

BRANDON ENCLARDE

VERSUS

LATONYA WALKER AND
GOAUTO INSURANCE
COMPANY

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NO. 2026-CA-0309

COURT OF APPEAL

FOURTH CIRCUIT

STATE OF LOUISIANA

APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2023-11715, DIVISION “L-6”
Hon. Kern A. Reese, Judge

Judge Dale N. Atkins

(Court composed of Judge Rosemary Ledet, Judge Dale N. Atkins, Judge Monique G. Morial)

LEDET, J., CONCURS IN THE RESULT

David C. Jarrell
LAW OFFICE OF DAVID C. JARRELL
9101 W. St. Bernard Highway
Chalmette, LA 70043

COUNSEL FOR PLAINTIFF/APPELLANT, Brandon Enclarde

Michele Trowbridge Barreca
Kailey M. Goerlitz
Garrett Alline
PORTEOUS HAINKEL & JOHNSON, L.L.P.
704 Carondelet Street
New Orleans, LA 70130

COUNSEL FOR DEFENDANT/APPELLEE, GoAuto Insurance Company

REVERSED AND REMANDED
OCTOBER 20, 2026

DNA

MGM

This insurance dispute stems from an automobile accident involving Appellant, Brandon Enclarde (“Mr. Enclarde”), and Latonya Walker (“Ms. Walker”). Mr. Enclarde seeks review of the trial court’s March 10, 2026 judgment, which granted the Motion for Summary Judgment filed by Appellee, GoAuto Insurance Company (“GoAuto”), and dismissed his claims against GoAuto with prejudice. For the following reasons, we reverse the trial court’s judgment and remand this matter for further proceedings consistent with this Opinion.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Petition

On October 17, 2023, Mr. Enclarde filed a Petition for Damages, wherein he named Ms. Walker and GoAuto as defendants. Mr. Enclarde alleged that on October 28, 2022, he was driving his vehicle on Downman Road in New Orleans when a vehicle operated by Ms. Walker collided with the rear of his vehicle. Further, Mr. Enclarde asserted he suffered personal injuries from the accident which he alleged was the fault of Ms. Walker. In relevant part, Mr. Enclarde also alleged that GoAuto insured Ms. Walker on the date of the accident. Pertinent to

understanding aspects of this Opinion, the record reveals that GoAuto eventually appointed separate counsel to represent Ms. Walker.

Motion for Summary Judgment

On July 30, 2025, GoAuto filed its Motion for Summary Judgment. Therein, GoAuto did not deny that it insured Ms. Walker on the date of the subject accident. Instead, GoAuto requested summary judgment on the basis “that there is no coverage under the GoAuto . . . policy because [Ms.] Walker has failed to comply with the terms of the GoAuto . . . contract.” More specifically, GoAuto alleged that Ms. “Walker has failed to cooperate with GoAuto in its investigation of the motor vehicle accident which forms the basis of [Mr. Enclarde’s] lawsuit, as required by the GoAuto policy terms, which has materially prejudiced GoAuto’s investigation of the accident and GoAuto’s defense of this claim.”

In its “Memorandum in Support of Summary Judgment” (“Memorandum”), GoAuto argued “that in the absence of conflict with statutes or with public policy, insurers have the same rights as individuals to limit their liability and to enforce whatever conditions they please upon their obligation.” In this regard, GoAuto pointed to the part of the policy it issued to Ms. Walker that provided, in pertinent part, that a person insured by the policy must cooperate with GoAuto in its investigation, settlement, or defense of any claim or suit in the event of an accident, i.e., the “Cooperation Clause.” GoAuto contended that “[t]he refusal of an insured to comply with [a] cooperation clause [like the foregoing] suffices to justify dismissal of the insurer” from the suit.

Additionally, GoAuto alleged Ms. Walker’s failure to cooperate had prejudiced it. Specifying how Ms. Walker failed to cooperate, GoAuto explained that she did not report the accident; did not respond to GoAuto reaching out to her

seventeen times via telephone, email, and written correspondence; and failed to appear for her deposition and an examination under oath. GoAuto's Memorandum laid out this information in a timeline:

1. On 11/4/22, GoAuto claims representative called [Ms.] Walker at [first telephone number¹] and was met with no answer. GoAuto claims representative then called [Ms.] Walker at [second telephone number] and was met with a busy signal each time. GoAuto mailed a Reservation of Rights Cooperation letter to [Ms.] Walker. GoAuto claims representative sent a text message to [first telephone number] requesting her to speak with the claims adjustor as soon as possible.
2. On 11/21/22, GoAuto called [Ms.] Walker at [first telephone number] and spoke very briefly. Ms. Walker asked the claims adjustor to hold on while she relocated to somewhere quiet. After a few minutes, the call ended. GoAuto called back and received no answer, but, left a voicemail.
3. On 11/30/22, GoAuto mailed a 10-day notice letter to [Ms.] Walker.
4. On 12/19/22, GoAuto claims representative called [Ms.] Walker at [first telephone number] and there was no answer. GoAuto was unable to leave a message as the mailbox was full. GoAuto followed up with a text message.
5. On 1/23/23 GoAuto noted in the claim file that there has been no response from [Ms.] Walker.
6. On 10/20/23, GoAuto mailed and emailed an updated Reservation of Rights for non-cooperation to [Ms.] Walker. GoAuto provided a copy of the suit in the email and requested Ms. Walker to contact the claims adjustor as soon as possible.
7. On 10/23/23, GoAuto called [Ms.] Walker at [first telephone number] and it was not a working number. GoAuto then called [third telephone number] listed on the policy and was sent to voicemail and left a message.
8. On 11/1/23, GoAuto received notification from St. Charles Sheriff's office that [Ms. Walker] was personally served with the Petition for Damages.

¹ For purposes of privacy, this Opinion will not repeat the telephone numbers listed in GoAuto's Memorandum.

9. On 11/4/23, GoAuto mailed a reservation of rights letter to [Ms.] Walker.
10. On 11/8/23, GoAuto called [Ms.] Walker at [third telephone number] and left a voicemail. GoAuto then called [first telephone number] and it was not in service.
11. On 3/18/24, GoAuto mailed and emailed a letter of notice to [Ms.] Walker.
12. On 6/6/24, a notice of deposition was sent to [Ms.] Walker scheduled for 7/9/24.
13. On 7/9/24, [Ms.] Walker did not appear for her deposition.
14. On 9/4/24, an examination under oath was scheduled tentatively with Ms. Walker's counsel, Carl Danna, for 9/23/24 as [Ms.] Walker's counsel was unable to speak with her or confirm dates.
15. On 9/18/24, Carl Danna informed that the examination under oath would not be going forward as he was unable to confirm the date and time with [Ms.] Walker.
16. On 10/22/24, the examination under oath of [Ms.] Walker was scheduled for 11/21/24.
17. On 11/21/24, the examination under oath did not go forward as [Ms.] Walker's counsel had a conflict. The examination under oath was rescheduled to 1/27/2[5].
18. On 1/27/2[5], [Ms.] Walker did not appear for her examination under oath.

(Footnotes omitted.)

Alleging how Ms. Walker's failure to cooperate prejudiced it, GoAuto contended it was "unable to investigate the facts and circumstances surrounding the accident and" had "been forced to blindly defend against a claim without any information and assistance from the insured." Additionally, Go Auto alleged it would "incur unnecessary costs and expenses in defending against a lawsuit it likely should not be involved in."

Opposition

On September 3, 2025, Mr. Enclarde filed a “Memorandum in Opposition to Defendant’s Motion for Summary Judgment” (“Opposition”). Therein, Mr. Enclarde delineated the following timeline in his Opposition (footnotes omitted):

- On **June 4, 2024**, [Mr. Enclarde’s] counsel noticed the deposition of [Ms.] Walker to take place on July 9, 2024.
- On **June 4, 2024**, [Mr. Enclarde’s] counsel served notice upon counsel for Ms. Walker.
- On **July 8, 2024**, Ms. Walker was served via domiciliary service.
- On **July 9, 2024**, Ms. Walker contacted [Mr. Enclarde’s counsel] stating that she had not been in contact with anyone purporting to represent her and that she did not have transportation to appear at the deposition in Chalmette.
- On **July 9, 2024**, [Mr. Enclarde’s counsel] contacted counsel for Ms. Walker and provided her phone number and asked that they call Ms. Walker and ask her to verify the facts of loss.
- On **July 9, 2024**, [Mr. Enclarde’s counsel] contacted counsel for Ms. Walker via e-mail and asked that they call Ms. Walker and ask her to verify the facts of loss.
- On **July 10, 2024**, [Mr. Enclarde’s counsel] contacted counsel for Ms. Walker via e-mail and asked that they call Ms. Walker and ask her to verify the facts of loss.
- At some point on or shortly after **July 10, 2024**, counsel for Ms. Walker informed [counsel for Mr. Enclarde] that Ms. Walker had verified the facts of loss.
- Prior to the filing of the motion for summary judgment, [Mr. Enclarde’s] counsel made no further requests to depose Ms. Walker in light of Ms. Walkers [sic] verification of the facts of loss.
- On **July 31, 2025**, GoAuto filed the instant Motion for Summary Judgment.
- On **July 31, 2025**, [Mr. Enclarde’s] counsel contacted counsel for Ms. Walker to schedule her deposition to oppose GoAuto’s [M]otion for [S]ummary [J]udgment.

- On **August 29, 2025**, [Mr. Enclarde's] counsel contacted counsel for Ms. Walker to schedule her deposition to oppose GoAuto's [M]otion for [S]ummary [J]udgment.
- In between **July 31, 2025** and **August 29, 2025**, [Mr. Enclarde's] counsel made several phone calls to counsel for Ms. Walker.
- As of the close of business on September 2, 2025, counsel for Ms. Walker has never responded to any of the requests to schedule the deposition of Ms. Walker.

Insofar as Mr. Enclarde alleged, as quoted above, that Ms. Walker communicated with her counsel, Mr. Enclarde supported this with an affidavit from his counsel. Mr. Enclarde also attached his own affidavit in support of his Opposition.

With respect to the above timeline, Mr. Enclarde contended it created a genuine issue of material fact sufficient to warrant denial of GoAuto's Motion for Summary Judgment. Specifically, Mr. Enclarde pointed out that when Ms. Walker directly received the deposition subpoena, she "was cooperative but lacked the means to attend the deposition." Mr. Enclarde alleged that after GoAuto filed its Motion for Summary Judgment and sought again to depose Ms. Walker and coordinate a defense with her attorney, it was Ms. Walker's counsel who was "utterly unresponsive," not Ms. Walker.

In addition, Mr. Enclarde argued that GoAuto had failed to allege—let alone prove—the factual basis for the prejudice it purportedly experienced. In particular, Mr. Enclarde pointed out that GoAuto did not identify "what additional facts need to be investigated" for it to defend against Mr. Enclarde's claim. As Mr. Enclarde explained, he submitted to a deposition, during which he verified the facts of the loss and provided a copy of Ms. Walker's driver's license and insurance card (with Ms. Walker being the named insured on same) that he received from her.

Quoting from *Marcantel v. State Farm Fire & Casualty Co.*, Mr. Enclarde argued “a cooperation clause is emphatically not an escape hatch that an insurer may use to flee from liability” with dismissal on the basis of an insured’s failure to cooperate being a “‘draconian remedy’ . . . available only where the insurer can establish actual prejudice.” No. 2:22-01511, 2024 WL 3157598, at *3 (W.D. La. June 24, 2024) (citations omitted). Mr. Enclarde also cited to *Williams v. USAgencies Casualty Insurance Co.* for the principle that the purpose of Louisiana’s compulsory liability law is “to provide compensation for persons injured by the operation of insured vehicles” rather than “to protect the vehicle owner or operator against liability.” 2014-185, p. 7 (La. App. 3 Cir. 6/4/14), 140 So.3d 895, 900 (citation omitted). In this vein, Mr. Enclarde argued GoAuto sought—via its Motion for Summary—“to circumvent the purpose of the compulsory insurance law and avoid liability under the policy by relying on on [sic] a failure to cooperate clause to effectively deny coverage to an innocent third party.” Mr. Enclarde argued that “[s]uch an interpretation imposes an additional requirement to effectuate the purpose of the compulsory insurance law, namely a requirement that, in addition to having insurance, an at-fault insured must give his permission to the third party claim by cooperating with the investigation.”

Reply

On September 25, 2025, GoAuto filed a “Reply to [Mr. Enclarde]’s Opposition to [Its] Motion for Summary Judgment” (“Reply”). In pertinent part, GoAuto’s Reply asserted: (1) Mr. Enclarde’s counsel’s affidavit was not admissible evidence to defeat its Motion for Summary Judgment; (2) Ms. Walker’s counsel’s unresponsiveness was not relevant to GoAuto’s Motion for Summary Judgment; (3) Mr. Enclarde’s affidavit was self-serving and not admissible

evidence to defeat GoAuto’s Motion for Summary Judgment; and (4) Ms. Walker’s failure to cooperate materially prejudiced GoAuto’s ability to investigate the alleged accident (this latter topic was essentially a reiteration of the argument GoAuto made in its Motion for Summary Judgment and Memorandum).

November 2025 Hearing

On November 21, 2025, the trial court held a hearing on GoAuto’s Motion for Summary Judgment. Ms. Walker’s new counsel² was present and explained Ms. Walker had contacted her office the day before and stated her willingness to participate in a deposition. Counsel for Ms. Walker also explained, however, that Ms. Walker did not have transportation or access to the internet to appear for the deposition in person or virtually via Zoom, respectively. The trial court continued the matter until January 2026 and told counsel for Ms. Walker to advise Ms. Walker that her failure to show for her deposition would result in the trial court assessing attorney fees and costs against her.

Supplemental Opposition

Then, on December 30, 2025, Mr. Enclarde filed a “Supplemental Memorandum in Opposition to Defendant’s Motion for Summary Judgment” (“Supplemental Opposition”). Therein, Mr. Enclarde informed the trial court that Ms. Walker continued to be insured by GoAuto until at least September 22, 2024 (nearly two years after the subject accident). According to Mr. Enclarde, this demonstrated the “dis-ingenuousness and absurdity of GoAuto’s failure to cooperate defense.” That is, Mr. Enclarde argued that GoAuto benefitted financially by continuing to receive Ms. Walker’s premiums while also benefitting

² By the time of the hearing, a different GoAuto-appointed attorney represented Ms. Walker.

financially by avoiding paying his legitimate claim on the basis of her failure to cooperate. Thus, Mr. Enclarde argued that GoAuto's failure to cooperate defense was "exaggerated at best and completely insincere at worse" because GoAuto did not find Ms. Walker's lack of cooperation so egregious as to cancel her policy. In pertinent part, Mr. Enclarde attached to his Supplemental Opposition the December 17, 2025 responses GoAuto provided to his supplemental requests for production, which included Ms. Walker's insurance policies from the company through September 22, 2024.

Reply to Supplemental Opposition

On January 30, 2026, in response to Mr. Enclarde's Supplemental Opposition, GoAuto filed a "Reply to [Mr. Enclarde]'s Supplemental Memorandum in Opposition to Defendant's Motion for Summary Judgment" ("Reply to Supplemental Opposition"). Therein, GoAuto argued the trial court should not consider Mr. Enclarde's Supplemental Opposition and the exhibit attached thereto because the facts of GoAuto continuing to insure Ms. Walker and collect premium payments from her had "no bearing on the issues at hand" in its Motion for Summary Judgment. Rather, according to GoAuto, this constituted an effort by Mr. Enclarde "to make an implication of disingenuity on the part of GoAuto." As argued by GoAuto, "An insurer can most definitely deny coverage for a particular claim without canceling the insured's policy," and GoAuto also argued that this was not contrary to public policy. Additionally, GoAuto asserted that to the extent Mr. Enclarde contended Ms. Walker's cooperation in paying her premiums had bearing on her cooperation in his case, this was both irrelevant and untrue.

March 2026 Hearing

On March 6, 2026, the trial court held another hearing on GoAuto's Motion for Summary Judgment. GoAuto's counsel confirmed that Ms. Walker's insurance policy contained the Cooperation Clause and asserted that her actions had violated it. Specifying those actions, counsel for GoAuto contended Ms. Walker remained uncooperative and still had not reported the loss, provided a statement, sat for a deposition, or sat for an examination under oath. As explained by GoAuto's counsel, the only information GoAuto had about the case came from the adverse party, Mr. Enclarde, such that GoAuto was prejudiced because it had "never been informed of the facts." Counsel for Ms. Walker explained that she had made multiple unsuccessful attempts to reach Ms. Walker.

At the outset, counsel for Mr. Enclarde discussed the fact that GoAuto continued to insure Ms. Walker despite her failure to cooperate in the subject case. Mr. Enclarde's counsel pointed out that GoAuto had issued multiple cancellation notices to Ms. Walker for her failure to timely pay her premium and then reinstated her policy upon her doing so. Arguing the import of that, counsel for Mr. Enclarde asserted this demonstrated that "when [GoAuto] really wanted to get in contact with [Ms. Walker], [it] did." As argued by Mr. Enclarde's counsel, if GoAuto really cared about Ms. Walker's failure to cooperate, it would have canceled her policy.

As to the effect of Ms. Walker's failure to cooperate, counsel for Mr. Enclarde explained this was "a simple rear-end auto accident," such that there was "very little to investigate." Mr. Enclarde's counsel argued that his "client received a copy from Ms. Walker of her license and her vehicle registration and her insurance card from GoAuto," which established it was Ms. Walker driving the

vehicle during the accident. Then, Mr. Enclarde’s counsel observed there had been no allegation of fraud or misconduct so as to justify GoAuto attempting to obtain an examination under oath. Turning to the issue of prejudice, Mr. Enclarde’s counsel argued GoAuto had not alleged, let alone proven, actual prejudice. Addressing the public policy aspect of the case, Mr. Enclarde’s counsel asserted Louisiana’s compulsory liability insurance policy is designed to protect the innocent party in an accident, i.e., Mr. Enclarde.

The trial court judge ruled that, under La. C.C.P. art. 966 (titled “Motion for Summary Judgment; procedure”), he could not consider the insurance premiums paid by Ms. Walker and the insurance policies that covered her subsequent to the subject accident. In other words, the trial court judge stated he could not and would not consider Mr. Enclarde’s Supplemental Opposition. The trial court concluded the hearing by orally granting GoAuto’s Motion for Summary Judgment.

Judgment

Thereafter, on March 10, 2026, the trial court issued its written judgment granting GoAuto’s Motion for Summary Judgment:

This matter was set for hearing on Friday, March 6, 2026 on the Motion for Summary Judgment, filed by defendant [GoAuto]

. . . .

After a review of the pleadings, evidence, and law, hearing the argument of counsel, and for the reasons orally assigned at the hearing, this Honorable Court renders judgment as follow:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Motion for Summary Judgment filed by [GoAuto] . . . is hereby GRANTED and [Mr. Enclarde]’s claims against [GoAuto] . . . are dismissed, with prejudice, with each party to bear their own costs; while specifically reserving the rights of [Mr. Enclarde] against any and all other parties herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Judgment be and is hereby designated as a [f]inal [j]udgment in accordance with La. C.C.P. art. 1915.

Mr. Enclarde's timely appeal to this Court followed.

ASSIGNMENTS OF ERROR

Mr. Enclarde asserts two assignments of error in his brief to this Court:

1. The trial [c]ourt erred as a matter of law in granting summary judgment on the basis of [Ms. Walker]'s failure to cooperate when [GoAuto] failed to allege, much less prove, actual prejudice.
2. The trial [c]ourt erred in not admitting and not considering GoAuto's Responses to Requests for Production that were attached as Exhibit 5 to the [S]upplement[al] [O]pposition to [GoAuto's] [M]otion for [S]ummary [J]udgment.

We begin with Mr. Enclarde's first assignment of error to address his arguments in chronological order and, for the following reasons, we find it dispositive of this appeal.

DISCUSSION

Summary Judgment Principles and Standard of Review

We begin our discussion with the principles and standard of review applicable to the summary judgment procedure so that these inform our analysis. "The summary judgment procedure is designed to secure the just, speedy, and inexpensive determination of every action" La. C.C.P. art. 966(A)(2). It "is favored and shall be construed to accomplish these ends." *Id.* A trial court grants a motion for summary judgment if "[a]fter an opportunity for adequate discovery," the mover's "motion, memorandum, and supporting documents show that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law." La. C.C.P. art. 966(A)(3). On a motion for summary judgment, "[t]he burden of proof rests with the mover." La. C.C.P. art. 966(D)(1).

As this Court has explained in discussing the summary judgment procedure:

[T]he party seeking summary judgment has the burden of proving there is no genuine issue of material fact. This Court has previously defined a genuine issue to mean a triable issue. More particularly, an issue is genuine if reasonable persons could disagree about the issue. If, however, reasonable persons could reach only one conclusion on the particular issue in light of the state of the evidence, then there is no need for a trial on that issue. A fact is material when its existence or non-existence may be essential to the plaintiff's cause of action under the applicable theory of recovery. Further, a fact is material when it potentially insures or precludes recovery, affects a litigant's ultimate success, or determines the outcome of the legal dispute. In determining whether a particular disputed fact is material or not, a court must analyze the substantive law applicable to the case as the applicable substantive law determines materiality.

If the movant proves that there is no genuine issue of material fact, thereby satisfying the initial burden of proof, at that point the burden shifts to the party opposing summary judgment to present factual support sufficient to show he or she will be able to satisfy the evidentiary burden at trial.

Pulliam v. Curahealth New Orleans, LLC, 2025-0240, pp. 11-12 (La. App. 4 Cir. 12/3/25), 430 So.3d 420, 428 (internal citations, alterations, and quotation marks omitted).

As established by La. C.C.P. art. 966(D)(1), if the party moving for summary judgment “will not bear the burden of proof at trial on the issue that is before the court on the motion for summary judgment,” then “the mover’s burden on the motion does not require him [or her] to negate all essential elements of the adverse party’s claim, action, or defense, but rather to point out to the court the absence of factual support for one or more elements essential to the adverse party’s claim, action, or defense.” Then, if “the motion has been made and properly supported . . . [t]he burden shift[s] from the mover to the adverse party.” *Pulliam*, 2025-0240, p. 12, 430 So.3d at 428 (quoting *Barnes v. Turn Servs., L.L.C.*, 2025-0439, p. 11 (La. App. 4 Cir. 9/17/25), 431 So.3d 138, 147). When the burden

shifts, “the adverse party [must] produce factual support sufficient to establish the existence of a genuine issue of material fact or that the mover is not entitled to judgment as a matter of law.” La. C.C.P. art. 966(D)(1). To produce such support, “[the] adverse party may not rest on the mere allegations or denials of his [or her] pleading, but his [or her] response, by affidavits or as otherwise provided . . ., must set forth specific facts showing that there is a genuine issue for trial.” La. C.C.P. art. 967(B).

Concerning the trial court’s consideration of the motion, this Court has explained that “[t]he trial court cannot make credibility determinations but must construe reasonable factual inferences in favor of the party opposing the motion, resolving all doubt in favor of the opponent.” *Pulliam*, 2025-0240, p. 12, 430 So.3d at 428 (quoting *Barnes*, 2025-0439, p. 11, 431 So.3d at 147). Upon the burden shifting, the trial court shall render summary judgment against the party opposing the motion if that party has failed to “set forth specific facts showing that there is a genuine issue for trial.” La. C.C.P. art. 967(B). As explained by this Court, “[t]he reason for judgment against the party opposing the motion for summary judgment at that juncture is because that party has failed to provide factual evidence sufficient to establish that he or she will be able to satisfy his or her evidentiary burden of proof at trial, such that there is no genuine issue of material fact and summary judgment is appropriate.” *Pulliam*, 2025-0240, pp. 12-13, 430 So.3d at 428-29 (internal alterations and quotation marks omitted) (quoting *Barnes*, 2025-0439, p. 12, 431 So.3d at 147).

Thereafter, “[o]n appeal, appellate courts review a trial court’s ruling on a motion for summary judgment *de novo* and utilize ‘the same criteria that govern the trial court’s determination of whether summary judgment is appropriate.’” *Id.* at

p. 13, 430 So.3d at 429 (quoting *Barnes*, 2025-0439, p. 12, 431 So.3d at 147). Stated differently, “in ascertaining whether summary judgment was appropriate, ‘an appellate court considers the same questions as the trial court,’ specifically ‘whether there is any genuine issue of material fact, and whether the mover is entitled to judgment as a matter of law.’” *Id.* With those principles and that standard of review in mind, we consider the propriety of the trial court’s grant of GoAuto’s Motion for Summary Judgment.

Whether the Trial Court Erred in Granting GoAuto’s Motion for Summary Judgment

As stated previously, the applicable substantive law determines materiality on a motion for summary judgment. The main issue in this appeal is whether there is a genuine issue of material fact as to coverage based on Ms. Walker’s purported failure to comply with the Cooperation Clause. Thus, we must look at the law concerning cooperation clauses.

As this Court explained in another cooperation clause case, *Bankers Insurance Co. v. EMIII Holdings, LLC*:

Interpretation of an insurance policy ordinarily involves a legal question that can be properly resolved by a motion for summary judgment. As this Court has explained, the purpose of the cooperation clause in an insurance policy is to require the insured to disclose all of the facts within his or her knowledge, and otherwise aid the company to determine its liability under the policy. As the Louisiana First Circuit Court of Appeal has described it, a cooperation clause protects the insurer against fraud by enabling it to obtain relevant information concerning the claimed loss while the information is fresh. Louisiana courts have held that violation of a cooperation clause, including the failure to submit to an examination under oath or the refusal to produce documentation, constitutes a material breach of an insurance contract and a defense to a suit on the policy. In so holding, however, the courts should be mindful that a cooperation clause is not an escape hatch for the insurer to flee liability for trivial policy violations, and dismissing a suit for breach of a cooperation clause is a draconian remedy. Accordingly, for a policy to be deemed void on the basis of non-compliance with a cooperation clause, the insurer must

demonstrate that it made a diligent effort to obtain the requested information, and the insurer bears the burden of proving that the breach of the cooperation clause was both material and prejudicial. Thus, when an insurance company asserts a denial of coverage based on the insured's refusal to cooperate, a central question for the courts to consider is whether there was prejudice to the insurer. If the insurer argues general prejudice but does not show how it was prejudiced or any particular prejudice, then the insurer has not met its burden of proof.

2024-0386, pp. 24-25 (La. App. 4 Cir. 12/16/24), 407 So.3d 681, 697 (internal citations, alterations, and quotation marks omitted).

In determining whether a lack of cooperation by its insured relieves the insurer of liability, courts must be mindful “[t]hat each case rests on its own facts and circumstances.” *Freyou v. Marquette Cas. Co.*, 149 So.2d 697, 699 (La. App. 3d Cir. 1963) (citations omitted). However, in *Bankers Insurance Co.*, this Court listed examples of when it is inappropriate to grant summary judgment in favor of the insurer on the basis of lack of cooperation by the insured:

[I]n *Trosclair [v. CNA Insurance Co.]*, this Court reversed the trial court's grant of summary judgment in favor of the insurer, Transportation, stating that while Transportation had “argued general prejudice,” it had “not shown how it [was] prejudiced, nor . . . any particular prejudice.” 637 So.2d [1168,] 1170 [(La. App. 4th Cir. 1994)]. Similarly, in *McCartney [v. Shelter Mutual Insurance Co.]*, the Louisiana First Circuit Court of Appeal (“First Circuit”), reversed the trial court's grant of summary judgment in favor of the insurer, Shelter, partially on the basis of the prejudice issue. 2017-1398, p. 7 [(La. App. 1 Cir. 7/10/18)], 255 So.3d [1060,] 1064. In support of its motion for summary judgment, Shelter attached the affidavit of Sonya White (“Ms. White”), who was the claims representative tasked with investigating the claim of the insureds, the McCartneys. *Id.* at p. 5, 255 So.3d at 1063. In her affidavit, Ms. White attested that “the McCartneys ‘failed to provide the information requested and failed to give an examination under oath.’” *Id.* at p. 6, 255 So.3d at 1063. She further attested that “[t]he ability to investigate and investigate early is critical,” and that the “the inability to do so substantially prejudiced Shelter's investigation into the McCartneys' claim.” *Id.* The First Circuit concluded this was insufficient, noting that “the record contains no evidence suggesting Shelter was prejudiced by any action or inaction by the McCartneys.” *Id.* at p. 7, 255 So.3d at 1064.

Id. at pp. 25-26, 407 So.3d at 698 (third and ninth alterations in original).

Moreover, with reference to the insurer's attempts to contact its insured, in *Desadier v. Safeway Insurance Co.*, the Louisiana Third Circuit Court of Appeal ("Third Circuit") noted the insurance company had attempted to contact its insured via letters and telephone calls but did not attempt to contact him at home or otherwise in person. 1997-1412, p. 5 (La. App. 3 Cir. 4/8/98), 712 So.2d 925, 928. In this latter sense, the Third Circuit stated it was "clear that further steps could have been taken to secure statements from" the insured. *Id.* With regard to the issue of prejudice, the Third Circuit held "there was little or no information that [the insured] could have provided which otherwise would have not been available at trial." *Id.* at p. 6, 712 So.2d at 928.

Based on the foregoing jurisprudence, GoAuto did not establish it was entitled to summary judgment. As in *Desadier*, GoAuto delineated its attempts to contact Ms. Walker via telephone, email, and written correspondence and to secure her deposition and an examination under oath. However, GoAuto did not establish it attempted to contact Ms. Walker at home or to otherwise contact her in person to obtain her cooperation, such that it arguably could have taken further steps to contact her. This notion of trying to communicate with Ms. Walker in person is particularly noteworthy in light of the fact that GoAuto stated in its Motion for Summary Judgment that the St. Charles Parish Sheriff's Office confirmed with GoAuto that it personally served Ms. Walker with Mr. Enclarde's Petition. Also, Mr. Enclarde's Opposition established that Ms. Walker received her deposition subpoena via domiciliary service.³

³ At the outset, we disclaim the following information is not dispositive to our holding because we have not discussed the admissibility of the sources of said information. Nonetheless,

Additionally, GoAuto asserted that Ms. Walker’s lack of cooperation prejudiced it but did so merely in general terms—stating it had to “blindly defend” Mr. Enclarde’s claims—and did not demonstrate how it was prejudiced or point to a specific prejudice just like the insurer failed to do in *Trosclair*. Similarly, GoAuto’s allegation of prejudice because of an inability to investigate Mr. Enclarde’s claims is analogous to the overly broad one at issue in *McCartney*. In particular, and like the insurer in *Desadier*, GoAuto failed to delineate what information it needed from Ms. Walker about the accident and what information Ms. Walker would provide that Mr. Enclarde had not already provided.

Therefore, we conclude the trial court erred in granting GoAuto’s Motion for Summary Judgment; reverse the trial court’s judgment; and remand this matter. In so doing, we reiterate something said by the First Circuit in *McCartney*, specifically that “[t]he jurisprudence cautions against allowing an insurer to use a cooperation clause to flee liability based on trivial policy violations.” 2017-1398, p. 7, 255 So.3d at 1064 (citations omitted). To allow an insurer like GoAuto to

we felt compelled to separately write this note to raise another point. Louisiana courts have declined to dismiss an insurer when its “insured had a reasonable explanation for his actions.” *Bankers Ins. Co.*, 2024-0386, p. 26, 407 So.3d at 698 (quoting *McCartney*, 2017-1398, p. 5, 255 So.3d at 1063). Certain facts and circumstances of the matter *sub judice* evoke that principle.

For one, GoAuto’s timeline in its Motion for Summary Judgment listed three different telephone numbers at which it tried to reach Ms. Walker. GoAuto described the first telephone number as “not a working number” in one instance and “not in service” in another instance. This begs the question of the reliability of reaching Ms. Walker by phone. Second, according to Mr. Enclarde’s counsel, around July 9, 2024, Ms. Walker contacted him and explained she missed her deposition because she did not have transportation to the location of the deposition. Moreover, during the November 2025 hearing, Ms. Walker’s counsel confirmed that Ms. Walker did not have access to transportation or the internet to appear for a deposition (or, by logical extension, for an examination under oath) either in-person or virtually. Thus, it is unsurprising that Ms. Walker had not appeared for her previously-scheduled deposition or examination under oath. Third, according to Mr. Enclarde’s counsel, around July 10, 2024, Ms. Walker’s original counsel informed him that Ms. Walker had verified the facts of loss. Assuming *arguendo* that this was true, the record indicates no experience Ms. Walker has with the insurance or legal systems to understand that to cooperate she needed to take further action. In other words, Ms. Walker might have logically concluded that speaking to the attorney GoAuto appointed to represent her was sufficient to constitute cooperation with GoAuto itself.

avoid liability in this situation when it has not established how it was specifically prejudiced by the lack of cooperation would constitute such a trivial policy violation. Our holding renders Mr. Enclarde's second assignment of error moot; therefore, we decline to address it as doing so would merely yield dicta.

DECREE

For the foregoing reasons, we reverse the trial court's March 10, 2026 judgment, which granted GoAuto's Motion for Summary Judgment and dismissed Mr. Enclarde's claims with prejudice. We remand this matter to the trial court for further proceedings consistent with this Opinion.

REVERSED AND REMANDED