

BAD FAITH BLOG

# Insurer's Good Faith Policy Defense Defeats Insured's Statutory Penalty Claim (Even When Insurer's Policy Limitation Violates Louisiana Public Policy)

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Summary: The Louisiana Appellate Court affirmed the trial court's dismissal of plaintiff's claim for future medical expenses and future loss of income precluding the assessment of statutory penalties even though its policy restrictions violated Louisiana's "Economic Only Uninsured Motorist" (EOUM) coverage statute.

*Hoagboon v. Cannon*, 54 So. 3d 802, 2010-0909 (La. App. 1 Cir. 12/29/10)

Bridgette Hoagboon had an auto accident with Brandy Cannon on the Causeway Bridge in Jefferson Parish Louisiana on October 30, 2006. Thereafter Hoagboon filed a Petition against Cannon, Geico (Cannon's insurance carrier) and Automobile Club Inter-Insurance Exchange (AAA), Hoagboon's EOUM insurer. After Hoagboon settled her claims against Cannon and Cannon's insurance company, Hoagboon pursued claims for future lost wages and future medical expenses against her EOUM insurer. Instead of having a formal trial, the parties submitted documentary evidence and legal memoranda to the trial judge who ruled in favor of Hoagboon's carrier. The trial judge denied her claims for future wages and medical expenses, denied her request for penalties and attorney's fees, and taxed three fourths of the costs against her insurer and one fourth to Ms. Hoagboon.

The Appellate Court first ruled that the EOUM insurer's restrictive policy language violated Louisiana's Civil Code. Although an insurer could agree with an insured to limit coverage, those limitations could not be more restrictive than what the Louisiana statutes require. Louisiana has a statute which allows an economic only uninsured/underinsured coverage in return for a lower premium, but that coverage must allow an insured to recover "special damages." In Louisiana, "special damages" include future lost wages and future medical expenses as a matter of law. Since the coverage provided in the AAA EOUM policy only allowed the recovery of incurred and documented economic damages, the Court held that that provision violated public policy.

Nevertheless, due to the nature of future loss of income and medical expense claims, Louisiana Courts do not allow such awards based "purely on speculation, conjecture, and probabilities, nor simply on the difference between a plaintiff's earnings before and after a disabling injury." *Id.* at 806. Furthermore, because the record on appeal did not contain evidence supporting Ms. Hoagboon's "claim of future loss of income" and that "future medical expenses will be necessary and inevitable," she had failed to meet burden of proof for either of those claims. *Id.* at 806-807. Accordingly, the trial court had properly denied her EOUM claims.

In addition, the Appellate Court affirmed the trial court's refusal to award her statutory penalties and for attorney's fees and costs. The court noted that "statutory penalties are inappropriate when the insurer has a responsible basis to defend the claim and acts in good faith reliance on that defense, especially when there is a responsible and legitimate question as to the extent and causation of claim, and bad faith should not be inferred from an insurer's failure to pay within the statutory time limits when such reasonable doubt exists." *Id.* at 807. In addition, because the issue of arbitrary and capricious behavior is a factual issue, the trial court's ruling on such matters would be reversed only if there was "manifest error." *Id.* at 807. Because the insured had failed to prove her entitlement to future lost wages and medical expenses, the Appellate Court could not find error in the trial court's ruling. Interestingly, the Appellate Court made it clear that if the insurer had cross-appealed on the assessment of costs, Ms. Hoagboon would have ended up paying all of the taxable costs, not just one fourth.

The lesson for insurers (especially those in Louisiana) is that you can require your insureds to prove up their claims in compliance with the policy conditions. You can permissibly deny claims which are not properly supported and avoid statutory penalties, as long as you have a solid, good faith defense and that is true, at least sometimes, even when the governing policy provision violates public policy. Obviously it helps if the insured fails to properly document her claim and fails to meet her burden of proof.