

SABRINA CARNEY

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NO. 2003-CA-0806

VERSUS

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COURT OF APPEAL

**AMERICAN NATIONAL
GENERAL INSURANCE
COMPANY**

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FOURTH CIRCUIT

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STATE OF LOUISIANA

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APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2001-16807, DIVISION "N"
HONORABLE ETHEL SIMMS JULIEN, JUDGE

**JAMES F. MCKAY III
JUDGE**

(Court composed of Judge James F. McKay III, Judge Terri F. Love, Judge David S. Gorbaty)

LOVE, J., CONCURS IN THE RESULT

GORBATY, J., CONCURS IN THE RESULT

AYNSLEY B. BOURNE
LIONEL J. FAVRET, III
HAIL STORM CLASS ACTION COALITION, LLC
New Orleans, Louisiana 70119

-and-

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AFFIRMED

The plaintiff, Sabrina Carney, appeals the trial court's granting of the defendant's, American National General Insurance Company (ANGIC), motion for summary judgment on the grounds of prescription. We affirm.

FACTS AND PROCEDURAL HISTORY

On January 23, 2000, a hailstorm struck the Greater New Orleans area. The hailstorm damaged Ms. Carney's home located at 3101 Preston Place in New Orleans. At the time of the hailstorm, a homeowners' insurance policy issued by ANGIC provided coverage for physical property damage to Ms. Carney's home. The policy contained a provision which stated that "[n]o action shall be brought unless there has been compliance with the policy provisions and the action is started within one year after the occurrence causing loss or damage." On March 16, 2000, Ms. Carney filed a claim with ANGIC for damage to her home resulting from the January 23, 2000 hailstorm. Eric Faust, an independent adjuster employed by National

Catastrophe Adjusters, Inc. inspected Ms. Carney's home and ANGIC's adjuster, Jennifer Homan, advised Ms. Carney that after a deduction for depreciation and the policy deductible, the value of her hailstorm damage was \$1,262.47. ANGIC then paid this amount to Ms. Carney.

In March of 2000, Ms. Carney paid T & K Corporation \$2,900.00 to replace her roof.

On January 23, 2001, a group of individuals filed a class action petition against a number of insurance companies, alleging that they were not fully compensated for various types of damage caused by the hailstorm. Ms. Carney would be a member of the class as defined and described by this suit. However, ANGIC was dismissed from the class action on September 2, 2002.

On October 12, 2001, Ms. Carney filed suit against ANGIC, alleging among other things that ANGIC failed to properly compensate her for her hailstorm damage and committed bad faith under the Louisiana Insurance Code. ANGIC moved for summary judgment on the grounds that Ms. Carney's cause of action had prescribed. A hearing on the motion was held on January 10, 2003, at which time the trial court granted ANGIC's motion

for summary judgment and dismissed Ms. Carney's suit. The trial court signed the judgment on March 3, 2003. It is from this judgment that Ms. Carney now appeals.

DISCUSSION

On appeal, the plaintiff raises the following assignments of error: 1) the district court erred in granting ANGIC's motion for summary judgment because the plaintiff is a putative member of a pending class action, which suspends prescription as to all members of the class until official notice is published advising the plaintiff of her rights; and 2) the district court erred in finding that the limitations clause in ANGIC's insurance policy barred the plaintiff's claim.

Ms. Carney argues that as a putative member of a pending class action, prescription in her cause of action against ANGIC has been suspended until official notice is published advising her of her rights as a member of the proposed class. However, Ms. Carney never raised this issue before the trial court.

According to Rule 1-3 of the Uniform Rules of Louisiana Courts of Appeal:

The scope of review in all cases within the appellate and supervisory jurisdiction of the Courts of Appeal shall be as provided by LSA-Const. Art. 5, §10 (B), and as otherwise provided by law. The Courts of Appeal will review only issues which were submitted to the trial court and which are contained in specifications or assignments of error, unless the interest of justice clearly requires otherwise.

In the instant case, Ms. Carney paid \$2,900.00 to replace her roof.

After a deduction for depreciation and the policy deductible, ANGIC paid Ms. Carney \$1,262.47 for her hailstorm damage. The difference in the amount ANGIC paid to Ms. Carney and the amount Ms. Carney paid to replace her roof is not so great that the interest of justice would require that this Court review an issue not submitted to the trial court. Accordingly, we will not consider Ms. Carney's first assignment of error.

La. R.S. 22:1220, which has a prescriptive period of ten years, imposes upon the insurer a duty of good faith and fair dealing with its insureds. The purpose of this statute is to protect the insured who does not know that he has been treated arbitrarily, capriciously, or with bad faith during the one-year period of time after the incident. It protects the insured who attempts to follow the terms and conditions of the policy by presenting a timely claim, by presenting a timely proof of loss, by allowing the insurer to inspect, evaluate, and appraise the damage, but who then gets misled by his insurer regarding the terms and conditions of the policy. Furthermore, this statute grants a right and cause of action to an insured and against an

insurer who breaches the statutorily prescribed duties of good faith and fair dealing. See Zidan v. USAA Prop. and Cas. Ins. Co., 629 So.2d 1138 (La. 1993).

However, in the instant case, considering ANGIC's actions toward Ms. Carney, there is no indication that ANGIC breached the statutorily prescribed duties of good faith and fair dealing. Furthermore, the homeowners' insurance policy issued by ANGIC to Ms. Carney contains a clause which limits actions to a period of one-year after the occurrence causing loss or damage. Because there is no evidence that ANGIC breached its duties of good faith and fair dealing, the one-year limitation in its policy provisions should be enforced. Accordingly, we agree with the trial court's judgment on this issue.

CONCLUSION

For the foregoing reasons, we affirm the trial court's granting of summary judgment in this case.

AFFIRMED

