

**KEARNEY LOUGHLIN, ET
AL.**

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NO. 2013-CA-1285

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COURT OF APPEAL

VERSUS

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FOURTH CIRCUIT

**UNITED SERVICES
AUTOMOBILE ASSOCIATION**

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STATE OF LOUISIANA

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JENKINS, J., DISSENTS WITH REASONS

I respectfully dissent from the majority’s opinion, finding that the trial court did not manifestly err in granting United Services Automobile Association’s exception of prescription. Under the manifest error standard of review, even if this Court would have decided the case differently had it been the original trier of fact, the trial court’s judgment should nonetheless be affirmed unless it is found to be clearly wrong. *Welch v. Winn-Dixie*, 94-2331 (La.5/22/95), 655 So.2d 309. “A finding is ‘clearly erroneous’ when although there is evidence to support it, the reviewing court is left with the definite and firm conviction that a mistake has been committed.” *U. S. v. United States Gypsum Co.*, 333 U.S. 364, 395, 68 S.Ct. 525, 541, 92 L.Ed.2d 746, 766 (1948). *See also, Stobart v. State, Through Dep’t of Transp. & Dev.*, 617 So.2d 880, 882 (La. 1993); *Sistler v. Liberty Mutual Ins. Co.*, 558 So.2d 1106, 1112 (La. 1990). Based on a review of the record, I cannot say that the trial court was clearly wrong and would therefore affirm the trial court’s judgment granting the exception of prescription.