NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2006 CA 0555

DON A. COPPOLA, JR.

VERSUS

ALLSTATE INSURANCE COMPANY, TIEN V. NGUYEN, AND SOUTHERN FARM BUREAU CASUALTY INSURANCE COMPANY

Judgment rendered December 28, 2006

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Appealed from the
19th Judicial District Court
in and for the Parish of East Baton Rouge, Louisiana
Trial Court No. 514,111
The Honorable Curtis A. Calloway

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ANDREW J. BENNETT, JR.
BATON ROUGE, LA

ATTORNEY FOR
PLAINTIFF/APPELLANT
DON A. COPPOLA, JR.

KIRK A. PATRICK III
HEATHER A. CROSS
DONOHUE PATRICK
BATON ROUGE, LA

ATTORNEYS FOR
DEFENDANT/APPELLEE
SOUTHERN FARM BUREAU
CASUALTY INSURANCE COMPANY

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BEFORE: PETTIGREW, DOWNING, AND HUGHES, JJ.

PETTIGREW, J.

Plaintiff, Don A. Coppola, Jr., appeals a trial court judgment dismissing his suit against his uninsured motorist carrier, Southern Farm Bureau Casualty Insurance Company (Farm Bureau). We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On December 11, 2002, Mr. Coppola, a police officer with the Baton Rouge City Police, was injured in a vehicular collision. At the time of the accident, Mr. Coppola was driving his police motorcycle northbound on Sherwood Forest Boulevard, when his motorcycle was struck by a vehicle operated by Tien Nguyen. Mr. Coppola filed suit against Nguyen,[1] Allstate Insurance Company, Nguyen's liability insurer, and Farm Bureau. He subsequently settled his claims against Nguyen and Allstate and dismissed them from the suit, leaving only his claim against Farm Bureau.

At the start of the trial, the parties stipulated that the accident was Nguyen's fault, that the bodily injury limits of Nguyen's policy with Allstate were $10,000.00/$20,000.00, and that Mr. Coppola had settled with Nguyen and Allstate for $18,000.00. The parties further stipulated that at the time of the accident, Mr. Coppola was operating a motorcycle owned by the City/Parish that had been furnished for his regular use. Finally, the parties stipulated that the Farm Bureau policy in effect on the date of the accident had limits of $50,000.00, and that the policy contained a "regular use" exclusion under its uninsured motorist provisions.[2]

Farm Bureau denied Mr. Coppola's claim, contending that the police motorcycle was excluded from coverage pursuant to the "regular use" exclusion. However, Mr. Coppola averred that the exclusion was inapplicable, because a copy of the policy had not been delivered to him prior to the accident.[3] After a bench trial, in which the majority of the testimony involved the issue of the delivery of the policy, the trial court

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[1] The plaintiff apparently misspelled the tortfeasor's last name as "Ngugen."

[2] The exclusion provided that the uninsured motorist bodily injury coverage did not apply "to any automobile or trailer furnished for the regular use of the named insured or a resident of the household and not described on the declarations." The police motorcycle is not listed on the declarations page.

[3] Although it was not one of the stipulations, the parties appear to agree that the terms of the exclusion were applicable to the facts of this case and would operate to deny Mr. Coppola's claim.

ruled in favor of Farm Bureau and dismissed Mr. Coppola's claim with prejudice. This appeal by Mr. Coppola followed.

DISCUSSION

Louisiana Revised Statute 22:634 requires every insurance policy to be delivered to the insured within a reasonable period of time after its issuance. An insured must be informed of a policy's contents. **Louisiana Maintenance Services, Inc. v. Certain Underwriters at Lloyd's of London**, 616 So.2d 1250, 1252 (La. 1993). Notice of any exclusionary provisions is essential, because the insured will otherwise assume the desired coverage exists. **Id.** If an insurer fails to comply with the statutory requirement of delivery, it cannot rely on its policy exclusions. **Id.** at 1253.

In this case, Farm Bureau attempted to demonstrate that it had complied with the requirement of delivery when a copy of the policy was mailed to the Coppolas by its automated mailing system after Mr. Coppola's application for insurance coverage had been approved. Mr. Coppola applied for insurance for his 1999 Chevy Silverado with Farm Bureau through one of its agents, Brad Thompson, on May 28, 2001. It is undisputed that shortly thereafter, the Coppolas received an envelope from Farm Bureau containing the declarations page and ID cards for the newly issued policy. Farm Bureau contends that the policy was in the same envelope as the declarations page and the ID cards. However, Mrs. Coppola, who opened the envelope, denied that a policy booklet was included.

Farm Bureau offered testimony from Karen Perkins, the Casualty Policy Services Manager for Farm Bureau, and from Mr. Thompson concerning Farm Bureau's normal procedure for the processing of applications, as well as the automated mailing of policy booklets to its insureds. According to this testimony, the agent is responsible for taking the application from a potential insured and forwarding the application to the Farm Bureau office in Baton Rouge. The agent gives the applicant a copy of the completed application but does not provide a copy of the policy booklet.

Ms. Perkins testified that she manages the department that receives the application from the field. An analyst in her department then inputs the information

from the application into the mainframe computer, and the information entered is electronically routed to the underwriting department. Once the application is approved by the underwriting department, the declarations page is printed. The computer also generates a bar code, which is printed on the back of the declarations page corresponding to the policy. The printed declarations page is sent to the mailroom where the computer-generated bar code communicates with the automated mail insertion machine to tell the machine what other documents to include in the mailing. The machine will then select the appropriate documents from the various hoppers, place the documents in the envelope, seal the envelope, and stamp it with postage. The envelope is then mailed to the insured.

Farm Bureau submitted a copy of the declarations page connected to Mr. Coppola's policy. The computer-generated bar code was on the reverse of the declarations page, along with the alphanumerical sequence, "A 771072 12100000284." According to Ms. Perkins, the first portion of the sequence, "A 771072," was Mr. Coppola's policy number. The "12" of the second portion of the sequence indicated that the declarations page was the first page of a two-page document.[4] In addition, the next "1" was a signal to the mail insertion machine to include a policy from the contract hopper in the mailing.[5]

Ms. Perkins further testified that policy booklets were always kept in the same hopper, which was loaded by the mailroom workers. She acknowledged that no one checked the mailing to ensure that a policy booklet had been included in the envelope before mailing; however, she also testified that the machine had no option about whether or not to insert a policy booklet in the mailing. According to Ms. Perkins, if no policy booklets were in the hopper at the time one was to be inserted, the machine would interrupt or stop working.

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[4] The ID cards were on the second page of the two-page document.

[5] This was contrasted with the code on the back of the declarations page sent after the policy was amended to include a new endorsement in June 2003. The amended declarations page had a bar code on the reverse side that had "120" as the first digits in the second portion of the sequence. The "12" again indicated that it was the first page of a two-page document, and the "0" indicated that no policy booklet was included in the mailing. In that mailing, the newly added endorsement was the second page of the two-page document.

On appeal, Mr. Coppola contends that the trial court erred in admitting and accepting testimony regarding the automated mailing of insurance policies by Farm Bureau without requiring authentication of that evidence as required by La. C.E. art. 901(B)(9). Specifically, Mr. Coppola contends that Farm Bureau failed to provide evidence demonstrating that the automated mailing system produces an accurate result. He further contends that this court should conduct a de novo review of the record, rather than a manifest error review, because the trial court's decision to admit this evidence interdicted the factfinding process. We disagree.

The trial court is granted broad discretion on its evidentiary rulings, and its determinations will not be disturbed on appeal absent a clear abuse of that discretion. **Roberts v. Owens-Corning Fiberglas Corp.**, 2003-0248, p. 18 (La. App. 1 Cir. 4/2/04), 878 So.2d 631, 646, writ denied, 2004-1834 (La. 12/17/04), 888 So.2d 863. Louisiana Code of Evidence article 901 requires authentication or identification for evidence to be admissible at trial; however, this requirement is generally satisfied by "evidence sufficient to support a finding that the matter in question is what its proponent claims." La. C.E. art 901(A).

The evidence demonstrates that Farm Bureau followed its normal business procedures in processing Mr. Coppola's application for insurance. It is also clear from the evidence that the automated mailing system had certain safeguards in place to ensure that any mailing included all necessary items. Mr. Coppola has offered no specific evidence that the machine malfunctioned in this instance or any other; rather, he merely suggests that the machine may have malfunctioned. Accordingly, we find no abuse of the trial court's discretion in admitting the testimony offered by Farm Bureau regarding the automated mailing system. Therefore, this matter is not subject to de novo review.

In his second assignment of error, Mr. Coppola argues that the trial court erroneously interpreted the testimony of his wife concerning whether she had received a copy of the policy from Farm Bureau. Mr. Coppola testified that his wife was the one who opened the mail at the house and acknowledged that he did not open the

envelope from Farm Bureau at issue in this matter. Thus, he had no independent knowledge of the contents of the envelope.

Mrs. Coppola initially testified that the only items in the envelope were the declarations page and the ID cards. She claimed that she put the ID cards in the vehicle and placed the declarations page in her insurance file at home. Under cross-examination, she acknowledged that she was relying on a review of the documents in her insurance file as support for her testimony and that she did not recall receiving a policy booklet. She further acknowledged that it was possible that she had not placed everything she had ever received from Farm Bureau in her file. Finally, she testified that she only looked for the policy booklet after the accident, which was approximately eighteen months after the policy had been issued.

In its oral reasons for judgment, the trial court stated:

> Mrs. Coppola did not, as the court interprets her testimony, say that she did not receive the policy. It is my understanding that Mrs. Coppola said that she didn't have a copy of the policy when she looked for it a year and half after the policy was issued and, to her knowledge, she does not remember receiving the policy. She acknowledges receiving the dec page and the ID cards, but she did not categorically state that she remembers receiving [sic] the policy. She indicates that when she looked for it, it wasn't there.

Mr. Coppola contends that this interpretation by the trial court is inconsistent with Mrs. Coppola's testimony and that the trial court's finding is, therefore, manifestly erroneous.

Where there is a conflict in the testimony, reasonable evaluations of credibility and reasonable inferences of fact should not be disturbed upon review, even though the appellate court may feel that its own evaluations and inferences are as reasonable. **Rosell v. ESCO**, 549 So.2d 840, 844 (La. 1989). If the trial court's findings are reasonable in light of the record in its entirety, the court of appeal may not reverse even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently. Furthermore, where there are two permissible views of the evidence, the fact finder's choice between them cannot be manifestly erroneous. **Id.** Only the fact finder can be aware of the variations in demeanor and tone of voice that bear so heavily on the listener's understanding and belief in what is said. **Id.**

After a thorough review of the record, we find no manifest error. Accordingly, the judgment of the trial court is affirmed. All costs of this appeal are assessed to Don A. Coppola, Jr.

AFFIRMED.