ROXANNE R. NAVARRETE WIFE OF/AND THOMAS P., HOITINGA	*	**NO. 2018-C-1059**
	*	**COURT OF APPEAL**
VERSUS	*	**FOURTH CIRCUIT**
CHERYL D. JARRELL, ANPAC LOUISIANA INSURANCE COMPANY AND GEICO CASUALTY COMPANY	*	**STATE OF LOUISIANA**
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APPLICATION FOR WRITS DIRECTED TO
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2016-12471, DIVISION "J"
Honorable D. Nicole Sheppard

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JUDGE SANDRA CABRINA JENKINS

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(Court composed of Judge Terri F. Love, Judge Edwin A. Lombard
Judge Roland L. Belsome, Judge Sandra Cabrina Jenkins, Judge Paula A. Brown)

BELSOME, J., DISSENTS

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WRIT GRANTED; REVERSED

JANUARY 30, 2019

Plaintiffs/relators, Roxanne A. Navarrette and Thomas P. Hoitinga, seek review of the trial court's December 17, 2018 judgment denying their second motion to strike the jury trial demand of defendant/respondent, ANPAC Louisiana Insurance Company ("ANPAC"). Plaintiffs argue that ANPAC is not entitled to a jury trial, pursuant to La. C.C.P. art. 1732, because plaintiffs' causes of action do not exceed fifty thousand dollars exclusive of interest and costs. Upon review of the applicable law and jurisprudence, we find the trial court erred in denying plaintiffs' second motion to strike jury trial demand. Accordingly, we grant plaintiffs/relators' writ and reverse the trial court's judgment.

FACTS AND PROCEDURAL BACKGROUND

On December 22, 2016, plaintiffs filed this suit for damages alleging injuries as a result of a motor vehicle accident that occurred on or about August 16, 2016. Plaintiffs named the following defendants: Cheryl D. Jarrell, as the driver of the vehicle allegedly causing the collision; ANPAC, as Jarrell's insurer; and GEICO Casualty Company ("GEICO"), as plaintiffs' uninsured motorist carrier.

Subsequently, plaintiffs dismissed their claims against Jarrell with prejudice. In addition, on January 30, 2018, plaintiffs and ANPAC entered into a joint stipulation that ANPAC waived its defense of failure to join Jarrell under the Direct Action Statute following the dismissal of its insured, and that the amount of each plaintiff's cause of action against ANPAC does not exceed fifty thousand dollars exclusive of interest and costs. Thereafter, plaintiffs proceeded with their suit against ANPAC and GEICO.

On April 4, 2018, plaintiffs filed their second motion to strike jury trial demand of ANPAC.[1] The trial court conducted a hearing on November 16, 2018, and rendered judgment on December 17, 2018, denying plaintiffs' motion. Plaintiffs timely noticed their intent to seek supervisory review of the trial court's judgment.

DISCUSSION

Plaintiffs argue that the trial court erred in its interpretation of La. C.C.P. article 1732 and denying their motion to strike jury trial.

La. C.C.P. article 1732 provides, in pertinent part, that "[a] trial by jury shall not be available in: (1) A suit where the amount of no individual petitioner's cause of action exceeds fifty thousand dollars exclusive of interest and costs, except as follows: …" In *Benoit v. Allstate Ins. Co.*, 00-0424 (La. 11/28/00), 773 So.2d 702, the Louisiana Supreme Court recognized the change in the language of the statute enacted by La. Acts 1989, No. 107. "Prior to 1989, the statutory standard for determining the monetary threshold for a jury trial was the 'amount in dispute.' La.

[1] Plaintiffs' First Motion to Strike Jury Demand of ANPAC and Jarrell was filed and denied prior to the dismissal of Jarrell as a defendant. GEICO has not requested a jury trial.

Acts 1989, No. 107, changed the standard to the amount of at least one 'individual petitioner's cause of action.'" *Benoit*, 00-0424, p.1, 773 So.2d at 703.

The *Benoit* Court considered the statutory source and legislative intent behind the change in the wording of the statute.

> La. Acts 1989, No. 107, began as a Senate bill that simply prohibited a trial by jury in "[a] suit where the amount of the cause of action does not exceed twenty thousand dollars exclusive of interest and costs." In Senate Committee, the bill was amended to delete the words "the cause of action does not exceed" and to substitute the words "no individual petitioner's cause of action exceeds." At the Committee meeting, the author of the original bill explained that the present law denies a jury trial where the amount in dispute does not exceed $20,000 and that "the intent [of the original bill] is that a person who has a claim of more than $20,000 would be entitled to a jury trial, and if the claim is less than that, he would not be entitled to a jury trial." The senator who offered the Committee amendment then explained the amendment was to clarify that a jury trial is unavailable if no individual petitioner's cause of action exceeds $20,000.
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> One purpose of the 1989 legislation, which is very evident from the insertion of the words "individual petitioner," was to clarify that the monetary threshold cannot be satisfied by the joinder of two or more plaintiffs in the same suit, although La.Code Civ. Proc. art. 463 might authorize that joinder under the specified conditions. The amendment clearly requires that the unjoined cause of action of at least one individual plaintiff must be valued above the minimum amount.
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> The more difficult issue is the determination of the purpose of the use of the phrase "cause of action." That phrase has caused considerable difficulty in judicial interpretation over the years, especially when issues of prescription or res judicata were involved. *See, e.g., Mitchell v. Bertolla,* 340 So.2d 287 (La.1976).
>
> Although the Code of Civil Procedure does not define "cause of action," the jurisprudence has offered several consistent definitions. In *Trahan v. Liberty Mut. Ins. Co.,* 314 So.2d 350, 353 n. 4 (La.1975), this court defined cause of action, in the context of an issue of interruption of prescription, as "[t]he juridical facts which constitute the basis of the right," "[t]he immediate basis of the right which the party seeks to exercise," and "[t]hat which serves as a basis for demand." Under these definitions, the term "cause of action" focuses on the conduct of the particular defendant in the occurrence or transaction which gives rise to the plaintiff's demand.
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> In *Everything on Wheels Subaru, Inc. v. Subaru South, Inc.*, 616 So.2d 1234 (La.1993), this court stated that the term "cause of action," as used in the context of the peremptory exception of no cause of action, means "the

> operative facts which give rise to the plaintiff's right to judicially assert the action against the defendant."

Benoit, 00-0424, pp. 6-7, 773 So.2d at 706.

The Court recognized its prior holding in *Bullock v. Graham*, 96-0711 (La.11/1/96), 681 So.2d 1248, "which states that the term 'cause of action' in Article 1732(1) is synonymous with the term 'amount in controversy.' The 1989 amendment changed the term 'amount in dispute' (which *is* synonymous to "amount in controversy") to 'cause of action.' The terms obviously do not have the same meaning, and the Legislature probably intended some change." *Benoit*, 00-0424, p. 8, 773 So.2d at 707.

The Court then went on to discuss the legislative intent to restrict jury trials and interpreted the "language change in the 1989 amendment as intended to focus, not on the amount of the plaintiff's overall claim arising out of the transaction or occurrence, as defendant urges, but on the value of the plaintiff's cause of action against the defendant or defendants who are before the court at the time the right to a jury trial is litigated." *Id.*, pp. 9-10, 773 So.2d at 707. Applying this analysis to the facts in *Benoit*, the Court concluded:

> [P]laintiff's cause of action against Allstate was based not only on the accident that gave rise to plaintiff's claim against the tortfeasor and his liability insurer, but also on the essential additional fact that Allstate issued UM coverage to plaintiff and agreed to pay damages when the tortfeasor was uninsured or underinsured. Thus, the amount of plaintiff's cause of action against Allstate, which was a separate cause of action from the cause of action against the tortfeasor and his liability insurer, was never over $10,000, either at the time of the accident, at the time of filing suit, or at the time the right to trial by jury was litigated. Indeed, plaintiff had no cause of action against Allstate to recover any amount greater than Allstate's $10,000 limits of liability.

Benoit, p.10, 773 So.2d at 708.

In light of the Louisiana Supreme Court's holding in *Benoit,* we find the trial court erred in denying plaintiffs' second motion to strike the jury trial demand of ANPAC. Under *Benoit,* each of the plaintiffs in the present matter had separate causes of action against ANPAC and GEICO, none of which exceeded fifty thousand dollars. In their joint stipulation with plaintiffs, ANPAC acknowledged that each of plaintiff's cause of action against ANPAC did not exceed fifty thousand dollars. In addition, each plaintiff's cause of action against GEICO does not exceed fifty thousand dollars. Thus, under the provisions of La. C.C.P. art. 1732, ANPAC is not entitled to a jury trial.

CONCLUSION

For the foregoing reasons, we grant plaintiffs/relators' writ and reverse the trial court's December 17, 2018 judgment denying plaintiffs' second motion to strike jury trial demand of ANPAC.

WRIT GRANTED; REVERSED