

SUPREME COURT OF LOUISIANA

NO. 95-C-2895

DIANNA M. THERIOT, ET AL.

V.

MIDLAND RISK INSURANCE CO., ET AL.

MARCUS, Justice (dissenting)

I disagree with the majority's conclusion that La. R.S. 22:1220 A creates a general cause of action in favor of a third party. La. R.S. 22:1220 is a penal statute which must be interpreted strictly. Subsection A of the statute imposes two duties on the insurer: one to the insured of good faith and fair dealing and one to the insured or claimant or both to adjust claims fairly and promptly and to make a reasonable effort to settle claims. Subsection A does not address what type of actions by the insurer would constitute a breach of these duties. However, subsection B states, "[a]ny one of the following acts, if knowingly committed or performed by an insurer, constitutes breach of the insured's duties imposed in Subsection A" (emphasis added). Section B then enumerates five acts, some of which affect only the insured. It is clear, therefore, that only the five enumerated acts in subsection B can constitute a breach of the duties imposed on the insurer in subsection A. Such reasoning is consistent with our holding in Manuel v. La. Sheriff's Risk Management Fund, 95-0406 (La. 11/27/95), 664 So. 2d 81, 85, where we held the statute "establishes penalties for the commission of certain acts" (emphasis added).

Under the facts of the instant case, plaintiff is not an insured under the contract. La. R.S. 22:1220(B)(5), dealing with the failure to pay a claim within sixty days after receipt of loss, applies only to a "person insured by the contract," not to a person such as plaintiff who is not insured under the contract. There-

fore, I would find plaintiff, as a person not insured by the contract, is not entitled to penalties under La. R.S. 22:1220(B)(5).

Lastly, even pretermittting the other issues, the majority ignores the clear language of La. R.S. 22:1220 C when it awards penalties in the absence of damages. La. R.S. 22:1220 C allows an award of penalties "in addition to any general or special damages to which a claimant is entitled for breach of the imposed duty." Since the majority sets aside the trial judge's award of general and special damages, it follows that plaintiff is not entitled to an award of penalties.

Accordingly, I respectfully dissent.