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Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-000921-MR

SELENA CAUDILL, INDIVIDUALLY
AND IN HER CAPACITY AS NEXT FRIEND
OF GARY J. CAUDILL AND AUSTIN
CAUDILL, AND AS ADMINISTRATRIX
OF THE ESTATE OF GARY RONALD CAUDILL, JR. APPELLANTS

v.

APPEAL FROM PERRY CIRCUIT COURT
HONORABLE WILLIAM ENGLE, III, JUDGE
ACTION NO. 02-CI-00352

NEW HAMPSHIRE INSURANCE
COMPANY APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: DIXON, MAZE, AND STUMBO, JUDGES.

DIXON, JUDGE: Appellant, Selena Caudill, individually and in her capacity as Next Friend of Gary J. Caudill and Austin Caudill, and as Administratrix

of the Estate of Gary Ronald Caudill, Jr. (Caudill), appeals from orders of the Perry Circuit Court granting summary judgment in favor of Appellee, New Hampshire Insurance Company, and dismissing her claims under Kentucky's Unfair Claims Settlement Practice Act (UCSPA), KRS 304.12-230(1)-(4), (6) and (14). Finding no error, we affirm.

On July 20, 2001, Caudill's husband, Gary Caudill, Jr., was fatally electrocuted in an underground coal mining operation in Perry County, Kentucky. At the time of his death, Caudill was employed by Blue Diamond Coal Company and was working in a mine operated by Leeco, Inc. Leeco, Inc. was a subsidiary of James River Service Corporation (JRSC) d/b/a James River Coal Company.

At the time of the accident, James River had coverage by two insurers. Zurich Specialty London Limited provided primary commercial general liability insurance under Policy No. 3398501, effective June 20, 2001 to August 1, 2004. New Hampshire issued excess liability insurance, Policy No. 3200772496, effective June 20, 1996 to June 20, 1999. The policy was extended through June 20, 2003. The New Hampshire policy was initially issued with policy form AIG 7'91 and endorsements 1-21. The 7'91 form provided coverage in excess of the "retained limit," meaning in excess of (1) the Zurich primary policy or (2) the self-insured retention for an occurrence not covered by the terms of the Zurich primary policy. However, Endorsement 7 provided:

> It is agreed that no coverages under this policy apply to any damages arising out of (1) Bodily injury . . . sustained by a person including . . . death resulting

> therefrom . . . unless . . . such damages are covered by valid collectible underlying insurance as described in the Schedule of Underlying Insurance, for the full limits of liability shown therein, and then only for such hazards from which coverage is afforded under said underlying insurance.

In other words, the New Hampshire Policy provided coverage for bodily injury or death *only* where such was covered by underlying primary insurance. Caudill conceded that under form 7'91, the policy would have only provided excess coverage for her claims.

Effective June 20, 2000, an endorsement changed the 7'91 coverage form to an Umbrella Elite Policy Form, No. 73756. The endorsement noting the change specifically stated that all other terms and conditions of the policy remain unchanged. The insuring agreement of the umbrella elite policy form in effect on the date of the accident provided coverage in excess of (1) Zurich's primary policy if the bodily injury was covered by that policy ("Coverage A") or (2) the self-insured retention for bodily injury not covered by the Zurich policy ("Coverage B").

On July 9, 2002, Caudill filed a wrongful death action in the Perry Circuit Court against Leeco and James River.[1] James River thereafter hired defense counsel for Leeco and JRSC and, on July 22, 2002, sent a letter with a copy of the original complaint to Rose Smith Tucker, LLC ("Rose Smith"), the domestic insurance broker for James River and Leeco, asking it to advise James

[1] The complaint was amended on July 22, 2002, to also name additional parties not relevant to this appeal.

River's insurers of the law suit. Rose Smith then forwarded the matter to JLT, James River's London broker who exclusively handled James River's liability insurance program, requesting that JLT notify Zurich and New Hampshire.[2] It is undisputed that JLT did not give notice to New Hampshire until 2004.

Approximately eight months after Caudill filed her wrongful death action, James River filed for bankruptcy protection, triggering an automatic stay of the civil action. In the petition, James River identified New Hampshire as one of its insurers. Caudill filed a $2.5 million proof of claim in the bankruptcy action as reflecting the full and accurate value of the wrongful death claim.

Subsequently in January 2004, Zurich denied coverage based upon an employee exclusion contain in its policy. Thereafter, JLT drafted a letter to AIG Europe[3] giving notice that the New Hampshire policy could be triggered. New Hampshire first received notice of the civil action on February 3, 2004. Two days later, the AIG London Claims Department opened a claim file on the matter. Less than two weeks later, the claim was sent to a New York claims office for handling since the wrongful death action originated in the United States.

On March 9, 2004, Rose Smith requested from New Hampshire "a determination on coverage under the [umbrella elite form], as well as any defense

[2] British law prohibited Rose Smith, the domestic broker, from communicating directly with Zurich or New Hampshire.

[3] New Hampshire is a member of the American International Group, Inc. ("AIG"). Claims made under a New Hampshire policy are adjusted by an AIG affiliate.

costs that would apply." However, New Hampshire claims that it was not until July 7, 2004, that it received a copy of Zurich's written denial. Upon receiving such, New Hampshire requested that Zurich reconsider its denial of coverage because Caudill was not employed by James River but rather one of its subsidiaries, thus making the employee exclusion contained in Zurich's policy inapplicable. Evidently, New Hampshire also advised Rose Smith at that time that Coverage A of its excess policy would apply after exhaustion of Zurich's underlying primary policy limits.

Thereafter, New Hampshire sought and obtained a coverage opinion by Zurich's counsel that concluded the Zurich policy did, in fact, apply to Caudill's claims. In December 2004, Zurich informed New Hampshire that it would assume James River's defense.

The record reveals that a mediation was held on July 3, 2006, wherein Caudill made a $26 million demand. New Hampshire was not asked to attend the mediation by Zurich, Caudill or James River. The mediation proved unsuccessful. Thereafter on July 21, 2006, Caudill amended her complaint to add the insurers, including New Hampshire, as defendants, asserting various violations of Kentucky's UCSPA. The trial court thereafter stayed the UCSPA claims until the underlying wrongful death action was resolved.

A second mediation was held in July 2007, during which Caudill raised her settlement demand to $500 million. The demand covered the wrongful death claim against James River as well as the bad faith claims against the insurers.

Again, mediation proved unsuccessful. Six months later, in February 2008, Caudill lowered her demand to $20 million. Zurich and New Hampshire responded with an offer of $3 million, which was rejected.

On August 15, 2007, Zurich issued a formal written withdrawal of its prior denial of coverage. It then made its $1 million policy limits available to New Hampshire to negotiate a settlement. New Hampshire, in turn, renewed the $3 million offer to Caudill, noting that it was not contingent upon settlement of the bad-faith claims. Caudill again rejected the offer. However, on November 4, 2008, Caudill lowered her settlement demand to $6.5 million, which was the first demand that fell within New Hampshire's policy limits. Less than one week later, New Hampshire offered $3.25 million. Eventually, on November 12, 2008, Caudill accepted a $3.75 million settlement offer.

After the underlying wrongful death action was settled, the trial court lifted the stay and allowed the bad-faith action to proceed. Following a year of discovery, New Hampshire filed a motion for summary judgment on all claims in March 2010. Following an extensive hearing, the trial court granted the motion as to claims brought under UCSPA §§ (3), (4), (6), and (14), but denied those brought under §§ (1) and (2), noting that additional discovery was warranted. However, the trial court recognized in its order that New Hampshire, as an excess insurer, had different obligations and duties than the primary insurer Zurich:

> I acknowledge the Defendant's argument: there's a difference in what their ultimate duties were and a difference in their alleged conduct and the alleged

> conduct of Zurich. . . . [t]he distinction, to the greatest extent of why I granted it in part, are the distinctions between the primary carrier and the excess . . . carrier . . . ."

On June 7, 2102, following another two years of extensive discovery, New Hampshire moved for summary judgment on Caudill's remaining claims under UCSPA §§(1) and (2). Following a hearing, the trial court granted the motion, concluding that New Hampshire did not engage in outrageous conduct and had not acted with an evil motive or reckless indifference to the rights of others. The trial court further stated:

> I also find that there's no specific, that there's no genuine issue, that [New Hampshire] misrepresented any . . . pertinent facts or they failed . . . to acknowledge and act reasonably promptly upon communications with respect to claims on the policy.

Caudill's motion to alter, amend or vacate was denied and this appeal ensued. Additional facts are set forth as necessary.

Our standard of review on appeal of a summary judgment is "whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law." *Scifres v. Kraft*, 916 S.W.2d 779, 781 (Ky. App. 1996). Summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, stipulations, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." CR 56.03. The trial court must view the record "in

a light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor." *Steelvest v. Scansteel Service Center, Inc.*, 807 S.W.2d 476, 480 (Ky. 1991). Summary judgment is proper only "where the movant shows that the adverse party could not prevail under any circumstances." *Id.*

Kentucky's Unfair Claims Settlement Practices Act (UCSPA), KRS 304.12–230, imposes what is generally known as the duty of good faith and fair dealing owed by an insurer to an insured or to another person bringing a claim under an insurance policy. *Knotts v. Zurich Insurance. Co.*, 197 S.W.3d 512, 515 (Ky. 2006). The Act requires a good-faith attempt to effectuate a prompt, fair, and equitable settlement, and is intended to protect the public from unfair trade practices and fraud. *Id.* at 517. Under the UCSPA, insurance companies are prohibited from engaging in seventeen enumerated acts or omissions. As is pertinent to the claims asserted by Caudill, KRS 304.12–230 provides:

> It is an unfair claims settlement practice for any person to commit or perform any of the following acts or omissions:
>
> (1) Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue;
>
> (2) Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;
>
> (3) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;

> (4) Refusing to pay claims without conducting a reasonable investigation based upon all available information;
> . . . .
>
> (6) Not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear;
> . . . .
>
> (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.

An insured must prove three elements in order to prevail against an insurance company for alleged refusal in bad faith to pay the insured's claim: (1) the insurer must be obligated to pay the 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." *Wittmer v. Jones*, 864 S.W.2d 885, 890 (Ky. 1993) (quoting J. Leibson, dissent, *Federal Kemper Ins. Co. v. Hornback*, 711 S.W.2d 844 (Ky. 1986)).

Notably, however, "there is no such thing as a 'technical violation' of the UCSPA." *Id.* Rather, in order to maintain a bad faith claim under Kentucky's UCSPA, a plaintiff "must meet a high threshold standard that requires evidence of 'intentional misconduct or reckless disregard of the rights of an insured or a claimant' by the insurance company that would support an award of punitive damages." *Phelps v. State Farm Mut. Auto. Ins. Co.,* 736 F.3d 697, 703 (6th Cir.

2012) (quoting *Wittmer,* 864 S.W.2d at 890). In fact, in *Wittmer*, the Kentucky Supreme Court expressly described the threshold standard as that of "outrageous" conduct by the insurer. *Id* (citations omitted). Further, as a panel of this Court explained in *United Services Automobile Association v. Bult,* 183 S.W.3d 181, 186 (Ky. App. 2003):

> The evidentiary threshold is high indeed. Evidence must demonstrate that an insurer has engaged in outrageous conduct toward its insured. Furthermore, the conduct must be driven by evil motives or by an indifference to its insureds' rights. Absent such evidence of egregious behavior, the tort claim predicated on bad faith may not proceed to a jury. Evidence of mere negligence or failure to pay a claim in timely fashion will not suffice to support a claim for bad faith. Inadvertence, sloppiness, or tardiness will not suffice; instead, the element of malice or flagrant malfeasance must be shown.

Thus, the mere negligent failure to settle within the policy limits or errors of judgment are insufficient to constitute bad faith. *Harvin v. United States Fidelity & Guaranty Co.*, 428 S.W.2d 213, 215 (Ky. 1968). Furthermore, "an insurer is . . . entitled to challenge a claim and litigate it if the claim is debatable on the law or the facts." *Whittmer,* 864 S.W.2d at 890. *See also Empire Fire & Marine Ins. Co. v. Simpsonville Wrecker Service, Inc.*, 880 S.W.2d 886 (Ky. App. 1994).

We are of the opinion that beyond conclusory statements, Caudill simply has made no showing herein, nor does the record reflect, any evidence of the sort of intentional or outrageous conduct "driven by evil motives or by an indifference to its insureds' rights" necessary to satisfy the high threshold for bad faith claims. *Bult*, 183 S.W.3d at 186. Furthermore, even assuming Kentucky's

high threshold standard could be satisfied, we are of the opinion that New Hampshire still would be entitled to summary judgment on each of Caudill's specific claims brought under Kentucky's UCSPA. We now turn to each of those claims.

Caudill first argues that the trial court erred in granting New Hampshire summary judgment on her claim that the insurance company violated UCSPA § 1. Caudill contends that the evidence permits the reasonable inference that New Hampshire recklessly or deliberately misrepresented the existence/potential applicability of its Coverage B under the umbrella elite form, which Caudill maintains imposed primary obligations upon New Hampshire as an "umbrella" insurer rather than merely secondary obligations as an "excess" insurer. Essentially, the crux of Caudill's argument is while the 7'91 form only provided excess coverage, the umbrella elite form nullified Endorsement No. 7, thus providing true umbrella insurance because it no longer excluded coverage for bodily injury or death not covered by primary insurance. Caudill claims that once Zurich denied coverage, New Hampshire was required to step in and fulfill its obligations to provide umbrella coverage under Coverage B. However, according to Caudill, New Hampshire instead chose to conceal the full applicability of its coverage and "lay low in silent acquiescence with Zurich's allegedly wrongful denial of primary coverage." We disagree.

To prove a violation under § 1, Caudill was required to prove that New Hampshire misrepresented "pertinent facts or insurance policy provisions related to

the coverages at issue." KRS 304.12-230(1). Caudill has never claimed that New Hampshire misrepresented its obligations under Coverage A. Rather, Caudill's argument is limited solely to Coverage B. However, we conclude that such argument is misplaced because Coverage B was never at issue.

As previously explained, New Hampshire's umbrella elite policy provided two independent and mutually exclusive types of coverage: (1) excess insurance when the primary coverage exhausts; or (2) coverage for claims that fall outside of those provided by the insured's primary insurance. Kentucky courts have recognized that excess coverage, such as Coverage A, is not implicated until the primary policy limits are exhausted. Accordingly, an excess insurer has no obligation to provide coverage before such occurs. *Motorists Mutual v. Glass*, 996 S.W.2d 437, 453 (Ky. 1999).

Herein, Coverage A was the only applicable provision because Caudill's claims fell within the coverage terms of Zurich's primary policy. The applicability of Coverage B would have only become an issue if the terms of Zurich's policy excluded coverage for Caudill's death.[4] Significantly, Caudill asserted from the outset of the case that Zurich's primary policy provided coverage in the wrongful death action.

Furthermore, we are of the opinion that Zurich's initial erroneous denial of coverage inconsequential. It certainly did not impart a duty upon New Hampshire

[4] New Hampshire has maintained that Endorsement No. 7 remained in effect and would have precluded coverage under Coverage B in any event. We do not believe that a determination on Coverage B is necessary because the existence of Zurich's primary insurance triggered only Coverage A.

to immediately provide coverage under Coverage B, because, as New Hampshire quickly informed Zurich, coverage for the wrongful death claim existed under the plain terms of Zurich's policy. In fact, it was New Hampshire that sought the coverage opinion from Zurich's counsel and persuaded Zurich to re-evaluate its position.

The record clearly establishes that New Hampshire acknowledged coverage from the outset, explaining that its policy applied upon exhaustion of Zurich's primary limits. We conclude that since Coverage B was never at issue, Caudill's assertion that New Hampshire violated § 1 by misrepresenting said coverage must fail.

We likewise find no merit in Caudill's argument that New Hampshire violated § 2 by "[f]ailing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies." Caudill's argument is based upon her assertion that JLT was New Hampshire's agent, and that notice of Caudill's action by Rose Smith to JLT in July 2002 was imputed to New Hampshire. We disagree.

In *J. Inmon Insurance Agency, Inc. v. Kentucky Farm Bureau Mutual Insurance Co.*, 549 S.W.2d 516, 518 (Ky. App. 1977), this Court recognized that a broker hired to obtain and provide notice to an insurer is an agent of the insured, not the insurer. Thus, notice to the broker is not notice to the insurer. *Id.* The record herein reflects that Rose Smith and JLT were James River's brokers. Such is evidenced by Rose Smith's February 4, 2002, letter appointing JLT as James

River's "exclusive London Broker with all matters pertaining to the handling and placing of the Liability Insurance Programming for James River Coal Company." Contrary to Caudill's assertion, Rose Smith brokers Fred Smith III and Angie Palko did not testify that JLT was New Hampshire's agent, but rather explained that to get notice to New Hampshire in London pursuant to the rules of the London market, Rose Smith was required to give notice to JLT, who in turn was to notify New Hampshire. Neither suggested that Rose Smith or JLT was New Hampshire's broker, or that notice to JLT constituted notice to New Hampshire.

In any event, constructive notice cannot support a bad faith claim; only actual notice suffices. *See generally Langendorf v. Travelers States Insurance Co*., 625 F.Supp. 1103, 1109 (N.D. Ill. 1985). It is undisputed that New Hampshire did not receive actual notice of Caudill's wrongful death claim until February 2004. It follows, then, that New Hampshire could not have intentionally or recklessly disregarded Caudill's claim prior to that time.

Moreover, we disagree with Caudill's argument that New Hampshire failed to act promptly after receiving actual notice in February 2004. Caudill makes much of the fact that New Hampshire did not provide her with an accurate copy of the policy until after the bad faith action was filed. The record reveals that although Caudill sought copies of the policy from other parties, and now argues that they were not accurate, it was not until the deposition of New Hampshire representative, Holly Weatherby in July 2007, that Caudill actually requested the insurance policy from New Hampshire. A complete copy, including the umbrella

elite form, the 7'91 form, and endorsements 1-29 were provided to Caudill's counsel during that deposition.

As the excess insurer, New Hampshire simply had no duty to explore coverage issues, reserve rights, investigate the merits of the claim, or monitor the underlying lawsuit until Zurich tendered its policy limits. However, New Hampshire had, in fact, acknowledged the claim, as well as investigated Zurich's coverage and convinced the primary insurer that its policy applied to Caudill's claim. Accordingly, the trial court properly found that Caudill failed to demonstrate that New Hampshire violated UCSPA § 2.

Caudill next argues that the trial court erred in finding that New Hampshire did not violate UCSPA § 6, because New Hampshire did not, in fact, attempt "in good faith to effectuate prompt, fair and equitable settlement[] even though liability [was] reasonably clear." KRS 304.12-230(6). Caudill contends that although New Hampshire claims it had monitored the underlying litigation since receiving notice in February 2004, it nevertheless failed to attend the July 2006 mediation and thereafter took no action to effectuate a settlement. Further, Caudill claims that even after Zurich tendered its policy limits in September 2007, New Hampshire made no attempts to settle until February 2008.

Pursuant to *Wittmer*, to prevail on this claim, Caudill was required to prove that New Hampshire's conduct was outrageous, because of an evil motive or reckless indifference to their rights. In applying that standard to the evidence in this case, it must be kept in mind that mere delay in payment does not amount to

outrageous conduct absent some affirmative act of harassment or deception. *Cf. Zurich Insurance Co. v. Mitchell*, 712 S.W.2d 340 (Ky. 1986). In other words, there must be proof or evidence supporting a reasonable inference that the purpose of New Hampshire's alleged delay was to extort a more favorable settlement or to deceive Caudill with respect to the applicable coverage.

Contrary to Appellants' argument, regardless of whether liability was clear from the outset, which New Hampshire contends it was not, New Hampshire, as the excess insurer, did not owe any coverage until Zurich's primary coverage was exhausted. *Ohio Casualty Insurance Co. v. State Farm Mutual Automobile Insurance Co.*, 511 S.W.2d 671, 674 (Ky. 1974) (quoting *Appleman, Insurance Law & Practice*, § 4914). Further, the record indicates that New Hampshire was not asked to attend the July 2006 mediation. Because it was not a party at that point, and because Zurich had not tendered its policy limits, New Hampshire clearly had no obligation to attend the mediation.

In determining whether the insurer acted in bad faith in failing to settle, the trial court must consider (1) whether the plaintiff offered to settle for the policy limits or less; (2) whether the insured made a demand for settlement on the insurer; and (3) the probability of recovery and whether a jury verdict would exceed policy limits. *Glass*, 996 S.W.2d at 451. Herein, Appellants did not tender a settlement demand within New Hampshire's $15 million policy limits until November 4, 2008; the case was settled one week later. It is not bad faith to refuse a demand to settle for a sum in excess of the policy limits. *Cooper v. Automobile Club*

Insurance Co., 638 S.W.2d 280, 282 (Ky. App. 1981). Further, James River never demanded that New Hampshire settle, but rather sought a defense against Caudill's claims. Again, the record supports the conclusion that it was New Hampshire that persuaded Zurich to reconsider its denial of coverage and provide such defense. Finally, given Appellants' $2.5 million proof of claim in the bankruptcy court, it is speculative at best that a jury would have awarded damages in excess of New Hampshire's policy limits. As such, the trial court properly granted summary judgment in favor of New Hampshire on this issue.

Finally, Caudill argues that the trial court erred in granting summary judgment for New Hampshire on her claim of a violation under UCSPA § 14. Caudill contends that New Hampshire not only failed to provide a reasonable explanation of the basis for its denial of coverage, but intentionally misrepresented that there was no coverage due to endorsement No. 7.

UCSPA § 14 requires insurers to promptly provide a reasonable explanation of the basis for denying a claim or settlement offer. However, regardless of whether the denial is correct, § 14 is not violated if the insurer identifies facts and policy provisions on which the decision was made. Caudill again claims that New Hampshire denied coverage under its excess coverage (Coverage A) "by following form to Zurich's denial" and under its umbrella coverage (Coverage B) by alleging "an expired endorsement." However, as we have previously noted, New Hampshire did not echo Zurich's denial under Coverage A, but rather

acknowledged the claim, convinced Zurich to reverse its denial of coverage, and then provide excess coverage when Zurich tendered its policy limits.

Caudill mistakenly relies upon the decision in *Farmland Mutual Insurance Co. v. Johnson,* 36 S.W.3d 368 (Ky. 2000), to argue that New Hampshire did not "debate the matter fairly." Unlike this case, however, the insurer in *Farmland* made a single settlement offer based on a patently incorrect interpretation of its policy, then refused to pay entirely. *Id.* at 373. Herein, New Hampshire made several settlement offers, accurately represented its policy, and eventually settled the claim.

Finally, New Hampshire has filed a motion to strike, in part, Caudill's reply brief because she therein argues for the first time that the language of the New Hampshire policy is ambiguous. We have reviewed the pleadings, as well as the videos of the hearings, and Caudill has not previously raised this issue. To the contrary, Caudill has maintained throughout the case that the language of the umbrella elite policy is "clear and unambiguous."

It is well-settled that a party may not raise new issue or arguments in its brief. *Catron v. Citizens Union Bank*, 229 S.W.3d 54, 59 (Ky. App. 2006). As such, we grant New Hampshire's motion to strike that portion of Caudill's reply brief pertaining to the ambiguity issue. We would observe, however, that Caudill's new position actually undermines her claims of bad faith. If a policy is susceptible to two or more reasonable constructions, the insurer's position need only be fairly debatable to avoid bad-faith liability. *See Eckstein v. Cincinnati Insurance Co.*,

618 F.Supp.2d. 707 (W.D. Ky. 2007). If the language in New Hampshire's policy is indeed ambiguous, as Caudill now asserts, New Hampshire's interpretation, if reasonable, could not be deemed bad faith.

The record in this case is voluminous and it is clear from the hearings that the trial court expended a great deal of time and consideration in ruling on Caudill's claims. We agree with the trial court that there simply is no evidence of record to support a finding of intentional misconduct or reckless disregard for Caudill's rights on the part of New Hampshire. For the reasons set forth herein, we conclude that the trial court properly found that there were no genuine issues of material fact and that New Hampshire was entitled to summary judgment on all of Caudill's claims brought under Kentucky' UCSPA.

The orders of the Perry Circuit Court are affirmed.

ALL CONCUR.

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