

**DARLENE ERMERT, WIFE
OF/AND JERRY TROXCLAIR**

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NO. 2001-CA-1130

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COURT OF APPEAL

VERSUS

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FOURTH CIRCUIT

**JUANITA STEVENS,
IMPERIAL ADJUSTMENT
CORPORATION AND AIG
INSURANCE COMPANY**

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STATE OF LOUISIANA

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**APPEAL FROM
ST. BERNARD 34TH JUDICIAL DISTRICT COURT
NO. 89-125, DIVISION "B"
Honorable David S. Gorbaty, Judge**

**Charles R. Jones
Judge**

(Court composed of Chief Judge William H. Byrnes III, Judge Charles R. Jones, and Judge Patricia Rivet Murray)

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AFFIRMED

The Appellant, AIG Insurance Company, appeals the judgment of the district court in favor of the Appellees, Darlene and Jerry Troxclair, awarding damages in the amount of \$7,446. Following a review of the record, we affirm the judgment of the district court.

On November 13, 1998, Darlene Ermert Troxclair's vehicle was rear-ended by a vehicle driven by Juanita Stevens, who is insured by Imperial Fire and Casualty Company. There was no question as to whether Ms. Troxclair was injured in the accident. Ms. Troxclair settled with Imperial Fire and Casualty Company in the amount of \$9,000. In exchange for this settlement amount, the Troxclair's released Juanita Stevens and Imperial Fire and Casualty Company, while reserving their right to proceed against the excess carrier, AIG Insurance Company. The policy issued by Imperial Fire and Casualty Company had a policy limit of \$10,000.

Thereafter, the Troxclairs proceeded to trial against AIG Insurance Company. At trial, both parties stipulated to a credit of \$10,000 to AIG

Insurance Company based on the Imperial Fire and Casualty Company's policy limits. After hearing the case, the district court rendered judgment in favor of the Troxclairs in the amount of \$3,600 in general damages and \$3,846 in special damages. However, neither the judgment nor the reasons for judgment expressly indicate whether the credit was taken into consideration by the district court.

AIG Insurance Company filed the instant appeal seeking an amendment to or clarification of the judgment with respect to the credit.

The sole issue for review on appeal is whether the district court erred by failing to specifically reference the credit in the judgment.

The record must clearly reveal that the trier of fact abused its discretion in making the award before an appellate court can disturb the damage award by the trial court. *Gaston v. G & D Marine Services, Inc.*, 93-0182 (La. App. 4 Cir. 1/19/94) 631 So.2d 547, 554.

Although the judgment is silent as to the \$10,000 credit, the record demonstrates that the district court was aware of the credit, and considered said credit. The district court expressly addressed the Troxclairs in open court to be sure that they fully understood all of the implications of

stipulating to the credit. The district court was aware that AIG Insurance Company was the only remaining defendant in the case and that only their liability was in judgment. Further, the district court rendered its disposition casting AIG Insurance Company in judgment. Hence, AIG Insurance Company is responsible for the full amount awarded at trial.

DECREE

For the foregoing reasons, we hereby affirm the judgment of the district court.

AFFIRMED