

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

**2011 CA 0372**

LOUISIANA WORKERS' COMPENSATION CORPORATION

VERSUS

GULF STATES CONSTRUCTORS, L.L.C.

**Judgment Rendered: SEP 14 2011**

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APPEALED FROM THE NINETEENTH JUDICIAL DISTRICT COURT  
PARISH OF EAST BATON ROUGE  
STATE OF LOUISIANA  
DOCKET NUMBER 565,074

THE HONORABLE WILLIAM A. MORVANT, JUDGE

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**BEFORE: GAIDRY, McDONALD, AND HUGHES, JJ.**

*Hughes, J., dissents with reasons.*

**McDONALD, J.**

This is an appeal from a grant of a motion for summary judgment in favor of plaintiff, Louisiana Workers' Compensation Corporation (LWCC), and against the defendant, Gulf States Constructors, L.L.C. (Gulf States). For the following reasons, the judgment is affirmed.

LWCC provided workers' compensation insurance to Gulf States through a continuous annual policy bearing number 80272 with an effective date of April 17, 2001. The policy was cancelled on May 1, 2007. Following an audit of the account, it was determined that Gulf States owed additional premiums totaling \$13,605.00. On March 13, 2008, LWCC filed suit against Gulf States for the \$13,605.00 amount and claiming a contractual right to reasonable attorney fees and any costs incurred in the collection of any unpaid premium amounts. Included with the petition were various exhibits, including a certified true copy of the insurance policy, a copy of the application for insurance submitted by Gulf States, a copy of endorsement LWCC38B, an invoice showing the amount due, and a policy summary statement.

On September 14, 2010, LWCC filed a motion for summary judgment, together with all the exhibits filed with the petition and several affidavits and other exhibits. The hearing on the motion was held on November 22, 2010. At the hearing the district court judge found that Gulf States's opposition memorandum was not filed on time and did not permit their attorney to orally argue. He did, however, read and consider Gulf States's opposition. Finding the opposition did not raise any genuine issue of material fact, the court granted LWCC's motion for summary judgment. Judgment was signed on December 15, 2010, in favor of LWCC in the amount of \$13,605.00, together with legal interest from March 13, 2008 until paid, attorney fees of 25%, and costs.

Gulf States filed a devolutive appeal alleging four assignments of error: (1) the trial court erred in determining that the affidavits and exhibits presented by plaintiff/appellee were sufficient; (2) the trial court erred in determining that LWCC proved that Gulf States undertook an obligation to pay retroactive premiums; (3) the trial court erred in determining that LWCC proved that Gulf States breached an obligation to LWCC; and (4) the trial court erred in determining that LWCC proved that it suffered damages as a result of a breach.

### DISCUSSION

Summary judgment is subject to *de novo* review on appeal, using the same standards applicable to the trial court's determination of the issues. *Berard v. L-3 Communications Vertex Aerospace, LLC*, 09-1202, p. 5 (La. App. 1st Cir. 2/12/10), 35 So.3d 334, 339-40, writ denied, 10-0715 (La. 6/4/10), 38 So.3d 302. The summary judgment procedure is expressly favored in the law and is designed to secure the just, speedy, and inexpensive determination of non-domestic civil actions. LSA-C.C.P. art. 966(A)(2). It should only be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with any affidavits, show that there is no genuine issue of material fact and that the mover is entitled to judgment as a matter of law. LSA-C.C.P. art. 966(B). A fact is material if it potentially insures or precludes recovery, affects a litigant's ultimate success, or determines the outcome of the legal dispute. *Anglin v. Anglin*, 05-1233, p. 5 (La. App. 1st Cir. 6/9/06), 938 So.2d 766, 769. Any doubt as to a dispute regarding a material issue of fact must be resolved against granting the motion and in favor of trial on the merits. *Fernandez v. Hebert*, 06-1558, p. 8 (La. App. 1st Cir. 5/4/07), 961 So.2d 404, 408, writ denied, 07-1123 (La. 9/21/07), 964 So.2d 333.

The mover has the burden of proof that he is entitled to summary judgment. See LSA-C.C.P. art. 966(C)(2). If the mover has put forth supporting proof

through affidavits or otherwise, the adverse party may not rest on the mere allegations or denials of his pleading, but his response, by affidavits or otherwise, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party fails to do so, summary judgment shall be rendered against him if appropriate. La. C.C.P. art. 967(B).

In ruling on a motion for summary judgment, the judge's role is not to evaluate the weight of the evidence or to determine the truth of the matter, but instead to determine whether there is a genuine issue of triable fact. *Hines v. Garrett*, 04-0806, p. 1 (La. 6/25/04), 876 So.2d 764, 765. Despite the legislative mandate that summary judgments are now favored, factual inferences reasonably drawn from the evidence must be construed in favor of the party opposing the motion, and all doubt must be resolved in the opponent's favor. *Willis v. Medders*, 00-2507, p. 1 (La. 12/8/00), 775 So.2d 1049, 1050.

In the matter before us, the district court, considering the evidence before it, found that LWCC was entitled to judgment as a matter of law. We have carefully examined the record and exhibits and find no error in the decision of the district court. Specifically, we have examined the affidavits submitted by LWCC in support of their motion and to which Gulf States objects. The record verifies that the affidavit of Bill Mathews is signed and notarized. The affidavits of Sherry Romines and Michael Pocrelo were correctly considered by the trial court. Many of the legal issues raised by Gulf States, e.g., the rights and responsibilities of the parties to an insurance contract, and specifically LWCC contracts, have been considered in numerous other cases, which we have also reviewed. We find no merit in any of the defendant's arguments, and they are not supported by current jurisprudence.

For these reasons the judgment of the trial court granting the plaintiff's motion for summary judgment is affirmed. This opinion is released in accordance with Uniform Rules - Courts of Appeal, Rule-2-16.2.A (6), (8). Costs of this appeal are assessed against the appellant, Gulf States Constructors, L.L.C.

**AFFIRMED.**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**NUMBER 2011 CA 0372**

**LOUISIANA WORKERS' COMPENSATION CORPORATION**

**VERSUS**

**GULF STATES CONSTRUCTORS, LLC**

HUGHES, J., dissenting.

I respectfully dissent because I believe issues of material fact remain as to the facts asserted to have been established by the affidavit of Sherry Romines. Ms. Romines stated in her affidavit that she conducted audits of the policy issued by the LWCC to the defendant, which audits were attached and declared to be true and correct. (See Record, page 310 et seq.) First, Ms. Romines stated she conducted the audits on June 27, 2006, while the greatest portion of the premium underpayments occurred after that date. Further, on the attached audit materials, the audit date is also listed as June 27, 2006, even though the substance of much of what was contained within the documents included events and figures that occurred after that date; i.e., events happening between June 28, 2006 and May 1, 2007 were listed on documents dated June 27, 2006. (See Record, pages 311-41.)

In addition, even though the defendant submitted certificates of workers' compensation coverage for its subcontractor, Morice Construction, indicating that the defendant was named as an additional insured (see Record, pages 324-25), Ms. Romines noted in one of the attached audit documents that she did not consider that coverage because she "spoke to David Peak, LWCC" who told her that the policy was cancelled on June 6, 2007; however, no documentation establishing the cancellation was attached and Mr. Peak's statement is unverified hearsay. It should also be noted that two policy periods were at issue (9/12/05 - 9/12/06 and 9/26/06 - 9/29/07), but no explanation appears in the audit documents as to whether both policy periods were considered uninsured or otherwise how the alleged 6/6/07 cancellation affected the premium charged. Therefore, I believe the Romines affidavit cannot be relied upon to establish the defendant owed the LWCC the full underpayment claimed and would conclude the LWCC has not established entitlement to summary judgment.