

RENDERED: JANUARY 12, 2001; 2:00 p.m.  
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AUGUST 15, 2001(2001-SC-0103-D)

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 1998-CA-002227-MR

JEFF MITCHELL

APPELLANT

v. APPEAL FROM MCCRACKEN CIRCUIT COURT  
HONORABLE R. JEFF HINES, JUDGE  
ACTION NO. 97-CI-00856

WESTFIELD INSURANCE COMPANY

APPELLEE

OPINION  
REVERSING AND REMANDING

\*\* \*\* \* \* \* \* \*

BEFORE: BARBER, KNOPF, AND TACKETT, JUDGES.

BARBER, JUDGE: Appellant Jeff Mitchell (Mitchell) was the operator of a CITGO service station in Paducah, Kentucky. Unknown individuals burglarized the station in July 1996. The police report details loss of a toolbox valued at \$3,500.00, tools valued at \$10,000.00 and \$17.00 in cash, for a total loss of \$13,517.00. At the time of the theft, Mitchell's property was insured by Appellee Westfield Insurance Company (Westfield), and the theft occurred during the time period covered by the \$25,000 insurance policy issued by Westfield. Mitchell notified the insurance agent of the loss the day after the burglary and reported a loss.

Mitchell provided Westfield's claims representative with a handwritten list of the items stolen. This list included not only those items listed on the police report, but also additional items. The cost of each tool was provided by Mitchell using the Snap-On Tools catalogue. The completed list showed losses in the sum of \$21,351.00. The majority of the property stolen during the burglary was purchased from Snap-On Tools. Mitchell did not have receipts for these tools, having been informed by the Snap-On salesman that if something ever went wrong with a Snap-On tool it would be replaced, no questions asked. Mitchell provided Westfield with all the documentation in his possession regarding the type and value of the tools stolen, including a receipt for tools valued at \$1,029.70 purchased in 1996. The Snap-On Tools representative provided receipts showing that Mitchell had purchased tools from him with a value of \$8,000-\$10,000.00. The representative stated that Mitchell purchased approximately \$2000 worth of new tools, not replacement tools, each year. The Snap-On Tools representative's letter also stated that Mitchell kept his tools in a careful and orderly fashion and that he believed Mitchell's statement of loss of \$20,000.00 worth of tools was accurate.

In February 1997, Westfield requested additional documentation from Mitchell, including a profit and loss statement for the business for each year it was operational, shipping documents, invoices, sales receipts, canceled checks, bank statements for his personal and business accounts for the years 1993 through 1996, statements of all debts and loans during

that time period, whether business or personal, and tax returns for the same years. Westfield also requested Mitchell's telephone records for 1996 from January through August. Mitchell provided all such documents in his possession. Mitchell also provided Westfield with an authorization to obtain these documents from the relevant sources, and informed Westfield that he could not afford to pay postage and copying charges to obtain the documents himself. Mitchell also provided a credit receipt showing that he had purchased a replacement toolbox and a few lower quality replacement tools valued at under \$10,000.00.

Mitchell made a good faith effort to provide the documentation and verification of claim reflected by Westfield, and did not object to the overly broad and burdensome requests for unrelated documentation, which were not relevant to his request for coverage. The record reflects that Mitchell cooperated with his insurer, as required under the policy.

Westfield admitted receiving receipts for the purchase of some replacement tools by Mitchell, but refused to pay even that portion of the claim, despite testimony at trial from Westfield's claims representative, who admitted that it was Westfield's policy to pay the non-disputed portion of the claim under such circumstances. Westfield also admitted receipt of a fully completed and notarized proof of loss form in February 1997. This form listed a toolbox valued at \$4,520.00, Snap-On hand tools valued at \$12,813.24, Snap-On air tools valued at \$2,353.45 plus sales tax, for a total of \$21,351.00.

The Westfield policy requires, in event of loss, that the insured meet the following conditions:

(1) Notify the police if a law may have been broken.

(2) Give us prompt notice of the loss or damage. Include a description of the property involved.

(3) As soon as possible, give us a description of how, when and where the loss or damage occurred.

. . . .

(5) At our request, give us complete inventories of the damaged and undamaged property. Include quantities, costs, values and amount of loss claimed.

. . . .

(7) Send us a signed, sworn proof of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.

(8) Cooperate with us in the investigation or settlement of the claim Insurance Policy, relevant duties after loss.

The insurance policy does not specify what type of documentation must be provided to support a claim for loss. It merely states that the insured must provide a complete inventory of the damaged and undamaged property and must include quantities, costs, values and amount of loss claimed. Kentucky law holds that even handwritten notes showing loss, without additional proof, are not necessarily insufficient to prove the extent of the loss. Kentucky Farm Bureau Mut. Ins. Co. v. Troxell, Ky., 959 S.W.2d 82, 84 (1997). The insured must provide a proof of loss sufficient to enable the insurer to investigate

the claim and to make an intelligent estimate of the company's rights and liabilities . . . @ State Automobile Mut. Ins. Co. v. Outlaw, Ky. App., 575 S.W.2d 489, 490 (1978). In the present case, Mitchell went far beyond that, providing cost of each tool from the Snap-On Tools catalogue, as well as testimony from the Snap-On Tools representative showing the cost of the tools he had purchased from Snap-On. The record shows that Mitchell provided documentation of his loss in accordance with the policy requirements. Denial of the claim due to lack of documentation was in error.

It is uncontroverted that Mitchell gave Westfield prompt notice of his loss, and provided all documentation available to him to show the value of the items lost. Mitchell provided Westfield with an authorization to obtain any records relevant to the loss, and permitted Westfield to fully investigate his premises and business records. Mitchell also provided Westfield with a signed proof of loss form. Westfield asserted that Mitchell failed to fully document his loss, and denied the claim on that ground. No assertion was made by Westfield's claims representative, who handled the claim on behalf of Westfield, that Mitchell was attempting to defraud the company, or that his claims of loss were false.

Mitchell's insurance policy was canceled by Westfield on July 29, 1996 with the effective date of cancellation being August 17, 1996. The cancellation was unrelated to the theft. The record reflects that Mitchell's initial notice of claim was sent on July 15, 1996. The record shows that Westfield had

definitive notice of the claim on September 19, 1996. Westfield provided Mitchell with acknowledgment of the claim on December 19, 1996. On that date, Westfield provided Mitchell with proof of loss forms to complete and submit. On January 24, 1997, Westfield acknowledged receipt of Mitchell's proof of loss forms, but returned the proof of loss for verification by a notary. On February 7, 1997, Westfield acknowledged receipt of the notarized proof of loss. Westfield denied the claim on June 9, 1997, almost a year after the initial notice of loss was submitted. Mitchell filed suit against Westfield, alleging a bad faith denial of his claim, in violation of the Kentucky Unfair Claims Settlement Practices Act, KRS 304.12-230.

Westfield advised Mitchell that his claim was denied due to failure to provide complete inventories with quantities, costs and values for each item. Westfield's representative stated that Snap-On's representative had estimated the tools' value at \$8,000-10,000, that Mitchell had shown \$10,700 in replacement value for the tools, and that Mitchell had reported a loss in the sum of \$13,517 to the police. Westfield admits that the greatest value for the tools was given in the sworn and verified proof of loss statement submitted after a full inventory of the losses. Westfield argues that these differences in value justified its failure to pay any part of the claim.

The trial court disallowed the bad faith claim, and allowed Mitchell to go before the jury on only one issue, his contract claim against Westfield for the value of the stolen property. At the conclusion of the jury trial, the jury found

that Mitchell had properly documented his claim, and unanimously returned a verdict in favor of Mitchell under a jury instruction stating:

Instruction No. 2: Insurance Contract, If you are satisfied from the evidence that Jeff Mitchell suffered a loss because of a burglary to his business establishment AND the loss was insured by Westfield Insurance; AND Jeff Mitchell substantially complied with the terms of his contract with Westfield, then you will find for Jeff Mitchell. Otherwise you will find for Westfield.

We find for Jeff Mitchell  
yes X      no \_\_\_\_\_

The jury then awarded Mitchell the sum of \$16,897.80 in compensation for the tools lost in the burglary.

Because the trial court directed a verdict in favor of Westfield on Mitchell's claims under the Unfair Claims Settlement Practices Act, and dismissed Mitchell's claim for punitive damages, Mitchell appeals. Kentucky law provides that where a party provides any evidence supporting his claim of bad faith, he is entitled to bring that claim before a jury. Shortridge v. Rice, Ky. App., 929 S.W.2d 194, 197 (1996).

The Unfair Claims Settlement Practices Act, KRS 304.12-230, details the steps which parties to an insurance contract must take in order to properly resolve a coverage dispute. The Act details unfair claims settlement practices, including the following acts or omissions:

(1) Failing to acknowledge and act reasonably upon communications with respect to claims arising under insurance policies;

. . . .

(5) Failing to affirm or deny coverage within a reasonable time after proof of loss statements have been completed;

(6) Not attempting in good faith to effectuate prompt, fair and equitable settlement of claims in which liability has become reasonably clear;

(7) Compelling insureds to institute litigation to recover amounts due under an insurance policy . . . .

. . . .

(14) Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.

Where a delay in payment is without reasonable foundation, the insured is entitled to full payment and reimbursement of all costs expended to obtain payment. KRS 304.12-230(6) states that an insurer has acted in bad faith where it has failed to attempt to act in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear. @

Kentucky law holds that an insured has the right to file an action where the insurer has failed to act in good faith in settling a coverage dispute. State Farm v. Reeder, Ky., 763 S.W.2d 116, 118 (1988). A plaintiff who presents evidence of bad faith sufficient for a jury to conclude that there was conduct that was outrageous or recklessly indifferent to the rights of the insured is entitled to an award of punitive damages. Guaranty National Ins. Co. v. George, Ky., 953 S.W.2d 946 (1997).



Mitchell asserts that Westfield's violation of the Unfair Claims Settlement Practices Act entitled him to an award of punitive damages. Punitive damages are permitted against an insurer where the insured shows a reckless disregard of the rights of the insured by the company. See Wittmer v. Jones, Ky., 864 S.W.2d 885 (1993), where the insurance company refused to pay a claim made by its insured due to a dispute over the dollar amount of the loss. In that case, the Kentucky Supreme Court held that Where the record establishes that an insurance company has operated arbitrarily or unreasonably, or from ulterior motives . . . [it] may be proof of bad faith@ Id. at 892. Similarly, in the present action, Westfield did not dispute coverage of the claim. Westfield refused to pay the claim because it held that Mitchell had not provided adequate documentation of the amount of the loss. Mitchell was forced to institute litigation and go through trial before recovering sums clearly due and owing under the policy of insurance.

In order to prove bad faith, an insured must show as follows:

- (1) the insurer must be obligated to pay a claim under the terms of the policy
- (2) the insurer must lack a reasonable basis in law or fact for denying the claim; and (3) it must be shown that the insurer either knew there was no reasonable basis for denying the claim or acted with reckless disregard for whether such a basis existed. . . .

Federal Kemper v. Hornback, Ky., 711 S.W.2d 844, 846-47 (1986).

Mitchell made such a showing, and provided evidence sufficient to permit his claim to go before the jury.

The law requires an insured to document his claim of loss. Kentucky Farm Bur. Mut. Ins. Co. v. Troxell Ky., 959 S.W.2d 82 (1997). The record shows that Mitchell documented his claim, filed a proof of loss, and submitted additional evidence supporting his claims of loss. The insurer admits that it did not believe the proof of loss to be false or fraudulent. Mitchell had provided sufficient evidence of loss for the jury to determine that he was entitled to compensation under the contract, and to fix a dollar amount for the loss incurred. Failure of Westfield to promptly provide coverage and to pay the claim when faced with the same evidence reviewed by the jury should be found sufficient to support a claim of bad faith. Under such circumstances, entry of a directed verdict in favor of Westfield was in error.

Punitive damages are properly recoverable in an insurance bad faith action. FB Insurance Co. v. Jones Ky. App., 864 S.W.2d 926 (1993). Mitchell argues that the entry of a directed verdict in favor of the insurance company on his claims of bad faith, and his demand for punitive damages was in error. The law requires that:

In ruling upon a motion for directed verdict, the trial court must draw all fair and rational inferences from the evidence in favor of the party opposing the motion, and a verdict should not be directed unless the evidence is insufficient to sustain that verdict. The evidence of such party's witnesses must be accepted as true@

Kroger Co. v. Willgruber, Ky., 920 S.W.2d 61, 64 (1996), quoting Spivey v. Sheeler, Ky., 514 S.W.2d 667, 673 (1974). Where, as here, there is evidence of intentional misconduct or a reckless

disregard of the rights of the insured, a jury issue is created, and entry of a directed verdict in favor of the insurer is in error. The jury may award punitive damages for the bad faith actions of the insurer at its discretion. Holliday v. Campbell, Ky. App., 873 S.W.2d 839, 841 (1994).

Westfield's claim that Mitchell is precluded from bringing this appeal due to his acceptance of a check for the monetary damages awarded by the jury is without merit. Mitchell is not appealing from that portion of the trial court's ruling entitling him to reimbursement for his loss, but rather is appealing the entry of a directed verdict on his claims of bad faith. An appeal from only one portion of a multi-part judgment is permitted by law. Webster Co. Soil Conservation Dist. v. Shelton, Ky., 437 S.W.2d 934 (1969). A party may properly appeal from that portion of a judgment not satisfied. Hundley v. Hundley, Ky., 291 S.W.2d 544, 546 (1956).

For the foregoing reasons, we reverse the judgment of the trial court and remand this matter for further proceedings consistent with this opinion.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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