ATTORNEY FOR APPELLANTS:

LESLIE C. SHIVELY
Shively & Associates, P.C.
Evansville, Indiana

ATTORNEYS FOR APPELLEE:

CHARLES T. JENNINGS
JOSEPH A. SAMRETA
CARI L. SHEEHAN
Jennings Taylor Wheeler & Haley, P.C.
Carmel, Indiana

IN THE COURT OF APPEALS OF INDIANA

WALTER ANGERMEIER, et al.,	)	
	)	
Appellants-Defendants,	)	
	)	
vs.	)	No. 65A04-1004-PL-230
	)	
INDIANA FARMERS MUTUAL INSURANCE GROUP,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE POSEY CIRCUIT COURT
The Honorable Carl A. Heldt, Special Judge
Cause No. 65C01-0702-PL-00045

December 21, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Walter Angermeier, Walter Angermeier d/b/a Wolfin, LLC, Wolfin, LLC, and Mt. Vernon Home Center, Inc., (collectively "Angermeier") brought a claim in the Posey Circuit Court alleging that Indiana Farmers Mutual Insurance Group ("Indiana Farmers") breached its duty to deal with Angermeier in good faith. The trial court granted summary judgment in favor of Indiana Farmers, and Angermeier appeals, claiming that there are genuine issues of material fact that preclude summary judgment. We affirm.

Facts and Procedural History

Indiana Farmers issued an insurance policy providing coverage to Angermeier covering three buildings that were part of a business known as the Mt. Vernon Home Center. The first building ("Building One") was insured up to $500,000, the second building ("Building Two") was insured up to $20,000, and the third building ("Building Three") was insured up to $21,000. The policy was effective from August 20, 2006 to August 26, 2007. On September 4, 2006, the buildings sustained fire damage.

Indiana Farmers was notified of the loss the following day, and began an investigation by employing Terry Kontz ("Kontz") of Southern Adjusters, Inc. Indiana Farmers received Kontz's report on October 12, 2006, and the report indicated that there was a total loss on Building One, and minor damage to Building Two and Building Three. The report also indicated that Angermeier had personal financial difficulties in starting up the business that was located on the property. Angermeier hired Property Fire Adjusters, Inc., a public adjustment company, to assist Angermeier in the adjustment process. Midwest Appraisal Group, working for Indiana Farmers, appraised the Angermeier property at a value of $360,000. Indiana Farmers forwarded a copy of the Midwest Appraisal Group's report to Property Fire Adjusters on November 9, 2006.

The only lienholder listed in the policy was United Fidelity Bank. But on September 12, 2006, Indiana Farmers received notice that the William D. Edmison and Phyllis Edmison Joint Tenancy Trust ("the Edmison Trust") held a mortgage on the Amgermeier property. During its investigation of the claim, Indiana Farmers obtained a title abstract for the Angermeier property. This abstract revealed various other parties with legal interests in the property, including: (1) a $292,500 mortgage from Angermeier to United Fidelity Bank; (2) a mortgage and "fixture filing" for $212,000 from Angermeier to Indiana Statewide Certified Development Corp., which was assigned to the United States Small Business Administration on June 10, 2005 and recorded on June 16, 2005; (3) an assignment of leases and rents from Angermeier to Indiana Statewide Certified Development Corp., which was also assigned to the U.S. Small Business Administration on June 10, 2005 and recorded on June 16, 2005; (4) a mortgage for $150,000 from Angermeier to the Edmison Trust; (5) a federal tax lien for $14,669.29, filed by the Internal Revenue Office, dated April 6, 2006 and recorded on May 15, 2006; (6) delinquent personal property taxes in favor of the Posey County Treasurer entered on October 10, 2006, in the amount of $253.37; and (7) $7,821.92 in unpaid and delinquent property taxes for 2005 payable in 2006.

Because of all the parties with interests in the Angermeier property, Indiana Farmer's filed a Complaint in Interpleader on November 21, 2006, which included as defendants: Walter Angermeier, Walter Angermeier d/b/a Wolfin, LLC, Wolfin, LLC, United Fidelity Bank, the United States Small Business Administration, the Edmison Trust, the Indiana Department of Revenue, Property Fire Adjusters, Mt. Vernon Home

Center, Inc., and Washington Mutual Bank. In the complaint, Indiana Farmers alleged in part:

> 25. Indiana Farmers believes that the policy of insurance covering [Angermeier] may be owing to the outstanding lienholders that exist and seeks to pay into Court the policy limits to allow the parties to litigate amongst themselves who is entitled to the insurance proceeds.
>
> 26. Indiana Farmers admits that the proceeds of the policy of insurance for commercial property coverage are now due and owing and that it has no interest in, and makes no claim to, retaining the benefits of the insurance under the policy issued to its insured. Based on the foregoing, however, Indiana Farmers is uncertain as to whom it should pay the proceeds; and it cannot pay over such proceeds, except under direction of the Court, without assuming the risk of multiple liability for such payment.

Appellant's App. pp. 24-25.

On February 5, 2007, Angermeier responded to the interpleader complaint by filing an answer, affirmative defenses, and a counterclaim. In the counterclaim, Angermeier alleged that Indiana Farmers had breached the insurance contract and breached its duty of good faith by filing the interpleader action, thus entitling Angermeier to punitive damages. Indiana Farmers filed an answer to Angermeier's counter-claim on February 19, 2007, generally denying the allegations. On February 23, 2007, Indiana Farmers tendered $360,000 to the trial court, i.e. the amount its appraiser had determined to be the value of the damaged property. Indiana Farmers filed a motion for summary judgment on February 27, 2009. Angermeier filed a response to the summary judgment motion on September 10, 2009. The trial court held a hearing on the summary judgment motion December 7, 2009. On December 10, 2009, the trial court entered an order granting summary judgment in favor of Indiana Farmers. Angermeier filed a motion to correct error on January 11, 2010. A hearing on Angermeier's motion to correct error

was initially set for February 25, 2010, but was eventually rescheduled by agreement of the parties for April 8, 2010. The trial court denied Angermeier's motion from the bench at the April 8, 2010 hearing. Angermeier filed a notice of appeal on April 15, 2010, and this appeal ensued.

Standard of Review

We review a summary judgment order *de novo*. DeHahn v. CSX Transp., Inc., 925 N.E.2d 442, 445-46 (Ind. Ct. App. 2010) (citing Kovach v. Caligor Midwest, 913 N.E.2d 193, 196-97 (Ind. 2009)). Considering only those facts supported by the designated evidence, we must determine whether there is a genuine issue as to any material fact and whether the moving party is entitled to judgment as a matter of law. Id.; see also Ind. Trial Rule 56(C). We construe all factual inferences in favor of the non-moving party and resolve all doubts as to the existence of a material issue against the moving party. Id. The moving party bears the burden of making a prima facie showing that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Id. (citing Dreaded, Inc. v. St. Paul Guardian Ins. Co., 904 N.E.2d 1267, 1270 (Ind. 2009). Once the movant satisfies this burden, the burden then shifts to the non-moving party to designate and produce evidence of facts showing the existence of a genuine issue of material fact. Id.

Discussion and Decision

Angermeier claims that the designated evidence was sufficient to present a genuine issue of material fact regarding whether Indiana Farmers acted in bad faith toward its insured, Angermeier. Indiana law has long recognized that there is a legal duty implied in all insurance contracts that the insurer deal in good faith with its insured.

Allstate Ins. Co. v. Fields, 885 N.E.2d 728, 732 (Ind. Ct. App. 2008), trans. denied (citing Erie Ins. Co. v. Hickman, 622 N.E.2d 515, 518 (Ind. 1993)). In Hickman, our supreme court specifically recognized a cause of action for the "tortious breach of an insurer's duty to deal with its insured in good faith." Id. at 519. The insurer's obligation of good faith and fair dealing with respect to the discharge of the insurer's contractual obligation includes the obligation to refrain from: (1) making an unfounded refusal to pay policy proceeds; (2) causing an unfounded delay in making payment; (3) deceiving the insured; and (4) exercising any unfair advantage to pressure an insured into a settlement of his claim. Id.

However, a good faith dispute about whether the insured has a valid claim or the amount of a valid claim will not support the grounds for recovery in tort for the breach of the obligation to exercise good faith. Id. (citing Hickman, 622 N.E.2d at 520). This is so because it has long been the rule in Indiana that insurance companies may, in good faith, dispute claims. Id. The insurance company's lack of diligent investigation, by itself, is insufficient to support an award. Id. The insurer breaches its duty to act in good faith only if it denies liability knowing that there is no rational, principled basis for doing so. Id. "Poor judgment or negligence do not amount to bad faith; the additional element of conscious wrongdoing must also be present." Id. (quoting Lumbermens Mut. Cas. Co. v. Combs, 873 N.E.2d 692, 714 (Ind. Ct. App. 2007)). Instead, a finding of bad faith requires evidence of a state of mind reflecting "dishonest purpose, moral obliquity, furtive design, or ill will[.]" Id. "A bad faith determination inherently includes an element of culpability." Id. Further, if the conduct giving rise to the alleged bad faith is not the denial of a claim, then any evidence that arises after the filing of the bad-faith

claim is irrelevant. Id. (citing Gooch v. State Farm Mut. Auto. Ins. Co., 712 N.E.2d 38, 42 (Ind. Ct. App. 1999)).

Here, Angermeier claims that its designated evidence establishes facts which would permit the jury to conclude that Indiana Farmers acted in bad faith. First, Angermeier complains that Indiana Farmers filed the interpleader action without giving Angermeier any prior notice. However, Angermeier does not cite any case, statute, or policy provision that would require Indiana Farmers to give Angermeier prior notice before filing the interpleader action.

Angermeier next complains that Indiana Farmers did not give him the opportunity to pay the policy proceeds to the lienholders himself before it filed the interpleader action. However, Angermeier was not necessarily the only party with a potential interest in the insurance proceeds. See Prop. Owners Ins. Co. v. Hack, 559 N.E.2d 396, 399 (Ind. Ct. App. 1990) (noting that, although a mortgagee has no automatic right to the proceeds of the mortgagor's insurance, the mortgagee may be entitled to such proceeds in a number of ways). Indiana Farmers discovered that there were several lienholders on the insured property who could have had an interest in the policy proceeds, and thereafter filed the interpleader action so that these interested parties could assert and litigate their interests in the proceeds. We fail to see how this could be evidence of bad faith. See Mahan v. Am. Standard Ins. Co., 862 N.E.2d 669, 677 (Ind. Ct. App. 2007) (noting that an interpleader action typically involves a neutral stakeholder, such as an insurance company, seeking apportionment of a common fund between two or more parties claiming an interest in it.).

Indiana Farmers did not deny Angermeier's claim; it simply initiated an interpleader action to allow the interested parties to assert their rights in the policy proceeds. Indeed, the trial court here approved an agreed order which dispersed $284,935.62 of the proceeds to United Fidelity Bank, a lienholder listed on the policy. The court later approved another agreed order which dispersed $26,687.34 to another of the lienholders, the Small Business Administration. Angermeier makes no argument that the trial court erred in these distributions.[1] Thus, Angermeier tacitly admits that he was not entitled to the entire amount of the insurance proceeds, yet claims that Indiana Farmers somehow acted improperly by filing the interpleader action which allowed all the interested parties to assert and litigate their respective interests. We disagree that filing the interpleader under these facts and circumstances indicates bad faith. See Mahan, 862 N.E.2d at 677 (holding that insurer did not act in bad faith by filing interpleader action after its investigation of insured's accident indicated that insured was at fault and that insurer would most likely be subject to multiple claims which would meet or exceed policy limits).

Angermeier next claims that inclusion of Washington Mutual Bank, who was the mortgagee bank for Angermeier's personal residence, in the interpleader action is evidence of bad faith. However, Angermeier fails to show how Indiana Farmers' inclusion of Washington Mutual as a party in the interpleader complaint was part of any

[1] Angermeier notes that the only lienholder who contacted Indiana Farmers prior to the filing of the interpleader action was the Edmison Trust, whose liens were not recorded until after the date of the loss. However, this does not alter the fact that Indiana Farmers' investigation revealed other lienholders who had potential interests in the policy proceeds.

malicious plan to force him to settle. Indeed, Indiana Farmers agreed to dismiss Washington Mutual as a party on April 3, 2007.

Angermeier next claims that evidence of Indiana Farmers' bad faith is found in the fact that it did not simultaneously file the policy proceeds into the trial court when it filed the interpleader action. Indiana Farmers responds by claiming that it is undisputed that it inquired into tendering the funds to the trial court when it initially filed the interpleader action but that the trial court did not want the money tendered at that time. Unfortunately, Indiana Farmers does not refer to that portion of the record supporting its claim that this is undisputed. The record is clear, however, that Indiana Farmers did tender $360,000 to the trial court on February 23, 2007 and an additional $130,000 on August 21, 2008 after the appraisal process was completed. Angermeier does not explain why any delay in the tender of the policy proceeds to the trial court prejudiced him or otherwise shows bad faith on the part of Indiana Farmers. Ultimately, the proceeds were paid to the interested parties, and Angermeier does not challenge the propriety of the distribution of the proceeds on appeal.

Angermeier next claims that Indiana Farmers' refusal to begin the appraisal process is evidence of bad faith. However, Indiana Farmers did not entirely refuse to begin the appraisal process. Instead, after Angermeier's counsel sent a letter demanding appraisal of the loss, Indiana Farmers responded that, because Angermeier had submitted no formal proof of loss, there was nothing to establish a disagreement between the parties regarding the loss. The insurance contract provided that either party could demand appraisal if "we and you disagree on the value of the property or the amount of loss." Appellee's App. pp. 40, 65. Indiana Farmers insisted that, without a formal proof of loss,

there could be no disagreement between the parties with regard to the value of the property which would trigger the appraisal procedures under the insurance contract. Angermeier claims that Indiana Farmers' requirement of a formal proof of loss was in bad faith because it had already received substantial information regarding the loss from Angermeier's private adjuster, Property Fire Adjusters, Inc. We fail to see, however, how Indiana Farmers' insistence on strict compliance with the insurance contract evidences a state of mind reflecting dishonest purpose, moral obliquity, furtive design, or ill will. See Fields, 885 N.E.2d at 732. In fact, Indiana Farmers and Angermeier did subsequently begin the appraisal process.[2]

Angermeier also claims that Indiana Farmers' bad faith is evidenced by the fact that it negotiated with his private adjuster initially, then terminated these negotiations "without legal justification." Angermeier fails to explain why Indiana Farmers was legally obligated to negotiate with his private adjuster. It seems that Angermeier is upset that, instead of continuing to work with Angermeier and his private adjuster, Indiana Farmers filed the interpleader action. But as discussed above, Indiana Farmers was justified in filing the interpleader action given its discovery that several parties had potential interests in the policy proceeds.

Lastly, Angermeier claims that Indiana Farmers engaged in bad faith by stating in an interrogatory that it "thought" that it had issued payment with regard to damage done to Building Two, when it had actually only paid for debris removal. Specifically,

[2] Property Fire Adjusters, Angermeier's private adjuster, submitted a proof of loss claiming that the actual value of the property was $720,892.20. Indiana Farmer's appraiser initially claimed that the insured property was worth $360,000. Ultimately, the umpire and appraisers determined that the property was worth $490,000.

Angermeier sent Indiana Farmers an interrogatory asking, among other things, if Indiana Farmers had made any payments to Angermeier prior to the filing of the interpleader action and, if so, what it had paid. Indiana Farmers responded that it had paid $30,675.50 in October 2006 for debris removal. It also stated, "Indiana Farmers thought it issued payment regarding buildings #2-3, however Indiana Farmers currently cannot find any documents showing such payments." Appellant's App. p. 230. Actually, Indiana Farmers had made no such payments. But when it discovered this, Indiana Farmers interpleaded an additional $3,258.17 to the court for the damage done to Buildings Two and Three. Thus, even though Indiana Farmers' interrogatory response was inaccurate, it used equivocal language in its response. And when the mistake was discovered, it was remedied by interpleading further funds. At most, this evidences negligence, not the sort of conscious wrongdoing required to prove bad faith. See Fields, 885 N.E.2d at 732; Combs, 873 N.E.2d at 714.

Even if we construe all inferences in the light most favorable to Angermeier as the non-moving party, we conclude that no trier of fact could reasonably conclude from the designated evidence that Indiana Farmers engaged in any conscious wrongdoing required for a finding of bad faith. At the heart of Angermeier's complaint is Indiana Farmers' decision to file an interpleader action instead of paying the policy proceeds directly to him. This was not improper under the facts and circumstances of the present case. See Mahan, 862 N.E.2d at 677. There is no evidence which would support a finding that Indiana Farmers had a state of mind reflecting dishonest purpose, moral obliquity, furtive design, or ill will required for a finding of bad faith. Indeed, Indiana Farmers never denied the claim. Cf. Monroe Guar. Ins. Co. v. Magwerks Corp., 829 N.E.2d 968, 976-

77 (Ind. 2005) (upholding jury's verdict that insurer acted in bad faith in denying claim based on argument that insured's roof did not "collapse," even though insurer's adjuster's report indicated that roof had "collapsed," independent engineering firm hired by insurer noted that roof had "collapsed," and insurer made no reference to collapse provision of policy when it denied coverage).

Here, the parties disagreed only with regard to the amount of the loss, which was ultimately determined to be much closer to Indiana Farmers' original appraisal than Angermeier's, and to whom the policy proceeds should be paid. On the summary judgment record before us on appeal, there is insufficient evidence from which a reasonable trier of fact could conclude that there is clear and convincing evidence that Indiana Farmers acted in bad faith. Because Angermeier cannot show bad faith, he cannot show any entitlement to punitive damages. See Hickman, 622 N.E.2d at 520 (even proof that insurer breached duty to act in good faith is insufficient by itself to show entitlement to punitive damages). We therefore affirm the trial court's entry of summary judgment in favor of Indiana Farmers.

Affirmed.

BAKER, C.J., and NAJAM, J., concur.