SUPREME COURT OF LOUISIANA

Ginger Hinch Durio v. Horace Mann Insurance Company, et al.

74 So. 3d 1159 (La. 2011) · No. 2011-C-0084 · Decided October 25, 2011

SUMMARY

The Louisiana Supreme Court reviewed an insurance dispute arising from Hurricane Rita damage to the plaintiff's home. The court addressed whether penalties under La. R.S. 22:1220 could be calculated using contractual damages and whether attorney fees were properly awarded under the amended version of La. R.S. 22:658. The court affirmed in part, reversed in part, and amended in part the lower-court rulings.

CASE DETAILS

COURT	Supreme Court of Louisiana
WRITING FOR THE COURT	Johnson, Justice; Knoll, Justice; Victory, Justice
JURISDICTION	Louisiana
DECIDED	October 25, 2011
DOCKET	2011-C-0084
DISPOSITION	other
PROCEDURAL POSTURE	Horace Mann sought review of a Louisiana Third Circuit judgment affirming a bench-trial judgment awarding contractual damages, penalties under La. R.S. 22:1220, consequential damages, and attorney fees under the amended La. R.S. 22:658. The Louisiana Supreme Court granted the writ application and reviewed the statutory penalty calculations and attorney-fee award.
STANDARD OF REVIEW	De novo review of the legal question involving interpretation of La. R.S. 22:1220(C) and the retroactive application of La. R.S. 22:658.
PRECEDENTIAL VALUE	Published Louisiana Supreme Court opinion; binding statewide precedent.
PARTIES	Horace Mann Insurance Company v. Ginger Hinch Durio

TOPICS

insurance bad faith · casualty insurance litigation · statutory interpretation · insurance · damages

PRACTICE AREAS

insurance | insurance bad faith | statutory interpretation | contracts | remedies

QUESTIONS PRESENTED

1. Whether penalties under La. R.S. 22:1220(C) may be calculated by doubling contractual damages owed under the insurance policy.
2. Whether the 2006 amendment to La. R.S. 22:658, which increased penalties and authorized attorney fees, applied to Durio's claim when satisfactory proof of loss was received before the amendment's effective date.
3. What disposition should follow from the proper calculation of statutory penalties and the nonretroactivity of the amended attorney-fee provision.

HOLDINGS

1. Penalties under La. R.S. 22:1220(C) are calculated by reference to damages sustained as a result of the insurer's breach of the statutory duties of good faith and fair dealing, not by including contractual amounts due under the insurance policy.
2. The proper penalty award was twice the $167,333 in general and special damages attributable to Horace Mann's statutory breach, or $334,666.
3. The 2006 amendment to La. R.S. 22:658 authorizing attorney fees and increasing the penalty did not apply because Durio's cause of action arose when Horace Mann failed to pay within the statutory period after receiving satisfactory proof of loss on May 5, 2006, before the amendment became effective.

KEY QUOTATIONS

> *"A logical and consistent reading of the statute mandates a finding that contractual damages due or awarded under the insurance contract should not be used to calculate penalties under the statute."* (74 So. 3d at 1170-71)

> *"Such penalties are properly calculated by doubling the amount of damages sustained as a result of the insurer's breach of its duties under the statute."* (74 So. 3d at 1173)

FACTUAL BACKGROUND

Hurricane Rita damaged Durio's Lake Charles home in September 2005, particularly the attached garage, while the parties disputed the extent of damage to the remainder of the structure. Durio submitted a sworn proof of loss received by Horace Mann on May 5, 2006, asserting that the home and contents were totally destroyed. Horace Mann made some payments but did not pay the full amounts claimed, and the trial court found that the insurer's handling of the claim was arbitrary and capricious and caused contractual, emotional-distress, wage, and retirement losses.

PROCEDURAL HISTORY

After a bench trial, the trial court awarded policy benefits, penalties under La. R.S. 22:1220, general and special damages, and attorney fees under the amended version of La. R.S. 22:658. The trial court later vacated the La. R.S. 22:658 penalties but awarded attorney fees. The court of appeal affirmed. The Supreme Court amended the judgment to exclude contractual damages from the La. R.S. 22:1220 penalty calculation, vacated the attorney-fee award, and affirmed the judgment in all other respects.

DISPOSITION

other

CASES CITED

- Red Stick Studio Development, L.L.C. v. State of Louisiana by and Through the Department of Economic Development, 56 So. 3d 181 (La. 2011)
- Cleco Evangeline, LLC v. Louisiana Tax Commission, 813 So. 2d 351 (La. 2002)
- Sultana Corp. v. Jewelers Mutual Insurance Co., 860 So. 2d 1112 (La. 2003)
- Neal Auction Co. v. Lafayette Insurance Co., 13 So. 3d 1135 (La. App. 4 Cir. 2009)
- Wegener v. Lafayette Insurance Co., 60 So. 3d 1220 (La. 2011)
- Audubon Orthopedic and Sports Medicine, APMC v. Lafayette Insurance Co., 38 So. 3d 963 (La. App. 4 Cir. 2010)
- Ferrara, Inc. v. Lafayette Insurance Co., 41 So. 3d 663 (La. App. 4 Cir. 2010) (unpublished)
- Theriot v. Midland Risk Insurance Co., 694 So. 2d 184 (La. 1997)
- Calogero v. Safeway Insurance Co., 753 So. 2d 170 (La. 2000)
- Sher v. Lafayette Insurance Co., 988 So. 2d 186 (La. 2008)
- Morrell v. Fisher, 7 So. 3d 1264 (La. App. 3 Cir. 2009)