

From The Bench

legal news of interest

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Proof of Actual Damages Is Not a Prerequisite to Penalties Under *LSA-R.S. 22:1220*

by Alicia M. Jacob

Q. Can a claimant recover penalties under *LSA-R.S. 22:1220* without proving actual damages?

a. Yes.

In *Sultana Corporation v. Jewelers Mutual Insurance Company*,¹ the Louisiana Supreme Court considered whether proof of actual damages is a prerequisite to an award of penalties under *LSA-R.S. 22:1220* for an insured's failure to timely fund a settlement. The Supreme Court found an insured need not prove it suffered damages for the award of penalties under this statute.

Sultana sued its insurer, Jewelers Mutual, for denying coverage. Before the court signed a written judgment following trial, Jewelers' counsel sent correspondence to Sultana's counsel stating that Jewelers would settle the litigation for the amount awarded to Sultana by the trial court. Sultana's counsel accepted the settlement offer and returned the agreement to Jewelers' counsel.

However, Sultana failed to receive the settlement funds, prompting Sultana to file a motion to enforce settlement, including a demand for statutory penalties, attorneys fees and costs. Jewelers immediately forwarded a settlement check to Sultana, but Sultana pursued its motion for penalties under *LSA-R.S. 22:1220*.

LSA-R.S. 22:1220 creates an affirmative duty on the part of an insurer to address claims fairly and promptly and to make a reasonable effort to settle claims with an insured or claimant. This statute requires an insurer to pay a settlement within thirty (30) days after it is reduced to writing. A claimant may be awarded penalties, as follows:

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.

The trial court denied Sultana's motion for penalties under the foregoing statute, finding that, because Sultana had failed to prove it sustained actual damages by Jewelers' untimely payment of the settlement, Sultana was not entitled to penalties under *LSA-R.S. 22:1220(C)*. Sultana submitted the affidavit of its owner, who stated that Jewelers' failure to timely pay the



settlement required Sultana to use out-of-pocket cash to pay for the construction of a new store. The trial court found this affidavit was insufficient to establish actual damages.

On appeal, the First Circuit Court of Appeal relied on its previous decisions holding an insured must prove he sustained actual general or special damages as a result of the insurer's breach in order to recover penalties under *LSA-R.S. 22:1220*. In the alternative, the First Circuit found the lower court had not erred in holding the affidavit of Sultana's owner was insufficient to establish actual damages.

The First Circuit recognized that its brethren in the Third, Fourth and Fifth Circuit Courts of Appeal had conversely found penalties could be awarded under *LSA-R.S. 22:1220(C)* without actual damages being proven by the insured. Because of this split in the courts, the Louisiana Supreme Court granted Sultana's writ application to decide whether actual damages must be proven before penalties can be assessed under *LSA-R.S. 22:1220(C)*.

After carefully comparing the two conflicting positions within the appellate courts, the Supreme Court rejected the approach adopted by the First Circuit. The Supreme Court concluded penalties may be imposed under *LSA-R.S. 22:1220(C)* without a showing of general or special damages by the insured or claimant.

As Jewelers did not timely remit payment as required by the statute, the Supreme Court decided Jewelers had breached its duty of good faith to Sultana and remanded the case to the trial court for an award of penalties.

¹ 2003-0360 (La. 12/3/03), 2003 WL 22853818.



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