NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2006 CA 0312

LEO P. GROS

VS.

HEIDI THERIOT AND STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

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JUDGMENT RENDERED: DECEMBER 28, 2006

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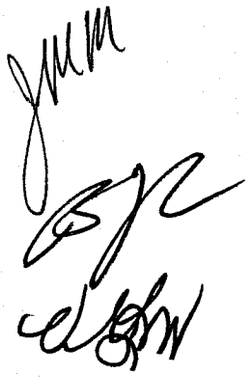

ON APPEAL FROM THE
SEVENTEENTH JUDICIAL DISTRICT COURT
DOCKET NUMBER 95942, DIVISION A
PARISH OF LAFOURCHE, STATE OF LOUISIANA

HONORABLE JOHN E. LEBLANC, JUDGE

****

JOSEPH J. WEIGAND, JR. HOUMA, LA	COUNSEL FOR PLAINTIFF/APPELLANT LEO P. GROS
WILLIAM RYAN ACOMB NEW ORLEANS, LA	COUNSEL FOR DEFENDANT/APPELLEE STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY AND HEIDI THERIOT

BEFORE: CARTER, C.J., WHIPPLE AND MCDONALD, JJ.

MCDONALD, J.

The plaintiff/appellant, Leo Gros (Gros), was involved in an automobile accident in July 2002, caused solely by the fault of Heidi Theriot (Theriot). State Farm Mutual Automobile Insurance Company (State Farm) issued an automobile liability policy covering Theriot and also a policy covering Gros for uninsured/underinsured motorists. State Farm paid Theriot's $25,000.00 liability policy limits to Gros. A formal demand was made to State Farm on June 21, 2004 for the $50,000.00 limits on Gros' UM policy. State Farm declined to offer any additional compensation for general damages under the claim. It had agreed, as evidenced by a letter of June 27, 2003, to pay medical expenses from the UM policy, and did pay the only claim for medical treatment submitted after June 2004, in the amount of $175.00.

In October 2005, the matter was tried before a judge, Gros having stipulated that damages did not exceed $50,000. Additionally, stipulations were submitted as to the fact of the accident, the sole liability of Theriot, the existence and limits of the liability policies, and the lack of a lost wages claim. State Farm submitted that it had paid $4,979.99.00 pursuant to a UM tender. Joint exhibits of medical records and depositions were admitted into evidence at trial.

Gros argued that the damages sustained in the accident were in excess of the amounts he received from State Farm, which amounted to approximately $19,000.00 in general damages and $15,859.26 in medical expenses incurred over an approximately two-year period. Gros further maintained that because State Farm had not offered "a penny" after submission of the *McDill* letter in June 2004, he was entitled to attorney fees

and penalties for arbitrary and capricious refusal to tender the amount of additional damages over which reasonable minds could not disagree.

State Farm contended that because of Gros' preexisting medical condition and a subsequent slip and fall causing injury to the same area, the amounts paid as damages attributable to the July 2002 accident were fair and sufficient compensation.

The trial court considered that it was evaluating a claim involving aggravation of a preexisting condition, with about 22 months of active treatment, and some continuing discomfort affected by subsequent intervening acts. It determined that $30,000 would be an appropriate general damage award. The court denied the claim for "arbitrary and capricious" damages, finding that the refusal by State Farm to make a tender in this case was because there "was a legal issue as to what amount would be owed, if any, beyond the scope of the liability insurance."

The determination that an insurer's handling of a claim is arbitrary and capricious is a factual finding which may not be disturbed unless manifestly erroneous. An insurer's actions are described as "arbitrary and capricious" when its willful refusal of a claim is not based on a good faith defense, or is unreasonable or without probable cause. However, where the insurer has legitimate doubts about coverage, the insurer has the right to litigate these questionable claims without being subjected to damages and penalties. *Calogero v. Safeway Ins. Co. of La.,* 99-1625 (La. 1/19/00), 753 So.2d 170, 173.

After thorough review of the record in this matter, we find no error on the part of the trial court. Therefore, the judgment appealed is affirmed, and this opinion issued in accordance with Uniform Rules, Courts of Appeal,

Rule 2-16.2 A (2), (5), (6), and (8). Costs are assessed to the appellant, Leo P. Gros.

AFFIRMED.