Louisiana Court Rules in Failure-to-Pay Settlement Case

When a party seeks penalties as a result of an insurer's failure to pay a settlement within 30 days, the party need not prove the insurer was "arbitrary, capricious, or without probable cause" in failing to pay, according to a recent decision in the Louisiana Third Circuit Court of Appeal. That's the analysis offered by Mark Perkins of **Perkins & Associates, L.L.C.**, a regional defense firm serving North Louisiana and Northeast Texas.

Perkins said that's it's important to note that this is a Third Circuit case and may not apply to other venues in Louisiana.

However, he said, anyone confronted by a plaintiff's attorney in Louisiana threatening penalties and attorney's fees for failing to fund an alleged agreement within 30 days, should review:

"When a party seeks penalties as a result of an insurer's failure to pay a settlement within 30 days, the party need not prove the insurer was 'arbitrary, capricious, or without probable cause' in failing to pay; rather, the party need only show that the insurer's failure was 'knowingly committed.' While the compromise must be made in writing and evidenced by documentation signed by both parties, there is no requirement that the compromise be contained in a single document. However, a letter written by one party memorializing their understanding of an oral agreement was insufficient to satisfy the 'in writing' requirement of La. C.C. art. 3072, and thus there was no agreement of the parties triggering the penalties for non-payment set forth in La. R.S. 33:1973. Barnes v West,

Third Circuit, No. CA 14-1018 (2/4/15), at www.la3circuit.org/Opinions/2015/02/020415/14-1018opi.pdf."

The court described the case:

"The plaintiffs in this automobile accident suit settled with the plaintiff/car-owner's uninsured motorist insurer. After the insurer allegedly failed to remit the settlement funds within thirty days, the plaintiffs filed a motion for penalties. The trialcourt granted the motion and imposed a $5,000.00 penalty."