NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2011 CA 1248

AVERIS TERRELL MANCHESTER, CRYSTAL D. ATKINS, AND HEATH H. ATKINS

VERSUS

DEDRICK CONRAD, CIRCLE J. TRUCKING, INC., AND GEMINI INSURANCE COMPANY

CONSOLIDATED WITH

2011 CA 1249

SHAWN JACKSON, INDIVIDUALLY, AND ON BEHALF OF HIS MINOR CHILDREN, JOSHUA TACKNO, CAMBRIELLE TACKNO, AND SHAMARA PORTER AND DANIELLE KINCHEN, INDIVIDUALLY

VERSUS

CIRCLE J. TRUCKING, INC., CONRAD DEDRICK, AND GEMINI INSURANCE COMPANY

CONSOLIDATED WITH

2011 CA 1250

JOHN ROSS

VERSUS

DEDRICK CONRAD, CIRCLE J. TRUCKING, INC., AND GEMINI INSURANCE COMPANY

KUHN, J CONCURS & ASSIGNS REASONS
Guidry, J. Concur in the result.

CONSOLIDATED WITH

2011 CA 1251

ADAM W. VEGAS

VERSUS

CIRCLE J. TRUCKING, INC., CONRAD DEDRICK, GEMINI INSURANCE COMPANY, AND ALMA PLANTATION, LLC

CONSOLIDATED WITH

2011 CA 1252

JASON WHITE

VERSUS

DEDRICK CONRAD, CIRCLE J. TRUCKING, ALMA PLANTATION, LLC, NATIONAL FIRE AND MARINE INSURANCE COMPANY, INTERSTATE FIRE AND CASUALTY COMPANY, AND GEMINI INSURANCE COMPANY

Judgment Rendered: February 10, 2012

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Appealed from the
Eighteenth Judicial District Court
In and for the Parish of Pointe Coupee, State of Louisiana
Trial Court Number 41,640 c/w 41,700 c/w 41,936 c/w 42,175 c/w 42,187

The Honorable J. Robin Free, Judge Presiding

* * * * * * * * * *

Dr. Edward A. Robinson, III **Baton Rouge, LA** **and** **Donald Price** **Baton Rouge, LA**	**Attorneys for 2nd Appellant, Averis T. Manchester**
Samuel M. Rosamond, III **Adam D. deMahy** **New Orleans, LA**	**Attorneys for 1st Appellant, National Fire & Marine Insurance Company**

C. Michael Pfister, Jr. Jaime M. Cambre Metairie, LA	Attorneys for 1st Appellant, Interstate Fire and Casualty Company
Michael P. Corry Lafayette, LA and Howard L. Murphy New Orleans, LA	Attorneys for Defendant, Alma Plantation, LLC
Stephen A. Debosier Baton Rouge, LA	Attorney for Plaintiffs, Crystal D. Atkins and Heath H. Atkins
George Blue, Jr. Covington, LA	Intevenor, in proper person George Blue, Jr.
Louis C. Lacour, Jr. New Orleans, LA	Attorney for Defendants, American International Specialty Lines Insurance Company, American International Group, Inc., a/k/a AIG Insurance Company
Terry L. Bonnie Baton Rouge, LA	Attorney for Intervenor, Jerome W. Dixon
James d'Entremont Baton Rouge, LA	Attorney for Defendant, Steadfast Insurance Company
Michael T. Beckers Brent P. Frederick Baton Rouge, LA	Attorneys for Appellees, Shawn Jackson, Individually and on Behalf of his minor children, Joshua Tackno, Cambrielle Tackno, and Shamara Porter, and Danielle Kinchen and Felicia Porter, Individually
Kenneth Fabre Baker, LA	Attorney for Appellee Shawn Jackson
George R. Blue, Jr. Covington, LA	Attorney for Appellees, Shawn Jackson, et al
William C. Helm Baton Rouge, LA	Attorney for Defendants, Conrad Dedrick, Circle J. Trucking, Inc., and Gemini Insurance Company
Anna E. Dow Gonzales, LA	Attorney for Plaintiff, John Ross
James E. Bolin, Jr. Shreveport, LA	Attorney for Plaintiff, Adam W. Vegas
Emmett J. Boudreaux Baton Rouge, LA	Attorney for Plaintiff, Adam W. Vegas

Samuel M. Rosamond, III	**Attorney for Appellant**
Adam deMahy	**National Fire & Marine Insurance**
New Orleans, LA	**Company**

* * * * * * * * * * *

BEFORE: WHIPPLE, KUHN, AND GUIDRY, JJ.

WHIPPLE, J.

This matter is before us on consolidated appeals. Defendants, National Fire and Marine Insurance Company and Interstate Fire and Casualty Company, challenge the portion of the trial court judgment, which found that the insurance policies at issue provide coverage for plaintiff's injuries. Plaintiff, Averis Terrell Manchester, challenges the portion of the same trial court judgment, which dismissed plaintiff's claim for penalties against the defendant insurers. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

This case arises from a multiple-car collision that occurred on or about March 27, 2008, on Interstate 10, near the Essen Lane exit, in Baton Rouge, Louisiana. In the course and scope of his employment with Circle J Trucking, Inc., Conrad Dedrick was operating a tractor-trailer owned by Circle J.[1] Dedrick was transporting a load of sugar from Alma Plantation in Lakeland, Louisiana to the Colonial Sugar Refinery in Gramercy, Louisiana. The accident occurred when Dedrick rear-ended several vehicles on the interstate, including a 1996 Chevrolet Tahoe, which Averis Terrell Manchester was operating. As a result of the accident, Manchester sustained injuries to his spinal cord and was rendered a quadriplegic.

Multiple plaintiffs filed lawsuits relating to the accident, which were consolidated by the trial court. However, Manchester is the only plaintiff before us in the instant appeal.

Manchester initially filed a petition for damages, naming as defendants Dedrick Conrad; Circle J; and Circle J's insurer, Gemini Insurance Company.[2]

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[1]Most of the pleadings identify the defendant-driver as Dedrick Conrad. However, during the course of litigation, the parties clarified that his correct name is Conrad Dedrick.

[2]Manchester's original petition was also filed on behalf of plaintiffs, Crystal D. Atkins and Heath H. Atkins. Manchester later obtained separate counsel from the Atkinses and the Atkinses are not a party to the instant appeal.

Manchester then filed a supplemental and amending petition naming Alma Plantation and its unknown insurer as additional defendants. This petition alleged Alma Plantation was vicariously liable for the actions of Dedrick and Circle J, and that Alma Plantation negligently entrusted its vehicle to Circle J.

Alma Plantation responded to the allegations by filing a general denial and a motion for summary judgment, seeking a dismissal of plaintiff's claims against it.

Prior to a hearing on Alma Plantation's motion for summary judgment, Manchester filed a second supplemental and amending petition, naming National Fire and Marine Insurance Company and Interstate Fire and Casualty Company, Alma Plantation's primary and excess business automobile liability insurers, respectively, as additional defendants.

National and Interstate answered Manchester's petition, denying the allegations and coverage. National and Interstate also filed a motion for partial summary judgment, seeking a dismissal of plaintiff's claims against them *as the alleged insurers of Alma Plantation.* (Emphasis added). Notably, National and Interstate filed a supplemental memorandum with the trial court to clarify that their partial motion for summary judgment sought a dismissal only in their capacity as the alleged insurers of Alma Plantation, further stating that although plaintiff asserted that Circle J and Dedrick might be entitled to direct coverage under the policies, there was no pending motion before the court as to that issue.

The trial court heard the motions for summary judgment of Alma Plantation, National, and Interstate, on May 12, 2009. The trial court denied Alma Plantation's summary judgment in open court; National and Interstate then withdrew their partial motion for summary judgment, noting they had adopted Alma Plantation's motion and that any ruling on Alma Plantation's motion would apply to National and Interstate as well.

Alma Plantation, National, and Interstate then filed an application for supervisory writs with this Court, seeking review of the May 12, 2009 judgment, which denied their motions for summary judgment. This Court granted writs and dismissed Alma Plantation, National, and Interstate from the suit, finding plaintiffs failed to prove they could establish Alma Plantation's vicarious liability or independent acts of negligence. See Manchester v. Conrad, 2009 CW 1074 (La. App. 1st Cir. 9/28/09) (unpublished). Subsequently, this Court granted plaintiff Manchester's application for rehearing in part, only to amend the writ-grant language to specify that National and Interstate were being dismissed only in their capacity as insurers of Alma Plantation. See Manchester v. Conrad, 2009 CW 1074 (La. App. 1st Cir. 12/14/09) (on rehearing) (unpublished). Manchester applied for a writ of certiorari to the Louisiana Supreme Court, seeking review of this Court's action granting writs. The Supreme Court denied the application. See Manchester v. Conrad, 2010-0087 (La. 3/26/10), 29 So. 3d 1259.

The instant appeal pertains to a second motion for summary judgment filed by National and Interstate. This motion (hereafter referred to as the "coverage motion") sought a dismissal of Manchester's claims against National and Interstate, as the alleged insurers of Circle J and Dedrick, contending the policies do not provide coverage to Circle J and Dedrick.

Prior to a hearing on the insurers' coverage motion, National and Interstate filed another motion for summary judgment. This motion (hereafter referred to as the "penalties motion") sought a dismissal of Manchester's claim for penalties under LSA-R.S. 22:1973. Manchester asserted penalties were owed by the insurers under LSA-R.S. 22:1973 because the insurers misrepresented pertinent facts or policy provisions. Specifically, National and Interstate sought a dismissal on the grounds that they provided no coverage to Circle J and Dedrick under the hired auto provisions of the policy. However, as noted by Manchester, National

charged, and Alma Plantation paid, an additional premium for hired auto coverage, calculated in part using Alma Plantation's billing to Circle J for the hiring of the tractor-trailer involved in this accident.

Prior to the trial court's hearing on the insurers' coverage and penalties motions, plaintiff Manchester filed a cross motion for partial summary judgment on the insurance coverage issue, seeking a declaration that National and Interstate provided coverage for Dedrick under the hired auto provisions of their policies. On January 18, 2011, the trial court conducted a hearing on: (1.) National and Interstate's coverage motion; (2.) National and Interstate's penalties motion; and (3.) Manchester's partial motion for summary judgment on insurance coverage. A written judgment was signed by the trial court on February 9, 2011, granting Manchester's partial motion for summary judgment on the insurance coverage issue; denying National and Interstate's coverage motion; and granting National and Interstate's penalties motion. From this judgment, National, Interstate, and Manchester appeal.

National and Interstate allege the trial court erred: (1.) in denying their motion for summary judgment and granting Manchester's motion for partial summary judgment pertaining to insurance coverage; (2.) in finding that Dedrick had Alma Plantation's permission to drive the Circle J vehicle when, as previously held by this Court, Alma Plantation had no control or direction over the Circle J truck; (3.) in ruling that the vehicle being driven by Dedrick was a "hired auto" as defined by their insurance policies when, as previously held by this Court, Alma Plantation had no control or direction over the Circle J truck, and Alma Plantation did not contract with Circle J to borrow or lease its truck; and (4.) in accepting parol evidence when the policies' language is clear and unambiguous and the parol evidence considered (premium payments) is irrelevant to the scope of coverage.

Manchester contends on appeal that the trial court erred in granting the insurers' summary judgment on the penalties issue, where the evidence shows the insurers did not disclose pertinent facts relating to coverage prior to seeking a dismissal for lack of coverage.

DISCUSSION

We begin our analysis by addressing National and Interstate's assignments of error on appeal. National and Interstate allege error in the trial court's insurance-coverage ruling. The trial court's coverage ruling is a partial judgment that determines only the applicability of the insurance policy to plaintiff's claims. However, the trial court designated the entire February 9, 2011 judgment as final and appealable under LSA-C.C.P. art. 1915(B), stating an express determination was made that there was no just reason for delay. However, the trial court did not state its reasons for concluding that there was no just reason for the delay. Accordingly, we are required to conduct a *de novo* review of the propriety of the certification. Gibbens v. Whiteside, 2004-1222 (La. App. 1st Cir. 5/6/05), 915 So. 2d 866, 868, writ denied, 2005-1525 (La. 12/16/05), 917 So. 2d 1116, citing Motorola, Inc. v. Associated Indemnity Corporation, 2002-1351 (La. App. 1st Cir. 10/22/03), 867 So. 2d 723, 732.

We first note that generally, the **denial** of a motion for summary judgment is not appealable. However, if the same issue lies at the heart of the summary judgment that was denied and the summary judgment that was granted, then review of both motions on appeal is appropriate. Board of Supervisors of Louisiana State University v. Louisiana Agricultural Finance Authority, 2007-0107 (La. App. 1st Cir. 2/8/08), 984 So. 2d 72, 78, n.1. Therein, the issue of insurance coverage under the hired auto provisions of the policies was the matter at issue in both the insurers' summary judgment, which was denied, and the plaintiff's summary judgment, which was granted.

Moreover, we further find there is no just reason for delaying review of this coverage ruling in that while the instant appeal was pending with this Court, the trial court proceeded with the trial on the merits and rendered a final judgment on liability and damages. This judgment states it is conditioned upon a final determination by the court of final appeal that coverage exists under the policy issued by National. Notably, the parties involved in the instant appeal have informed this Court (during oral arguments) that they do not intend to appeal this final judgment. Accordingly, a decision on insurance coverage at this time will facilitate resolution of all remaining issues in this case, thereby fostering judicial economy.

Turning to the insurers' argument that coverage does not exist under the hired auto provision, we first apply the well-established principles governing interpretation of insurance policies. An insurance policy is a contract between the parties and is construed using the general rules of interpretation of contracts set forth in the Louisiana Civil Code. LeBlanc v. Aysenne, 2005-0297 (La. 1/19/06), 921 So. 2d 85, 89.

The Civil Code provides that interpretation of a contract is the determination of the common intent of the parties and when the words of a contract are clear and explicit and lead to no absurd consequences, no further interpretation may be made in search of the parties' intent. LSA-C.C. art. 2045 and 2046. The words of the policy are given their generally prevailing meaning, and words susceptible of different meanings must be interpreted as having the meaning that best conforms to the object of the contract. LSA-C.C. art. 2047 and 2048.

The policy language in the National policy regarding hired autos, provides, in pertinent part, as follows:[3]

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[3]The policy issued by Interstate is excess to the policy issued by National and, by its terms, adopts this same language as the National policy. The Interstate policy specifically provides:

SECTION II-LIABILITY COVERAGE

*****

1. Who is An Insured

The following are "insureds"[:]

*****

b[.] Anyone else while using with your **express or implied permission a covered "auto" you own, hire or borrow** except

(1) The owner or anyone else from whom you hire or borrow a covered "auto[.]" This exception does not apply if the covered "auto" is a "trailer" connected to a covered "auto" you own[.] [Emphasis added.]

Moreover, the National policy contains a "Hired Autos Endorsement" stating:

ADDITIONAL DEFINITIONS – LIABILITY COVERAGE

I. COVERAGES

A. Coverage A- Excess Liability Coverage

Insurance under Coverage A applies only to liability and damages covered by the "underlying insurance" scheduled on this policy and **is subject to the same terms, conditions, agreements, warranties, exclusions, definitions and limitations as the "underlying policy"** which are incorporated as part of this policy as applicable to Coverage A, except for:

1. Medical Payments;
2. No-fault, Uninsured or Undersinsured Motorist Coverage;
3. Any duty to investigate or defend, or to pay for any investigation or defense;
4. Limits of insurance;
5. Insolvency, bankruptcy, or non-payment provisions;
6. Premium, subrogation, cancellation and other insurance provisions;

*****

We will pay on behalf of the "insured" that part of "loss" to which this insurance applies, in excess of the total applicable limits of "underlying insurance" and any "other insurance", that the "insured" becomes legally obligated to pay as damages provided such damages are caused by an "occurrence" during this Policy Period ....

*****

Notwithstanding anything to the contrary contained above, if "underlying insurance" does not cover a "loss", for reasons other than exhaustion of a limit of insurance by payment of claims or judgments covered under the terms and conditions of this insurance, then we will not cover such "loss". [Emphasis added].

We interpret this provision to mean that if damages are covered by National's "underlying insurance," then there is coverage under Interstate's excess policy, should such damages exceed the coverage amount of the underlying insurance and not be specifically excluded.

> **(1) A HIRED "AUTO" is defined as those "autos" you lease, hire, rent or borrow under a verbal or written contract,** but does not include any "autos" which are SPECIFICALLY DESCRIBED "AUTOS" nor does it include any "autos" which you lease, hire, rent or borrow from any of your employees or partners or members of their households
>
> **(2) Lease, hiring, renting or borrowing a HIRED "AUTO" includes**
>
> > **(I) operation of a HIRED "AUTO" by you or any person under your direction or control,**
> >
> > (II) operation of a HIRED "AUTO" by any person, with your consent, under a state or Interstate Commerce Commission certificate of authority issued to you, or
> >
> > (III) transportation of property or passengers by a HIRED "AUTO" under a bill of lading, ticket or any agreement where you are shown as the carrier of the property or passengers
>
> Lease, hiring, renting or borrowing of a HIRED "AUTO" occurs even if the owner, lessor or lender of such "auto" agrees to indemnify or otherwise hold you harmless from liability in connection with such use and/or procures insurance on your behalf[.] [Emphasis added].

The policy language affording coverage for an "auto you own, hire, or borrow" is clear and explicit. See Schroeder v. Board of Supervisors of Louisiana State University, 591 So. 2d 342, 346 (La. 12/2/91). Accordingly, we must determine whether, under the general prevailing meaning of the term "hire," the Circle J vehicle was hired by the insured (Alma Plantation). We must further determine whether, under the general prevailing meaning of the term "direction or control," defendant driver Dedrick was operating the vehicle while subject to the insured's (Alma Plantation's) direction or control.

National and Interstate argue that neither of these requirements was met. The insurers' argument relies on their interpretation of the prior action of this Court, which granted writs and dismissed Alma Plantation, and National and Interstate, in their capacity as insurers of Alma Plantation. Specifically, National and Interstate contend that this Court found there was no liability on the part of Alma Plantation, *because Alma Plantation exercised no control or direction over Circle J or its employees, including defendant-driver Dedrick.* The insurers reason

that since Alma Plantation exercised no control or direction over Circle J or its employees, then there can be no coverage for Dedrick because: (1.) without direction or control, Alma Plantation could not give permission to Dedrick to operate the vehicle; and (2.) without direction or control, the vehicle could not be a hired auto under the policy language or case law. We find no merit to these arguments.

The prior action of this Court did not state Alma Plantation exercised *no* control or direction over Circle J or its employees. Instead, in pertinent part, this Court's prior action stated:

> Based on a *de novo* review of the documents provided by the parties, it is the finding of this Court that the plaintiffs failed to establish that they will be able to carry their evidentiary burden at trial to demonstrate [Alma Plantation's] vicarious liability or a duty of Alma [Plantation] to prevent the overloading of the tractor-trailer, thereby warranting the grant of summary judgment in favor of these defendants.

See Manchester v. Conrad, 2009 CW 1074 (La. App. 1st Cir. 9/28/09) (unpublished). Based on the documents then presented, the extent of Alma Plantation's control over Circle J and its employees was not sufficient to justify a finding of vicarious liability; however, such a ruling does not mean that Alma Plantation exercised *no* direction or control over Circle J and its employees, including defendant-driver Dedrick.

Accordingly, we find that under the facts of this case, the Circle J tractor-trailer involved in the accident was "hired" by Alma Plantation. The corporate representative of Alma Plantation testified during his deposition that a written and verbal agreement existed between Alma Plantation and Circle J. The intent of the contract was to obtain an independent entity to haul sugar and molasses for Alma Plantation. Moreover, the owner of Circle J acknowledged during his deposition that his tractor-trailer was "hired" to transport sugar for Alma Plantation on the date of the accident.

Furthermore, National collected an additional premium under the hired auto endorsement for the Circle J tractor-trailer, which National and Interstate now contend is not a "hired auto." The hired auto endorsement provides that the premium owed for the endorsement would be calculated using the Alma Plantation's "cost of hire." "Cost of Hire" is defined as the amount of money Alma Plantation pays or owes to hire, rent or lease hired autos. The endorsement further states Alma Plantation is required to maintain auditable records of its cost of hire sufficient to permit the insurer to audit the records and determine the cost of hire Alma Plantation paid or owed during the policy period.

Further, on July 3, 2008, National actually sent an auditor to Alma Plantation to conduct a premium audit and determine Alma Plantation's actual cost of hire for the policy period from July 1, 2007 through July 1, 2008. As part of the audit, Alma Plantation was required to provide the auditor with records of amounts paid to each subcontractor it hired. Alma Plantation did so and provided the auditor with a document entitled, "Alma Plantation 7/1/08-6/30/09 Hired Auto." This document reflected that Alma Plantation paid Circle J Trucking $1,256,178.43. Based on this audit, National charged, and Alma Plantation paid, an additional premium cost of $47,394.55. Prior to paying the additional premium, Alma Plantation disputed the amount owed because many of the haulers (including Circle J) provided their own coverage and listed Alma Plantation as an additional insured. National's underwriter responded, "The hired car exposure for individuals hauling sugar needs to be included in the COH [cost of hire]... **Our quote contemplated this exposure** .... We still have a hired car exposure even with the certificates provided to the insured." (Emphasis added). As these facts demonstrate, National clearly considered the Circle J vehicle to be a "hired auto" for purposes of collecting a premium. We are likewise convinced that the Circle J

vehicle was a "hired" auto under the general prevailing meaning of the term "hired."

We further note that our consideration of the premium payment is not reliance on impermissible parole evidence, as urged by National and Interstate. Parole evidence may not be admitted to negate or vary the contents of the policy. LSA-C.C. art. 1848. In the instant matter, the premiums collected by National, under the terms of the hired auto endorsement, are not being introduced to negate or vary the terms of the policy. Rather, the premiums paid to National are relevant as a fact in the case, considered for the purpose of determining whether the Circle J tractor-trailer was a hired auto under the clear and explicit policy language.

Moreover, we find no merit to National and Interstate's argument that Dedrick was not operating the vehicle under the "direction or control" of the insured (Alma Plantation). At the time of the accident, ninety percent of Dedrick's employer's business (Circle J's business) was from Alma Plantation. Alma Plantation owned the sugar that Dedrick was transporting at the time of the accident. Alma Plantation was paying Dedrick's employer for the delivery of the sugar. Dedrick picked up the sugar from Alma Plantation's warehouse. Dedrick used front-end loaders, owned by Alma Plantation, to load the trailer with sugar. Dedrick then used scales, owned by Alma Plantation, to weigh the sugar load.

For the foregoing reasons, we find the tractor-trailer involved in the accident was "hired" by Alma, and was being operated by a person "under the direction or control" of Alma. As such, we find that the National and Interstate policies issued to Alma provide coverage for the subject accident.

Turning to plaintiff Manchester's consolidated appeal, which disputes the portion of the trial court judgment dismissing his penalty claim, Manchester asserts National and Interstate owe penalties for misrepresentation under LSA-R.S. 22:1973, because the insurers did not disclose pertinent facts relating to coverage,

prior to seeking dismissal for lack of coverage. Specifically, Manchester contends National did not disclose that it charged Alma Plantation a hired auto premium based in part on the amounts Alma Plantation paid to Circle J for the truck involved in this accident. Manchester argues the insurers were required to affirmatively disclose this pertinent coverage fact.

Louisiana Revised Statute 22:1973, formerly LSA-R.S. 22:1220, provides, in pertinent part:

> Good faith duty; claims settlement practices; cause of action; penalties
>
> A. An insurer, including but not limited to a foreign line and surplus line insurer, owes to his insured a duty of good faith and fair dealing. The insurer has an affirmative duty to adjust claims fairly and promptly and to make a reasonable effort to settle claims with the insured or the claimant, or both. Any insurer who breaches these duties shall be liable for any damages sustained as a result of the breach.
>
> B. Any one of the following acts, if knowingly committed or performed by an insurer, constitutes a breach of the insurer's duties imposed in Subsection A:
>
> (1) **Misrepresenting pertinent facts or insurance policy provisions relating to any coverages at issue**. [Emphasis added].

Louisiana Revised Statutes 22:1973 is a penal statute that must be strictly construed. See generally Vaughn v. Franklin, 2000-0291 (La. App. 1st Cir. 3/28/01), 785 So. 2d 79, 91, writ denied, 2001-1551 (La. 10/5/01), 798 So. 2d 969. 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. But, where an insurer is found to have acted arbitrarily, capriciously, or without probable cause, the insurer shall be liable for damages as a result of the breach, and may be liable for penalties. 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. Calogero v. Safeway Ins. Co. of Louisiana, 99-1625 (La. 1/19/00), 753 So. 2d 170, 173.

On review, we are unable to find the insurers' actions in this case justify the imposition of penalties. On February 26, 2009, Manchester was provided with copies of National and Interstate's insurance policies. There are no allegations that the policies provided were incomplete or inaccurate. Presumably, the copy of the National policy included the hired auto endorsement, which stated Alma Plantation was to maintain auditable records for the calculation of the hired auto premium. Manchester did not request "records of cost of hire maintained in compliance with the hired auto endorsement" until March 24, 2010. The requested records were provided to Manchester on April 5, 2010. Manchester does not allege that the records received were altered or contained any misrepresentations. Accordingly, based on the foregoing facts, we are unable to say the trial court erred in dismissing Manchester's penalty claim against the insurers.

CONCLUSION

Based on the above and foregoing reasons, the February 9, 2011 judgment of the trial court is hereby affirmed at the costs of the defendant appellants, National Fire and Marine Insurance Company and Interstate Fire and Casualty Company.

AFFIRMED.

AVERIS TERRELL MANCHESTER, ET. AL	**FIRST CIRCUIT**
	COURT OF APPEAL
VERSUS	**STATE OF LOUISIANA**
DEDRICK CONRAD, ET. AL	**NO. 2011 KA 1248**

CONSOLIDATED WITH

SHAWN JACKSON, ET. AL	**FIRST CIRCUIT**
	COURT OF APPEAL
VERSUS	**STATE OF LOUISIANA**
CIRCLE J. TRUCKING, INC., ET. AL	**NO. 2011 KA 1249**

CONSOLIDATED WITH

JOHN ROSS	**FIRST CIRCUIT**
	COURT OF APPEAL
VERSUS	**STATE OF LOUISIANA**
DEDRICK CONRAD, ET. AL	**NO. 2011 KA 1250**

CONSOLIDATED WITH

ADAM W. VEGAS	**FIRST CIRCUIT**
	COURT OF APPEAL
VERSUS	**STATE OF LOUISIANA**
CIRCLE J. TRUCKING, INC., ET. AL	**NO. 2011 KA 1251**

CONSOLIDATED WITH

JASON WHITE	**FIRST CIRCUIT**
	COURT OF APPEAL
VERSUS	**STATE OF LOUISIANA**
DEDRICK CONRAD, ET. AL	**NO. 2011 KA 1252**

KUHN, J., concurring.

Although I fully agree with the result reached in this appeal, I believe it is unnecessary to consider the extrinsic evidence regarding National's premium audit of Alma in reaching this result. When the language of an insurance policy is clear and unambiguous, the meaning and intent of the parties must be sought within the four corners of the policy and cannot be explained by extrinsic or parol evidence. See La. C.C. art. 2046; ***Highlands Underwriters Insurance Company v. Foley***, 96-1018 (La. App. 1st Cir. 3/27/97), 691 So.2d 1336, 1340; see also ***Abshire v. Vermilion Parish School Board***, 02-2881 (La. 6/27/03), 848 So.2d 552, 555 n.5. Thus, since the terms of the policies are clear in this case, the resort to extrinsic evidence concerning the audit is unwarranted.