions found the duty to defend can be based on evidence outside the pleadings.

WHEN INSURER CONTESTS COVERAGE

- If the insurer contests coverage, the insured needs to have two attorneys (one to defend the insured and one to represent the insurer on the coverage issue).
- Unethical, even with consent of both parties, for attorney to represent both insured and insurer.
- Denial of coverage may entitle insured to select own independent counsel at the insurer's expense.
- *Belanger v. Gabriel Chemicals, Inc.*, 787 So.2d 559 (La. App. 1 Cir. 2001)
- Environmental case, numerous coverage issues
- Liability insurer offered to insured two different law firms as defense counsel
- Insured demanded financial information from the firms about their relationship with the insurer
- Insured retained own counsel and sought reimbursement of defense costs
- Court found that where, because of coverage defenses raised, the insurer's interest "would be furthered by providing a less than vigorous defense to [the petition] allegations," there exists as a conflict of interest that allows the insured to reject defense counsel selected by the insurer and retain its own counsel at the insurer's cost.

~continued on next page~

WHEN INSURER CONTESTS COVERAGE ~continued~

- Policies normally contain CUMIS endorsements that might read: "In the event you are entitled by law to select independent counsel to defend you at our expense," attorney's fees can be "limited to the rates we actually pay to counsel we retain in the ordinary course of our business in the defense of similar claims" where the claim is being defended; and that counsel retained have professional liability insurance coverage and meet "certain minimum qualifications" with regard to competency and experience.
- The duty to defend requires the insurer to provide legal representation as to issues of liability and damages, but not coverage.
- Normally if two primary insurers have duty to defend, each insurer equally liable for defense costs regardless of other insurance provisions and policy limit amounts.
- Insurer that has knowledge of facts indicating non-coverage and that assumes the defense of an insured without obtaining a non-waiver agreement waives all coverage defenses then known to the insurer—need a reservation of rights letter—emerging trend outside Louisiana is court's finding that ROR letters were ineffective because they did not fully and clearly advise the insured of the insurer's coverage defenses.

Advantage Buildings & Exteriors, Inc. v. Mid-Continent Casualty Company, 449 S.W. 3d 16 (Mo. App. W.D. 2014); Hoover v. Maxum Indemnity Company, 730 S.E. 2d 413 (Ga. 2012).

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March 5, 2014

ROR/Disclaimer Letter

High Court Provides A Warning On The Wishy-Washy Disclaimer Letter

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Vol. 3, Iss. 14
October 6, 2014

ROR

Another Ineffective Reservation Of Rights Case

Advantage Builders & Exteriors, Inc. v. Mid-Continent Casualty Co., -- S.W.3d -- (Mo. C... Page 1 of 2

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Vol. 3, Iss. 16
December 3, 2014

ROR Letter

Advantage Builders & Exteriors, Inc. v. Mid-Continent Casualty Co., -- S.W.3d -- (Mo. Ct. App. 2014)

The Loudest Case Yet To Conclude That A Reservation Of Rights Letter Was Ineffective For Lack Of An Adequate Explanation

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Vol. 4, Iss. 11
November 11, 2015

Reservation Of Frights:
Harsh Consequences For Getting The Reservation Of Rights Wrong

WHEN THE DUTY ENDS

- Duty ends upon first judicial determination that coverage does not exist (summary judgment)
- Policy provisions that clearly state the duty to defend ends when the policy limits are exhausted are not contrary to public policy ("duty to defend ends when our limit of liability for this coverage has been exhausted").
- Insurers seeking to end their duty to defend by unilaterally tendering policy limits to the court or claimant can be bad faith.
- Late notice. If the insurer receives late notice of the suit from its insured, coverage voided only if the insured can show actual prejudice as a result of late notice.

Peavey Co. v. M/V ANPA, 971 F.2d 1168 (5th Cir. 1992)

DUTY AFTER EXCESS JUDGMENT

- The insurer's duty to defend includes duty to appeal a judgment where reasonable grounds for the appeal.
- Subsequent failure on appeal does not mean they were not reasonable grounds.
- Insurer not obligated to post bond on the entire amount of the judgment because that would in effect provide coverage beyond policy limits.
- But good faith obligation to assist the insured in securing the appeal bond.

Bowen v. Government Employees Ins. Co., 451 So.2d 1196 (La. App. 5 Cir. 1984)

EXCESS INSURER

- Excess insurer is not an insurer of the primary insurer; thus, the primary insurer has no duty to defend the excess insurer

DUTY TO SETTLE

- Insurer has good faith duty to protect insured from excess exposure
- "The insurer, as a professional defender of lawsuits, is held to a standard higher than that of an unskilled practitioner; but may be neglect on the part of the latter may well constitute bad faith on the part of the insurer. The insurer is not required to settle a claim within policy limits under penalty of absolute liability for any excess judgment rendered against the insured, but the insurer may be liable for the excess judgment if its refusal to settle within policy limits is found to be arbitrary or in bad faith."

Keith v. Comco Ins. Co., 574 So.2d 1270, 1277 (La. App. 2 Cir. 1991).

Smith v. Audubon Ins. Co., 679 So.2d 372 (La. 1996)

- Plaintiff, insured's grandson, attempting to install rebuilt gas motor on grandfather's lawnmower when lawnmower caught fire, burning the plaintiff.
- Statement from plaintiff and insured after fire showed the insured free of fault and plaintiff responsible.
- When deposed, both plaintiffs gave different accident versions indicating the insured was at fault.
- The insurer refused to settle based on post-accident statement.
- At the trial the court found insured liable and awarded excess judgment.
- The insured then insured insurer for breach of duty to settle.
- The Supreme Court found that the insured's settlement actions reasonable, noting that liability was questionable, emphasizing the post-accident statement.

INSURER BAD FAITH FOR FAILING TO SETTLE DEPENDS UPON FACTS OF CASE

Some of the factors are:

- Probability of the insured's liability
- The adequacy of the insurer's claim investigation
- The extent of damages recovered in excess of policy limits
- The rejection of settlement offers after trial
- The extent of the insured's exposure in comparison to the insurer's exposure
- The insurer's nondisclosure of relevant facts to the insured

Kelly v. State Farm Fire & Casualty Company, 169 So.3d 328 (La. 2015)

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Vol. 4, Iss. 6
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*DUTY TO SETTLE
Kelly*

Did This Supreme Court Just Change The Bad Faith Landscape?

Is The Decision Poised To Have A National Impact?

There is much that can be said about Kelly v. State Farm.

On one hand, it is a Louisiana case interpreting a Louisiana statute. And Louisiana's jurisprudence holds statutes in high regard (you know that whole French influence thing that they have going on down there). So the case can be dismissed as having no applicability beyond the Pelican State.

On the other hand, the statute at issue is part of Louisiana's version of the National Association of Insurance Commissioner's Unfair Claims Settlement Practices Act. And just about every state in the country has adopted some version of the NAIC's Act. But the NAIC Act does not contain the "affirmative duty" language that was an important consideration in the Kelly court's analysis. Rather, many states' Unfair Claims Settlement Practices Acts instead likely provide that it is an unfair claims practice for an insurer to "not attempt[] in good faith to effectuate prompt, fair and equitable settlement of claims submitted in which liability has become reasonably clear." But could this provision be considered as having the same purpose of the Louisiana provision? And could the Kelly court's reasoning (this is why I used that long quote) be persuasive, even if the statutory language is different?

Here's what Kelly v. State Farm is all about. Is Kelly "Louisiana-enough" such that the decision does not have reach outside of Louisiana? Or has the Louisiana Supreme Court handed a playbook to policyholders and courts to change the bad faith landscape? Will insurers still be able to consider themselves without risk of exposure for an excess verdict because a demand to settle within the insured's limit of liability was never made?

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The Wall Street Journal, Jan. 22, 2015 (WALLSTREETJOURNAL.COM)

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Vol. 5, Iss. 2
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DUTY TO SETTLE

Bill Barker Responds To Lee Archer's Commentary On The "Modern View" That Insurers Must Initiate Settlement Negotiations – Even Without A Demand -- To Protect Insureds From Excess Judgments

The January 13th issue of Coverage Opinions featured a guest commentary by Lee Archer, appeal co-counsel in *Kelly v. State Farm* (La. 2015). In *Kelly*, the Louisiana Supreme Court held that an insurer can be found liable for a bad-faith failure-to-settle claim, under Louisiana's version of the Unfair Claims Settlement Practices Act, notwithstanding that the insurer never received a firm settlement offer. Ms. Archer's commentary advocated that the decision in *Kelly* wasn't as shocking as some defense and coverage counsel for insurers have maintained. As Ms. Archer sees it, that an insurer can be liable for a bad-faith failure-to-settle claim, notwithstanding that the insurer never received a firm settlement offer, is already the "modern view" on this issue.

Bill Barker, of the Chicago office of Dentons US LLP, offers the following response to Ms. Archer's commentary:

Insurers Ought Not To Be Required To Initiate Settlement Negotiations

By William T. Barker

In the last issue of Coverage Opinions, Lee Archer argued that "[t]he modern view is that absence of a third party's settlement demand will not insulate a liability insurer from exposure to liability to pay sums beyond its policy limits as a result of its bad faith and unfair dealing in settlement." Lee Archer, *The Modern View: Insurers Owe a Duty to Initiate Settlement Negotiations to Protect Insureds from Excess Judgments*, Coverage Opinions (Jan. 13, 2016), quoting DENNIS J. WALL, LITIGATING & PREVENTING INSURANCE BAD FAITH, § 3:14 (3rd ed. 2012). Space here is too limited to argue about the current state of the law, but I disagree with the rule Archer advocates.

To be sure, I recognize situations in which absence of a demand is not a defense. Thus, if the insurer has forestalled a demand by refusing to disclose the limits when it should have done so and has also failed to initiate settlement negotiations, the reasonableness of its actions may present a jury issue. E.g., *Powell v. Prudential Prop. & Cas. Ins. Co.*, 564 So. 2d 12 (Fla. Dist. Ct. App. 1991). If the insurer has offered its limits but (without consulting the insured) refused to have the insured give a statement to determine whether there were other possible sources of recovery, the absence of a demand does not preclude a jury from finding the refusal to seek a statement unreasonable. E.g., *Badillo v. Mid-Century Ins. Co.*, 2005 OK 48 (2005). But if the insurer has done nothing to obstruct a claimant's consideration of a possible demand and has breached no other duty to the insured, I argue that it should not be liable for failure to settle unless it has refused a demand (or failed to tender its limits, if the demand exceeds limits).

This view is not limited to insurers and those who represent them. Dean Syverud has noted that some courts may think requiring the insurer to negotiate may be desirable, lest the insurer be able to manipulate the negotiations so the claimant never makes a demand. Kent D. Syverud, *The Duty to Settle*, 76 VA. L. REV. 1113, 1166-67 (1990). But he points out that such a requirement places insurers at the mercy of jury interpretations of the settlement strategies in particular cases and concludes that such a standard is likely to change bargaining strategies in all cases, not just those where settlement is appropriate, resulting in overpayment that will be a cost to all insureds. *Id.* at 1168.

My argument relies on a more focused examination of the effects of a rule requiring or not requiring a demand to find liability. Looked at purely based on the rule that the insurer should act as it would if it alone were liable for the entire judgment, it would seem reasonable to require the insurer to initiate negotiations if that is what any reasonable insurer would do if it alone were liable. But that fails to take account of the distortion of the claimant's incentives resulting from the very existence of the duty to settle. While the law of bad faith is designed to provide insurers with incentives to address settlement in an appropriate manner, existence of that law alters the incentives of claimants in a way that can be harmful to insureds.

While creation of the settlement duty might not greatly affect the claimant if the policyholder could pay any excess judgment, it has a dramatic effect if the policyholder cannot do so. A greater amount would become recoverable if the insurer breached its duty than if the case were simply taken to a favorable judgment. The claimant thus acquires an incentive to exploit the existence of the duty.

If the expected value of the claim (without regard to collectibility) does not exceed limits by much, the claimant is most likely to use the duty to pressure the insurer to agree to pay the limit (or some smaller amount). If the insurer refuses, any judgment will become fully collectible. Still, the claimant is likely to be chiefly interested in settlement, just as would be the case with a sufficiently solvent tortfeasor.

But if the claim's expected value is far greater than the policy limit, the injured party may instead seek to provide occasions for the insurer to bypass an arguable settlement opportunity. If the insurer breaches its settlement duty, the entire judgment will become

FOOTNOTE IN *KELLY*

Indeed, based on the jurisprudence, commentators have formulated the following current guidance regarding an insurer's duty to settle:

Anyone involved in handling claims quickly learns that the evaluation of liability and amount of damages is not an exact science, and reasonable professional judgment may vary (substantially in larger claims) on where to draw the line in settlement negotiations. It is suggested that the insurance company should disregard its policy limits in evaluating the reasonableness of a settlement offer. The insurer should not be motivated by how much it stands to gain or lose, thus disregarding the insured's exposure. Instead, the insurance company should analyze the claim from the viewpoint of how much it would be willing to pay in settlement of the case if its policy limits were adequate to cover the insured's full exposure. Then it should be prepared to fund such reasonable settlement up to its policy limits. On the other hand, if the insurer reasonably would risk its own funds in litigation of the claim, then it should not be required to pay more simply because the insured has purchased inadequate insurance protection.

169 So.3d 328, n. 28.

MULTIPLE CLAIMANTS

- When multiple claimants, general rule is that the insurer can settle with fewer than all claimants, exhausting or seriously diminishing available coverage to the detriment of other claimants, if settlements are made in good faith.
- Should at all times advise the insured of what is taking place.
- Should try to get the insured's consent to the settlement.

PROCEDURAL DEVICES

- To resolve multiple claims that exceed policy limits
- Concursus proceeding in state court
- Deposit policy proceeds into the registry of the court
- The insurer admits liability for the full amount of the insurance coverage.
- Should state that liability not being imputed to the insured and admission effective only up to the amount deposited.
- In federal court interpleader action.

- **Legal interest**--when liability clear and damages readily exceed the policy limit, insurer in bad faith if it rejects settlement offer of policy limit and legal interest
 - *Hodge v. American Fidelity Ins. Co.*, 486 So.2d 233, 239 (La. App. 3 Cir. 1986)—rationale is that insurer not incurring any additional expense because any final judgment probably would have exceed the policy limit and eventually would have paid legal interest.

INSURED'S DEDUCTIBLE

- In most policies the insurer has absolute authority to settle within the policy limits without the insured's consent.
- Insured's consent might be needed for the insured to pay the deductible amount in any settlement, and if the insurer pays the entire amount, no right of reimbursement.
- *Employer's Surplus Line Ins. v. City of Baton Rouge*, 362 So.2d 561 (La. 1978) (the amount is deductible from the sum insured "legally obligated to pay.")

NEGOTIATIONS

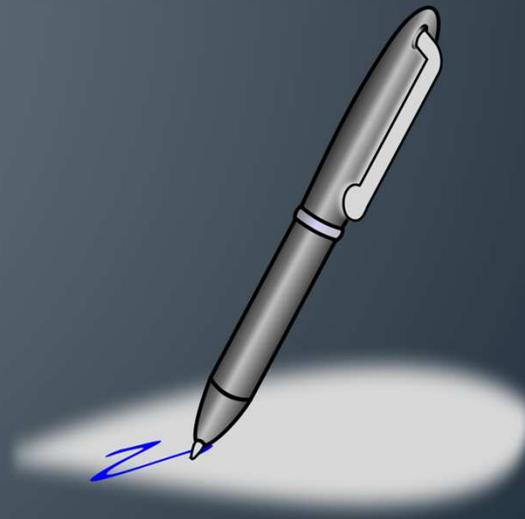
- Negotiating is bad faith.
- Insurer not necessarily in bad faith because does not immediately accept settlement demand but makes counter offer.
- *Bone v. Sentry Ins. Co.*, 681 F.Supp. 357, 364 (E.D. La. 1988)

DUTY TO INFORM INSURED

- Before *Kelly*, in excess judgment cases, insurers often found in bad faith not because of breach of duty to settle, but breach of duty to keep the insured advised of significant developments in the case.
- Now under *Kelly*, failure to disclose is misrepresentation of pertinent facts under R.S. 22:1973(B)(1).

STATUTORY DUTIES

- The two principal statutes
- R.S. 22:1892
- R.S. 22:1973



- R.S. 22:1892
- The Duties
 - Paying claims to insureds within 30 days of proof of loss
 - Paying third-party property damage and medical expense claims with 30 days of a written settlement agreement
 - Initiating loss adjustment of property damage and medical expense claims within 14 days after notice of loss
 - Making a written offer to settle all property damage claims, including those made by third parties, within 30 days of proof of loss
 - Paying third party personal vehicle loss of use claims exceeding 5 working days within 30 days of proof of loss

- Unconditional payment of first party claims within 30 days of proof of loss
 - R.S. 22:1892(A)(1) states that the insurer "shall pay the amount of any claim due any insured within 30 days after receipt of satisfactory proof of loss from the insured or any party in interest."
 - Only first-party claims
 - **Unconditional tender**, not a settlement offer
 - Absent fraud or ill practices, **no right of reimbursement** if at trial the court awards the insured an amount less than the unconditional payment
 - Proof of loss need not be in any formal style
 - The insurer's actual knowledge of the facts showing the extent of loss suffices as proof of loss
 - Under R.S. 22:1892(B)(1), the arbitrary failure to make unconditional payments, **penalty of 50 percent** of the amount timely paid or \$1,000 (whichever is greater), as well as attorney's fees
 - When the same insurer conduct violates both R.S. 22:1892 and R.S. 22:1973, the insured can select the statute awarding the larger penalty, but cannot receive penalties under both statutes

~continued on next page~

- Unconditional payment of first party claims within 30 days of proof of loss ~continued~
 - Must be an unconditional payment of the amount unquestionably owed: if reasonable people would not disagree that the insured is owed at least a certain amount, that amount must be tendered—question as to whether arbitrary failure to make payment is objective or subjective *McGill v. Utica Mut. Ins. Co.*, 475 So.2d 1085, 1092 (La. 1985), amount of unconditional payment should be "a figure over which reasonable minds could not differ"
 - *Merwin v. Spears*, 90 So.3d 1041 (La. 2012) (indicating the finding of bad faith could be subjective determination)
 - Legitimate questions regarding negligence, medical causation, extent of damages may justify absence of a tender or tender of a lower amount
 - Insurer does have right to timely investigate the claim
 - Unconditional tender under UM constitutes acknowledgement of obligation interrupting prescription, but may not be true with other types of insurance coverage

INITIATE LOSS ADJUSTMENT OF PD/MED EXP. CLAIMS

- Insurer must initiate loss adjustment of property damage or medical expense claim within 14 days after notice of loss
- Catastrophic loss exception where time period of 30 days
- Insurer must take "substantive and affirmative step" to gather information to evaluate the claim
- Visiting accident scene, statements, inspection of vehicle, send packet to claimant seeking information

PRESCRIPTION

- Prescriptive period for bad faith claims not involving fire policy may be 10 years for breach of policy provisions
- *See We Sell Used Cars, Inc. v. United National Insurance Company*, 715 So.2d 656

DAMAGES

- Legal interest on penalties or attorney's fees under a bad faith statute calculated from date of judgment
Sher v. Lafayette Insurance Company, 973 So.2d 39, 48 (La. 2007)
- Attorney's fees under statute only for those fees incurred in prosecuting the bad faith claim
Arceneaux v. Amstar Corp., 66 So.3d 438 (La. 2011)

La. R.S. 22:1973

§ 1973. Good faith duty; claims settlement practices; cause of action; penalties

A. An insurer, including but not limited to a foreign line and surplus line insurer, owes to his insured a duty of good faith and fair dealing. The insurer has an affirmative duty to adjust claims fairly and promptly and to make a reasonable effort to settle claims with the insured or the claimant, or both. Any insurer who breaches these duties shall be liable for any damages sustained as a result of the breach.

B. Any one of the following acts, if knowingly committed or performed by an insurer, constitutes a breach of the insurer's duties imposed in Subsection A of this Section:

- (1) Misrepresenting pertinent facts or insurance policy provisions relating to any coverages at issue.
- (2) Failing to pay a settlement within thirty days after an agreement is reduced to writing.
- (3) Denying coverage or attempting to settle a claim on the basis of an application which the insurer knows was altered without notice to, or knowledge or consent of, the insured.
- (4) Misleading a claimant as to the applicable prescriptive period.
- (5) Failing to pay the amount of any claim due any person insured by the contract within sixty days after receipt of satisfactory proof of loss from the claimant when such failure is arbitrary, capricious, or without probable cause.
- (6) Failing to pay claims pursuant to R.S. 22:1893 when such failure is arbitrary, capricious, or without probable cause.

C. In addition to any general or special damages to which a claimant is entitled for breach of the imposed duty, the claimant may be awarded penalties assessed against the insurer in an amount not to exceed two times the damages sustained or five thousand dollars, whichever is greater. Such penalties, if awarded, shall not be used by the insurer in computing either past or prospective loss experience for the purpose of setting rates or making rate filings.

D. The provisions of this Section shall not be applicable to claims made under health and accident insurance policies.

E. Repealed by Acts 1997, No. 949, § 2.

F. The Insurance Guaranty Association Fund, as provided in R.S. 22:2051 et seq., shall not be liable for any special damages awarded under the provisions of this Section.

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- Court found that insurers can violate duty to settle even without a firm settlement demand.
- Case received national attention.
- Randy Maniloff, in national Coverage Opinions newsletter, asked whether "the Louisiana Supreme Court is handed a playbook to policyholders in court the chance to change the bad faith landscape."
- Fifth Circuit certified two questions
 - 1) Can an insurer be liable under 1973(A) for breach of duty to settle even though there was no firm settlement demand?
 - 2) Can insurer's failure to disclose facts not related to insurance coverage violate 1973(B)(1)?

Theriot (1977 Supreme Court decision). Court said that the general language in then 1220(A) only illustrative of insurer duties

 - Subsection (B) constitutes exclusive list of types of conduct that violate statute
 - Case involved third party claimant, but court's language on scope of statute clearly covered both insureds and third-party claimants
- *Kelly*
 - 1) Insureds may have general cause of action under 22:1973(A), even with violation of one of the six specific duties in (B), and can sue for breach of duty to settle under 1973
 - 2) Insurer can violate (B)(1)—misrepresenting pertinent facts or insurance policy provisions relating to any coverages at issue—by failing to disclose settlement communications

- R.S. 22:1973(B) poses six specific duties on insurers. Provision states that these acts, if "knowingly committed," constitute breach of the insurer's statutory good faith duty:
 1. Misrepresenting pertinent facts or policy provisions relative to insurance coverage
 2. Failing to pay a settlement within 30 days of a written settlement agreement
 3. Denying coverage or attempting to settle a claim based on an altered application
 4. Misleading a claimant on prescription
 5. Failing to pay an insured's claim within 60 days of proof of loss
 6. Violating R.S. 22:1893 by using solely floodwater markings on, or the displacement of, structures to determine coverage under homeowners' insurance policies

PENALTIES

R.S. 22:1973(C) states:

"In addition to any general or specific damages to which a claimant is entitled for breach of the imposed duty, the claimant may be awarded damages assessed against the insurer in an amount not to exceed two times the damages sustained or \$5,000, whichever is greater."

- If damages actually caused by breach of duty for \$20,000, the penalty would be \$40,000
- Court can award penalty even if breach of duty did not result in actual damages (settlement payment made 31 days after date of settlement agreement)