

**Fifth Circuit Court of Appeal**  
**State of Louisiana**

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No. 25-CA-512

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NICHOLAS VICTOR CHISESI

*versus*

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY AND NATIONAL GENERAL  
INSURANCE COMPANY A/K/A IMPERIAL FIRE & CASUALTY INSURANCE COMPANY

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ON APPEAL THE TWENTY-FOURTH JUDICIAL DISTRICT COURT  
PARISH OF JEFFERSON, STATE OF LOUISIANA  
NO. 848-015, DIVISION "D"  
HONORABLE JACQUELINE F. MALONEY, JUDGE PRESIDING

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May 20, 2026

**FREDERICKA HOMBERG WICKER**  
**JUDGE**

Panel composed of Judges Fredericka Homberg Wicker,  
Jude G. Gravois, and Scott U. Schlegel

**AFFIRMED**

**FHW**  
**JGG**  
**SUS**

TRUE COPY



JALISA WALKER  
DEPUTY CLERK

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NICHOLAS VICTOR CHISESI

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**WICKER, J.**

Plaintiff-Appellant Nicholas V. Chisesi appeals the trial court's judgment following a bench trial, finding that he failed to prove by a preponderance of the evidence that Defendant-Appellee National General Insurance Company a/k/a Imperial Fire & Casualty Insurance Company acted in bad faith under La. R.S. 22:1973, La. R.S. 22:1892, or applicable Louisiana Supreme Court and Fifth Circuit precedent. For the following reasons, we find no manifest error in the trial court's ruling and affirm its judgment accordingly.

**PROCEDURAL HISTORY**

On October 13, 2023, Nicholas V. Chisesi filed suit against State Farm Mutual Automobile Insurance Company and National General Insurance Company a/k/a Imperial Fire & Casualty Insurance Company, arising from injuries he allegedly sustained in a December 4, 2022 car accident. Plaintiff alleged that State Farm insured the at-fault driver and that National General provided uninsured/underinsured motorist ("UM") coverage to Plaintiff. State Farm was dismissed on August 7, 2024, after Plaintiff represented that the claims had been settled. On October 4, 2024, Plaintiff filed an amended petition asserting statutory bad faith claims against his UM carrier, National General, under La. R.S. 22:1892 and La. R.S. 22:1973, alleging untimely and insufficient UM tenders despite what he views as satisfactory proof of loss.

The case proceeded to a bench trial on April 30, 2025, limited to Plaintiff's bad faith claims against National General.<sup>1</sup> At the conclusion of trial, both parties were given the opportunity to submit post-trial memoranda. Plaintiff submitted his post-trial memorandum on time. National General did not. On June 30, 2025, the

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<sup>1</sup> At trial, all exhibits offered by the parties were admitted into evidence without objection, including the deposition testimony of National General's corporate representative, Bonina Hayes, and Plaintiff testified live before the trial court.

trial court rendered judgment in favor of National General and against Plaintiff, finding that Plaintiff “has not met his burden of preponderance of the evidence to prove that [National General] committed bad faith under the statutes of La. R.S. 22:1973, La. R.S. 22:1892, or the relevant caselaw from the Louisiana Supreme Court and the Louisiana Fifth Circuit Court of Appeal.” Plaintiff timely appealed.

### **FACTS ESTABLISHED AT TRIAL**

On December 4, 2022, Plaintiff was involved in a car accident on I-10 near the Cleary Avenue overpass in Jefferson Parish. The accident involved three vehicles: (1) a 2001 Lexus owned by Joseph Dapremont and operated by his daughter, J’val Dapremont; (2) a 2021 Mercedes Benz owned and operated by Sandy Ackerson; and (3) a 2009 Mercedes Benz owned and operated by Plaintiff. The central issue in the case was the extent of underlying coverage available to Plaintiff before National General’s UM obligations were triggered.

At trial, the parties stipulated to several facts, including that the accident was caused by the negligence of J’val Dapremont; that the 2001 Lexus she was driving was insured by GEICO with bodily injury liability limits of \$25,000; that she was also insured under a State Farm policy with bodily injury liability limits of \$15,000; that a total of \$40,000 in liability coverage was available to Plaintiff; that Plaintiff was insured by National General under a policy providing \$100,000 in UM coverage; and that National General tendered to Plaintiff UM payments of \$69,084.21 on March 18, 2024, and \$30,915.79 on June 17, 2024.

National General received notice of the accident on December 5, 2022 and a copy of the police report on December 8, 2022. The police report revealed no apparent injury to Plaintiff at the scene and indicated that EMS transport was not provided to Plaintiff. At trial, Plaintiff testified that he struck his head in the accident and experienced confusion, after which he sought treatment for head, neck, and shoulder pain. Hospital records reflect that Plaintiff was diagnosed with acute head

trauma and a right shoulder contusion, but that Plaintiff denied significant head trauma or loss of consciousness. Following the accident, Plaintiff treated with multiple healthcare providers, including Spectrum Neurology, Diagnostic Imaging Services, Riverbend Physical Therapy, Crescent City Surgical Centre, and Southern Brain and Spine. Medical records reflect Plaintiff complained of headaches, neck pain, shoulder pain, cognitive symptoms, and cervical radiculopathy, and that he was diagnosed with cervical disc herniations.

Several emails between Plaintiff's counsel and National General were admitted into evidence at trial. The emails show that, on March 6, 2023, Plaintiff's counsel sent National General a copy of the police report, the GEICO declaration page for the Dapremont Lexus, an affidavit of no other insurance from the Lexus owner, and Plaintiff's medical records. In the same email, Plaintiff's counsel demanded payment of the \$100,000 UM policy limits. National General responded on April 14, 2023, informing Plaintiff's counsel that it had identified additional liability policies potentially associated with the at-fault driver through an insurance database search. Those additional policies included two State Farm policies insuring a 2011 Ford Edge and a 2016 Dodge Journey owned by J'val Dapremont, as well as a GEICO policy insuring a Honda CR-V owned by her mother, Valerie Dapremont. National General also informed Plaintiff's counsel that the applicability and limits of those policies were still uncertain.

On April 27, 2023, National General received documentation showing that GEICO had tendered its \$25,000 limits to Plaintiff under the policy insuring the Dapremont Lexus on March 16, 2023. Although Plaintiff previously sent National General an affidavit of no other insurance from the Dapremont Lexus owner, he did not obtain an affidavit of no other insurance from the at-fault driver, nor did he obtain a certification from the Department of Public Safety and Corrections concerning the at-fault driver's insurance status.

On June 13, 2023, GEICO advised Plaintiff that it disclaimed coverage under the policy insuring Valerie Dapremont's Honda CR-V because the vehicle driven by J'val Dapremont at the time of the accident did not qualify as an owned or non-owned automobile under that policy. Plaintiff sent GEICO's response to National General on August 25, 2023. On July 18, 2023, State Farm advised Plaintiff that coverage under the policy insuring the 2016 Dodge Journey was not in effect at the time of the accident as coverage began on January 9, 2023. Plaintiff sent that letter to National General on July 19, 2023. The remaining State Farm policy insuring the 2011 Ford Edge provided minimum bodily injury liability limits of \$15,000, which State Farm tendered to Plaintiff on September 25, 2023. Plaintiff reported the tender to National General on November 6, 2023.

From March 2023 through May 2024, Plaintiff's counsel continued to send medical records to National General and renewed requests for payment of UM benefits. National General's corporate representative, Bonina Hayes, testified by deposition that the company continued investigating potential underlying coverage and determined in March 2024 that the underlying liability limits available to Plaintiff had been sufficiently established so as to trigger National General's UM payment obligations.<sup>2</sup> On March 18, 2024, National General tendered \$69,084.21 to Plaintiff under the UM policy.

Ms. Hayes testified by deposition that, after National General's first tender, Plaintiff sent National General additional medical records indicating that he had restarted treatment with Spectrum Neurology and that he had scheduled future appointments to continue treatment. As a result, National General made a second

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<sup>2</sup> As used here, "underlying liability limits" refers to the total bodily injury liability insurance applicable to the owner and operator of the at-fault motor vehicle within the meaning of La. R.S. 22:1295(2)(b), which must be established and taken into account in determining whether the at-fault driver was uninsured or underinsured and whether Plaintiff's damages exceeded those limits so as to trigger a UM carrier's obligations.

tender to Plaintiff on June 17, 2024, of the remaining \$30,915.79 of the UM policy limits.

The evidence adduced at trial showed Plaintiff's medical expenses totaled at most \$40,000. Plaintiff did not call any treating physicians or vocational experts to testify about the extent of Plaintiff's injuries, his potential need for future treatment, or his potential to incur lost wages. In total, Plaintiff received \$145,000 in payments related to the accident, consisting of \$40,000 from the underlying liability insurers, \$100,000 in UM benefits from National General, and \$5,000 from National General in medical payments coverage.

### **ASSIGNMENTS OF ERROR**

On appeal, Plaintiff raises five assignments of error, including:

1. The trial court erred in failing to find that National General was in bad faith under La. R.S. 22:1973 and La. R.S. 22:1892.
2. The trial court erred in failing to find that National General failed to make a tender within the statutorily prescribed time frame after receipt of satisfactory proof of loss.
3. The trial court erred in failing to find that National General received satisfactory proof of loss and failed to make a tender within the statutorily required time frame.
4. The trial court was clearly wrong in failing to find National General was liable for failing to timely make a UM tender.
5. The trial court erred in applying the undisputed facts to the law.

Because the assignments of error are interrelated, we address them together below.

### **LAW AND ANALYSIS**

#### **Standard of Review**

A trial court's findings of fact are reviewed under the manifest error/clearly wrong standard. *Zydeco's II, LLC v. Certain Underwriters at Lloyd's, London*, 19-562 (La. App. 5 Cir. 5/28/21), 356 So.3d 345, 371–72, writ denied, 21-1745 (La. 2/8/22), 332 So.3d 640, and writ denied sub nom. *Zydeco's II, LLC v. Certain*

*Underwriters at Lloyd's*, 21-1755 (La. 2/8/22), 332 So.3d 665. An appellate court may not disturb those findings unless they are manifestly erroneous or clearly wrong after reviewing the record in its entirety. *Id.* at 372 (citing *Rosell v. ESCO*, 89-607 (La. 9/12/89), 549 So.2d 840, 844). The question is not whether we might have reached a different result, but whether the trial court's conclusions were reasonable. *Id.* (citing *Stobart v. State, Dep't of Transp. & Dev.*, 92-1328 (La. 4/12/93), 617 So.2d 880, 882). "The manifest error-clearly wrong standard is not easily met, as it is rare that no reasonable basis exists to support a finding of a district court." *Johnston v. Vincent*, 21-1196 (La. 2/1/23), 359 So.3d 896, 911. Whether an insurer acted arbitrarily, capriciously, or without probable cause is a question of fact that should not be disturbed on appeal absent manifest error. *La. Bag Co. v. Audubon Indem. Co.*, 08-453 (La. 12/2/08), 999 So.2d 1104, 1120.

### **UM Coverage & Burden of Proof**

Louisiana's uninsured (UM) coverage regime is governed by La. R.S. 22:1295,<sup>3</sup> which requires every automobile liability policy issued in Louisiana to include UM coverage in amounts not less than the bodily injury liability limits of the policy. La. R.S. 22:1295(2)(b) provides that for purposes of coverage, the term "uninsured motor vehicle" is deemed to include an insured motorist vehicle when the automobile liability insurance coverage on such vehicle is less than the amount of damages sustained. However, a UM insurer is obligated to pay only those damages that exceed the tortfeasor's liability limits, and there is no overlap between liability and UM coverage. *Rizer v. Am. Sur. & Fid. Ins. Co.*, 95-1200 (La. 3/8/96), 669 So.2d 387, 390. When there is no evidence that the insured's damages exceeded the uninsured motorist's liability limits, the UM insurer had no coverage obligation

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<sup>3</sup> Formerly La. R.S. 22:1406(D).

at all. *Haase v. GEICO Ins. Agency, Inc.*, 21-31 (La. App. 5 Cir. 5/26/21), 325 So.3d 1140, 1147, *writ denied*, 21-913 (La. 10/19/21), 326 So.3d 264.

Before an insured may recover against a UM carrier, he bears the burden of proving the tortfeasor was uninsured or underinsured. *Lozano v. Brown*, 10-489 (La. App. 5 Cir. 1/25/11), 60 So.3d 669, 671 (citing *Finley v. “ABC” Ins. Co.*, 06-581 (La. App. 5 Cir. 12/27/06), 946 So.2d 330, 334). La. R.S. 22:1295(6) provides specific methods for establishing a prima facie case of uninsured or underinsured status, which, if satisfied, shifts the burden to the UM insurer, including: (1) an affidavit from the owner and operator of the alleged uninsured<sup>4</sup> vehicle stating that they did not have automobile liability insurance at the time of the accident; (2) an affidavit from the Department of Public Safety and Corrections regarding inquiry into the insurance of the owner and operator; or (3) admissible evidence showing that the owner and operator of the alleged uninsured vehicle was a nonresident or noncitizen of Louisiana on the date of the accident. *Id.* at 671. Absent such proof, the burden remains with the plaintiff. *Id.* (citing *Finley*, 946 So.2d at 334).

### **Louisiana’s Bad Faith Statutes**

At the time of the accident, Louisiana law authorized the recovery of bad faith penalties from insurers under two provisions: La. R.S. 22:1892<sup>5</sup> and La. R.S. 22:1973.<sup>6</sup> This Court explained the interplay between the two statutes in a recent case:

Under La. R.S. 22:1892(A)(1), “all insurers . . . shall pay the amount of any claim due any insured within thirty days after receipt of satisfactory proofs of loss from the insured.” If an insurer refuses to pay a claim within thirty days of receiving satisfactory proof of loss, then La.

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<sup>4</sup> La. R.S. 22:1295(2)(b) provides that for purposes of coverage, the term “uninsured motor vehicle” is deemed to include an insured motorist vehicle when the automobile liability insurance coverage on such vehicle is less than the amount of damages sustained.

<sup>5</sup> Formerly La. R.S. 22:658.

<sup>6</sup> This statute, which was formerly designated as La. R.S. 22:1220, has since been repealed by Acts 2024, No. 3, § 2, effective July 1, 2024.

R.S. 22:1892(B)(1) provides that the insurer is subject to penalties if its conduct is “found to be arbitrary, capricious, or without probable cause.” Additionally, La. R.S. 22:1973(B)(5) requires insurers to act in good faith and provides for penalties if an insurer fails to pay a claim within sixty days after receipt of satisfactory proof of loss when “such failure is arbitrary, capricious, or without probable cause.”

The conduct prohibited by La. R.S. 22:1892(A)(1) is virtually identical to the conduct prohibited by La. R.S. 22:1973(B)(5): the failure to timely pay a claim after receiving satisfactory proof of loss when that failure to pay is arbitrary, capricious, or without probable cause. *Reed v. State Farm Mutual Automobile Insurance Company*, 03-107 (La. 10/21/03), 857 So.2d 1012, 1020. The primary difference is the time periods allowed for payment. *Id.* Both statutes are penal in nature and must be strictly construed. *Id.*

*Bell v. Steckler*, 19-170 (La. App. 5 Cir. 12/4/19), 285 So.3d 561, 569, writ denied, 20-28 (La. 2/26/20), 347 So.3d 877. Moreover, the bad faith statutes are applicable to UM claims. *Hart v. Allstate Ins. Co.*, 83-524 (La. 9/2/83), 437 So.2d 823, 827.

To recover penalties under La. R.S. 22:1892, the insured must prove that (1) the insurer received satisfactory proof of loss; (2) the insurer failed to tender payment within thirty days; and (3) the insurer’s failure to pay was arbitrary, capricious, or without probable cause. *Willwoods Cmty. v. Essex Ins. Co.*, 09-651 (La. App. 5 Cir. 4/13/10), 33 So.3d 1102, 1110 (quoting *La. Bag Co.*, 999 So.2d at 1109); see also *Guillory v. Lee*, 09-75 (La. 6/26/09), 16 So.3d 1104, 1126. Because La. R.S. 22:1892 is penal in nature, it must be strictly construed. *Baack v. McIntosh*, 20-1054 (La. 6/30/21), 333 So.3d 1206, 1217. “Satisfactory proof of loss” is that which fully apprises the insurer of the insured’s claim. *La. Bag Co.*, 999 So.2d at 1119; see also *Zydeco’s II, LLC*, 356 So.3d at 379. To establish satisfactory proof of loss of a UM claim, the insured must show that the other vehicle’s owner or operator was uninsured or underinsured; the other vehicle’s owner or operator was at fault; such fault caused damages; and the extent of those damages. *Hart*, 437 So.2d at 828.

“Arbitrary, capricious, or without probable cause” is synonymous with vexatious, meaning unjustified, without reasonable or probable cause or excuse.

*Baack*, 333 So.3d at 1217. An insurer does not act arbitrarily or capriciously when it withholds payment based on a genuine, good faith dispute about the amount of a loss or the applicability of coverage. *Id.*; *see also XL Specialty Ins. Co. v. Bollinger Shipyards, Inc.*, 954 F.Supp.2d 440, 444 (E.D. La. 2013). Whether an insurer's action was arbitrary, capricious, or without probable cause is essentially a fact issue to be determined by the trial court and not to be disturbed on appeal absent manifest error. *La. Bag Co.*, 999 So.2d at 1120.

### **Analysis**

Plaintiff contends that National General acted in bad faith by issuing untimely and insufficient UM tenders. The trial court rejected this claim. After reviewing the record, we find no manifest error.

#### *First Tender – March 18, 2024*

As to National General's first tender, which it made on March 18, 2024, Plaintiff argues that it was untimely and insufficient. Plaintiff asserts it was untimely because National General had received satisfactory proof of loss by November 6, 2023. But the evidence in the record does not show that National General received satisfactory proof of loss before March 5, 2024. Plaintiff argues that National General had adequate information about Plaintiff's damages months earlier and that National General should have tendered then. But National General's decision to tender on March 18, 2024 was not because of information about Plaintiff's damages—it was due to the lack of information about the possible underlying liability coverage still available to Plaintiff.

The evidence establishes that legitimate questions remained concerning additional liability coverage available to J'val Dapremont personally. The record reflects that National General was awaiting proof of the underlying liability limits necessary to determine whether and to what extent its UM obligations had been triggered. Plaintiff did not provide an affidavit of no other insurance from the at-

fault driver, nor did he avail himself of the other mechanisms under La. R.S. 22:1295(6) to shift the burden of proof. To the contrary, National General identified multiple potentially applicable policies and communicated those findings to Plaintiff. During the deposition of National General's corporate representative, Ms. Hayes testified that National General received the outstanding information, and thus received satisfactory proof of loss from Plaintiff, on March 5, 2024. National General tendered payment thirteen days later, on March 18, 2024. Under these facts, Plaintiff failed to prove the first tender was untimely.

Plaintiff likewise failed to prove the first tender was insufficient. Plaintiff argues the first tender was insufficient to cover his damages. At the time of the tender, Plaintiff had documented approximately \$34,000 in medical expenses. Underlying coverage available to Plaintiff totaled \$40,000. Plaintiff demanded National General pay the full \$100,000 limit of the UM policy. No medical or vocational expert testimony established any future medical expenses or lost wages Plaintiff may incur. Considering the \$40,000 in underlying liability coverage, as well as the information available to National General at that time, its tender of \$69,084.21 was supported by the evidence.

Even if National General's March 18, 2024 tender was untimely or insufficient, the evidence in the record does not demonstrate that National General's actions were arbitrary, capricious, or without probable cause. A dispute over the amount owed, when reasonable minds could differ, does not constitute bad faith. *Baack*, 333 So.3d at 1217; *see also XL Specialty Ins. Co.*, 954 F.Supp.2d at 448–49. Accordingly, the trial court was not manifestly erroneous in finding that Plaintiff failed to prove National General acted in bad faith in tendering the first payment.

#### Second Tender – June 17, 2024

As to National General's second tender, which it made on June 17, 2024, Plaintiff argues that it was untimely because National General had received

satisfactory proof of loss by November 6, 2023. The evidence in the record reflects that National General did not receive additional information sufficient to trigger payment of the remaining UM limits until May 8, 2024, when Plaintiff provided documentation of renewed treatment and anticipated future care. National General tendered the remaining policy limits thereafter on June 17, 2024.

Even if this second tender was considered to be untimely, the record does not establish that National General's actions were arbitrary, capricious, or without probable cause. Plaintiff argues that any untimely payment is, by definition, arbitrary, and capricious, relying on *Louisiana Bag Co. v. Audubon Indemnity Co.*, 08-453 (La. 12/2/08), 999 So.2d 1104, 1116. This argument overlooks the clarification in that case that penalties are warranted only when an insurer fails to pay an undisputed amount "over which reasonable minds could not differ." *Id.* at 1116. An insurer does not act in bad faith when it withholds payment based on a reasonable dispute regarding coverage or the amount owed. *Baack*, 333 So.3d at 1217; *see also XL Specialty Ins. Co.*, 954 F.Supp.2d at 448–49. Here, the amount owed under the UM policy was disputed, and the record supports that such dispute was reasonable.

### **CONCLUSION**

After reviewing the record in its entirety, we find no manifest error in the trial court's determination that Plaintiff failed to prove that National General acted arbitrarily, capriciously, or without probable cause. Absent such proof, penalties under La. R.S. 22:1892 and La. R.S. 22:1973 were not warranted. Plaintiff's assignments of error are therefore without merit. For the foregoing reasons, we affirm the judgment of the trial court.

**AFFIRMED**

SUSAN M. CHEHARDY  
CHIEF JUDGE

FREDERICKA H. WICKER  
JUDE G. GRAVOIS  
MARC E. JOHNSON  
STEPHEN J. WINDHORST  
JOHN J. MOLAISSON, JR.  
SCOTT U. SCHLEGEL  
TIMOTHY S. MARCEL

JUDGES



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**NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY**

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **MAY 20, 2026** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

**CURTIS B. PURSELL**  
CLERK OF COURT

**25-CA-512**

**E-NOTIFIED**

24TH JUDICIAL DISTRICT COURT (CLERK)

HONORABLE JACQUELINE F. MALONEY (DISTRICT JUDGE)

LLOYD N. FRISCHHERTZ, JR.  
(APPELLANT)

MARC L. FRISCHHERTZ (APPELLANT)

JAMES L. DONOVAN, JR. (APPELLEE)

P. M. DONOVAN (APPELLEE)

**MAILED**

NO ATTORNEYS WERE MAILED