STATE OF MICHIGAN

COURT OF APPEALS

GHD OPERATING, L.L.C. d/b/a CHEM STRIP CO.,

Plaintiff-Appellee,

v

EMERSON PREW, INC. and BRUCE LYS,

Defendants/Cross Defendants-Appellants,

and

ST. PAUL PROPERTY & CASUALTY,

Defendant/Cross Plaintiff.

UNPUBLISHED
February 3, 2009

No. 278857
Wayne Circuit Court
LC No. 04-422131-CK

Before: Cavanagh, P.J., and Jansen and Meter, JJ.

PER CURIAM.

Defendants, Emerson Prew, Inc. and Bruce Lys, appeal as of right the judgment entered in plaintiff's favor following a jury trial in this negligence case. We affirm.

Plaintiff, GHD Operating, L.L.C., d/b/a Chem Strip Company, was a processing facility located in Detroit that did paint stripping, rust removal, and parts washing for automobile manufacturers. Garet Danvers purchased Chem Strip in 2002 for $1.2 million. Danvers purchased insurance for Chem Strip from Auto-Owners Insurance Company through defendant Bruce Lys, a licensed insurance agent employed by defendant Emerson Prew. When Auto-Owners cancelled Chem Strip's insurance, effective September 2, 2002, because of the nature of its operations, Danvers contacted Lys who assured him that he would secure an extension of coverage while he sought insurance through a different company.

In January of 2003, Lys presented Danvers with a Business Insurance Premium Quotation that was dated January 9, 2003, from St. Paul Property & Casualty Insurance

Company (St. Paul Insurance).[1] The policy included coverage for loss of the building, business personal property, business income and other assets, as well as liability coverage, for an annualized premium of $32,120. Danvers told Lys to purchase the policy and gave Lys a check in the amount of $6,125 to bind the insurance coverage. Lys testified that he gave the check to his Customer Service Representative (CSR), Kathleen McCann. On January 14, 2003, defendants Emerson Prew and Lys issued a certificate of property insurance to plaintiff, confirming that, as of January 9, 2003 and through January 9, 2004, Chem Strip had property insurance issued by St. Paul Insurance for the building (with a $2,000,000 limit), personal property (with a $215,000 limit), and business income. The certificate of insurance was signed by Arthur Emerson, Emerson Prew's principal.

Because plaintiff's check was not cashed by St. Paul Insurance and he did not receive a policy or premium invoices, Danvers telephoned Lys several times. Danvers was repeatedly advised by Lys not to worry, Chem Strip was insured by St. Paul Insurance. Lys explained that the delay in further actions from St. Paul Insurance was typical and due to administrative issues; it took time for companies to issue policies and they routinely do not cash premium checks until the policy is issued.

By March of 2003, Danvers had still not received any documents from St. Paul Insurance. At Danvers' request, Lys provided him another certificate of property insurance. Danvers continued to call Lys through August of 2003 with concerns about coverage and requesting the policy. Lys continued to reassure Danvers that Chem Strip had insurance coverage. Danvers believed Lys. However, on September 1, 2003, Lys left the employment of Emerson Prew. Neither Emerson Prew nor Lys informed plaintiff of Lys' resignation. In late October of 2003, Danvers received two letters from another insurance agency disavowing any responsibility for Lys.

On November 3, 2003, concerned about his insurance coverage, Danvers called Emerson Prew. He spoke with CSR McCann who transferred the call to the office manager, Ralph Petersen. Petersen advised Danvers that Chem Strip did not have insurance coverage—the policy had never been issued. Petersen and Danvers had a heated conversation. Later that day, Danvers faxed Emerson Prew a letter indicating that Danvers was in the process of obtaining insurance from a different service provider but, until such time as new insurance was effective, Chem Strip would consider Emerson Prew liable for any damages that resulted in the interim period. Also on that day, Emerson Prew sent a certified letter to Danvers reiterating that Chem Strip did not have insurance coverage and that St. Paul Insurance never issued a policy. Thereafter, Danvers attempted to procure insurance coverage from several agencies without success. Allegedly, because of the nature of the business, it was a difficult and time consuming process to obtain insurance. While still in the process of seeking coverage, on December 11, 2003, a fire completely destroyed plaintiff's premises, resulting in a loss of the building, business personal property, and business income.

On July 20, 2004, plaintiff sued defendants for negligence, generally claiming that their failure to procure insurance coverage and timely advise plaintiff that it did not have insurance

[1] St. Paul Insurance was a defendant in this matter, but it was granted summary disposition by order dated November 18, 2005, and that dismissal is not a subject of this appeal.

resulted in Chem Strip being uninsured when the fire destroyed the business. Throughout the course of the litigation defendants filed several motions for summary disposition and all were denied. On November 27, 2006, a seven-day jury trial commenced. Following the close of proofs, and while the jury was deliberating, motions for directed verdict were argued. Defendants' motions were denied, but plaintiff's motion for directed verdict was granted, in part. The trial court held that plaintiff was entitled to a directed verdict on the issue of negligence, but not on the issues of proximate cause and damages.

Thereafter, the jury returned a verdict. In response to the question whether Lys or Emerson Prew were negligent in handling plaintiff's property insurance, the jury answered "yes." In response to the question whether their negligence was a proximate cause of plaintiff's December 11 loss, the jury answered in the affirmative. In response to the question pertaining to the amount of damages, the jury answered "$2,215,000." The rate of interest the jury found applicable was 5 percent. In response to the question whether Chem Strip was comparatively negligent, the jury answered in the affirmative and assigned the value of forty percent. On January 17, 2007, an order for directed verdict partly in favor of plaintiff was entered. On January 18, 2007, a judgment on the jury verdict was entered in plaintiff's favor in the amount of $1,329,000, with interest of $38,959.73, for a total of $1,367,959.73. Defendants filed several post-trial motions, which were all denied. This appeal followed.

First, defendants argue that plaintiff's negligence claim must fail for lack of proximate cause. Specifically, defendants argue that on November 3, 2003, over 30 days before the December 11, 2003, fire that destroyed plaintiff's property, plaintiff terminated the relationship it had with defendants and could have procured insurance through other agencies. This issue was raised in defendants' motions for directed verdict and JNOV; thus, it is preserved for appellate review.

The standard for deciding motions for directed verdict and JNOV is the same. *Sniecinski v Blue Cross & Blue Shield of Michigan*, 469 Mich 124, 131; 666 NW2d 186 (2003). We review de novo their denial. *Id*. Either motion should be granted only if the evidence and all legitimate inferences, viewed in the light most favorable to the nonmoving party, fails to establish a claim as a matter of law. *Id*. If the evidence could lead reasonable jurors to different conclusions, the question is for the jury. *Foreman v Foreman*, 266 Mich App 132, 136; 701 NW2d 167 (2005).

The issue of proximate cause generally presents a question of fact for the jury. *Helmus v Dep't of Transportation*, 238 Mich App 250, 256; 604 NW2d 793 (1999); *Reeves v Kmart Corp*, 229 Mich App 466, 480; 582 NW2d 841 (1998). But, when the facts bearing on proximate cause are not disputed and reasonable minds could not differ, the issue presents a question of law for the court. *Id*. To establish proximate cause, two elements must be proven: cause in fact and legal cause. *Skinner v Square D Co*, 445 Mich 153, 162-163; 516 NW2d 475 (1994). Generally to prove cause in fact, a plaintiff must show that "but for" the defendant's actions, the plaintiff's injury would not have occurred. *Id*. at 163. If cause in fact is established, the issue becomes whether the defendant's actions were the legal cause of the injury. *Id*. To be the legal cause of the injury, the plaintiff must show that it was foreseeable that the defendant's conduct would create a risk of harm, and that the result of that conduct and intervening causes were foreseeable. *Weymers v Khera*, 454 Mich 639, 648; 563 NW2d 647 (1997); *McMillian v Vliet*, 422 Mich 570, 576; 374 NW2d 679 (1985).

It is unclear from defendants' brief on appeal whether they are arguing that they were not the cause in fact of plaintiff's damages or whether they are arguing that they were not the legal cause of plaintiff's damages.[2] It appears that defendants are claiming that, because plaintiff terminated their services on November 3, 2003, they were not to blame for plaintiff being uninsured on December 11, 2003, when the fire occurred. But the evidence was conflicting as to whether plaintiff terminated their services.

The evidence included that Danvers and Petersen had a heated telephone conversation on November 3, 2003, but Petersen did not testify that Danvers terminated the relationship on the telephone. Petersen testified that he blamed Danvers for the problem and was sarcastic and testy with Danvers; he did not offer to assist Danvers in procuring insurance coverage. McCann testified that on that same day, she contacted Universal Specialty Insurance and attempted to secure an insurance quote for Chem Strip. Petersen testified that Emerson Prew sent Danvers a letter on November 5, 2003, stating that, if he wanted assistance obtaining insurance, contact their agency. If Emerson Prew was terminated on November 3, why would they have attempted to secure a quote for insurance and why would they have mailed such a letter on November 5? And Danvers testified that, because he had lost confidence in Emerson Prew, he was attempting to secure insurance coverage. Danvers further testified that Emerson Prew never told him that they could procure insurance coverage for Chem Strip and they never directed him to any source of insurance coverage. Danvers testified that if Petersen would have told him he could have procured insurance coverage, Danvers would have told Petersen to get the coverage and he would have paid for the coverage. Thus, it was a question of fact for the jury whether the relationship between Emerson Prew and Chem Strip was terminated on November 3, 2003.

Further, it was a question of fact for the jury whether Chem Strip could have obtained replacement cost insurance coverage between November 3, 2003, and December 11, 2003, as he purportedly had with St. Paul Insurance Company. Lys testified that, after Auto-Owners terminated Chem Strip's insurance coverage effective September 2, 2002, because of the hazardous nature of the business he could not procure replacement cost insurance coverage for Chem Strip until January of 2003, when he gave Danvers the purported quote from St. Paul Insurance Company. Jerry Troski testified that, when Danvers was in the process of purchasing Chem Strip, he was asked to procure replacement cost insurance coverage and was unable to for a period of time because it was not available. Troski further testified that, after September 11, it was more difficult to purchase insurance policies; the insurance market got harder. The testimony of Ron Ansley included that Michigan Basic Property Insurance Association does not sell replacement cost coverage, that a person seeking any insurance through them must have an insurance agent, and they do not advertise so a person would have to find out about them through an agent. McCann testified that she never told Danvers where he could procure insurance. Petersen testified that he did not advise Danvers as to where he could get insurance or that Emerson Prew could procure insurance for Chem Strip. Petersen admitted that telling an insurance agency that the business had been uninsured for fourteen months might have caused a problem in attempting to secure insurance. Petersen also admitted that trying to get insurance quickly in November or December, which were difficult months to get insurance, would also

[2] While defendants appear to claim that they owed no duty to plaintiff, that was not an issue raised in the statement of questions involved. See MCR 7.212(C)(5).

have been a problem. Petersen further testified that there would also be problems obtaining insurance because the business involved the use of hazardous chemicals and the building did not have a sprinkler system. Danvers testified that, after he found out that Chem Strip did not have insurance on November 3, he called several agencies in an attempt to procure insurance without success.[3]

Considering the evidence and all legitimate inferences in the light most favorable to plaintiff, we agree with the trial court that it was for the jury to determine whether plaintiff could have obtained insurance coverage between November 3, 2003, and December 11, 2003. Thus, defendants' claim that their motions for directed verdict and JNOV should have been granted on the ground that plaintiff failed to establish proximate cause as a matter of law is without merit.

Next, defendants appear to argue that plaintiff's expert's testimony was not sufficient to support the jury award of $2,215,000.[4] Defendants did not object to Stewart Shipper's testimony during the trial and they stipulated to the admission of his five damage calculation reports. Defendants did not argue that Shipper was unqualified or that his testimony was unreliable. In their post-trial motions, defendants argued that plaintiff failed to establish that it was entitled to replacement cost insurance coverage because Shipper's testimony was unsupported by evidence, particularly since Shipper referenced a St. Paul Insurance policy that was not admitted into evidence. On appeal, defendants clarify in their reply brief that they "are not challenging the *admissibility* of Shipper's reports or evaluations, but specifically that, even as admitted in the form used, they constituted a complete failure of the Burden of Proof of applicable policy terms and that his testimony, extracting favorable terms and provisions on a presupposed Phantom Policy with coverage analyses, were based entirely on out-of-court hearsay, and was a failure to Plaintiff's burden of proof and violative of MRE 703."

First, we note that plaintiff sued defendants for negligence, not breach of contract. To establish a prima facie case of negligence, one of the elements that a plaintiff must prove is damages. *Case v Consumers Power Co*, 463 Mich 1, 6; 615 NW2d 17 (2000). Generally, a negligent defendant is liable for all injuries resulting directly from his wrongful act, whether foreseeable or not, if the damages were the legal and natural consequences of his conduct and might reasonably have been anticipated. *Ensink v Mecosta Co Gen Hosp*, 262 Mich App 518, 524; 687 NW2d 143 (2004), quoting *Sutter v Biggs*, 377 Mich 80, 86-87; 139 NW2d 684 (1966). A plaintiff has the burden of proving damages with reasonable certainty. *Hofmann v Auto Club Ins Ass'n*, 211 Mich App 55, 108; 535 NW2d 529 (1995). Thus, remote, contingent, or speculative damages cannot be recovered. *Sutter*, *supra*; *Ensink*, *supra*.

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[3] We note that defendants' repeated references to Danvers being an attorney and former insurance agent are misleading. It is undisputed that, while Danvers obtained a license to practice law in Pennsylvania and had been a tax attorney some years ago, he never handled legal cases or had occasion to deal with insurance issues. And, while Danvers sold two life insurance polices to relatives, he did so over thirty years ago.

[4] Because defendants' brief on appeal contains more sarcastic remarks than actual arguments supported by an accurate representation of the facts and apposite case law, it is difficult to discern the precise nature of defendants' arguments on appeal.

Second, we disagree with defendants' contention that plaintiff was required to present the actual policy of insurance on which his negligence claim was based; it was impossible because defendants never procured that policy. It simply does not exist. That is why defendants were sued. What does exist, however, are the certificates of insurance that defendants issued to plaintiff. Those documents certified that policies of insurance had been issued to Chem Strip on the building—limited to $2,000,000, on the personal property—limited to $215,000, and on the business income. If defendants had actually procured this insurance coverage, plaintiff could have sought payment up to the policy limits from the insurance company after the fire destroyed Chem Strip. Any loss suffered in addition to that coverage, would have been plaintiff's loss resulting from the agreed upon terms of the insurance contract.

But defendants are not an insurance company that issued a policy of insurance; thus, defendants' reliance on case law involving a plaintiff insured's attempt to recover from an insurer according to the terms of an insurance policy is misplaced. Plaintiff did not contract with defendants to limit their liability to the terms of a contract. If this was a breach of contract claim, the law holds that a plaintiff is adequately compensated "when damages are awarded by reference only to the terms of the contract." *Kewin v Massachusetts Mut Life Ins Co*, 409 Mich 401, 423; 295 NW2d 50 (1980). But in a negligence case such as this, plaintiff's damages are not necessarily limited to the terms of the insurance contract that defendants negligently failed to procure. Rather, defendants are liable to plaintiff for the damages that were the legal and natural consequences of their conduct that might reasonably have been anticipated. See *Ensink*, *supra*.

Here, in an effort to establish the benefits that plaintiff could have recovered under the policy that defendants claimed to have procured, plaintiff presented the testimony of Shipper, an insurance consultant, appraiser, and public adjuster with about thirty-four years of experience and who had worked on thousands of fire cases. The fire destroyed Chem Strip. If plaintiff had the insurance coverage that defendants claimed it procured, plaintiff could have recovered up to the policy limits of that policy. Shipper was asked by plaintiff to estimate the amount of loss resulting from the fire that occurred and, after a thorough investigation, Shipper set forth his calculations in five separate reports. These calculations were presented using two well-known and common methods of calculating loss: replacement cost and actual cash value, which Shipper testified was replacement cost less depreciation. According to Shipper, the total replacement cost of plaintiff's loss was $3,096,543.18 and the actual cash value of the loss was $2,380,920.45. Both values exceeded the $2,215,000 limit stated on the certificates of insurance which described the policy that defendants were supposed to have procured for plaintiff.

Defendants appear to argue on appeal that Shipper's computation of the actual cash value loss was calculated using an improper formula—replacement cost less depreciation—and thus could not support the jury's verdict. But Shipper testified that, because no policy existed in this case, he based his calculations on his experience in the commercial policy industry. He also reviewed a St. Paul commercial policy that had been written about the same time as this case—in 2003. The St. Paul policy he reviewed indicated that actual cash value was defined as replacement cost minus depreciation, but he did not produce that policy at trial. Shipper testified that replacement cost less depreciation is a typical methodology applied throughout the property insurance industry and it is probably the oldest method established. Jerry Troski, a licensed insurance agent since 1975 and defendants' own witness, also testified that the actual cash value is generally considered replacement cost less depreciation.

Defendants argue that, because Shipper's testimony was not based on the actual policy at issue in this case and he failed to produce the policy he looked at that contained the meaning of "actual cash value," Shipper's testimony could not support the jury verdict. We disagree. As stated previously, no actual policy existed that could be produced. And Shipper's testimony with regard to how he computed the "actual cash value" of plaintiff's loss was not merely based on a "phantom" St. Paul Insurance policy as defendants claim; it was based on his personal experience with commercial insurance policies and Troski, defendants' own witness, agreed that actual cash value is generally considered replacement cost less depreciation. MRE 703 does not preclude an expert from basing an opinion on the expert's personal knowledge. *Morales v State Farm Mut Auto Ins Co*, 279 Mich App 720, 733, 735; __ NW2d __ (2008). But, to the extent Shipper's reference to a sample St. Paul Insurance policy constituted hearsay, in light of the other admissible evidence, the reference was harmless.

And the jury awarded neither the replacement cost nor the actual cash value. The jury awarded $2,215,000—the policy limit indicated on the certificates of insurance issued by defendants. Although the jury was not required to limit its verdict to the terms of the policy that plaintiff was supposed to have, the verdict was supported by the evidence. In fact, Danvers testified about significant other losses sustained by Chem Strip because insurance benefits were unavailable to pay bank loans, interest, late charges, and remediation costs. Nevertheless, according to Shipper's estimates, plaintiff sustained damages well in excess of this jury verdict. Defendants presented no evidence to challenge these calculations. Thus, plaintiff met its burden of proving damages with reasonable certainty, *Hofmann*, *supra*, and these damages were not remote, contingent, or speculative. *Sutter*, *supra*. Accordingly, this issue is without merit. Further, defendants' argument that they were entitled to remittitur—which was not properly presented for appellate review—is likewise rejected. See MCR 7.212(C)(5); *Grand Rapids Employees Independent Union v Grand Rapids*, 235 Mich App 398, 409-410; 597 NW2d 284 (1999). The jury award was supported by the evidence. See *Diamond v Witherspoon*, 265 Mich App 673, 693; 696 NW2d 770 (2005).

Next, defendants argue that they were entitled to JNOV because plaintiff's reliance on the certificates of insurance, which contained disclaimers, was not reasonable. After review de novo, considering the evidence and all legitimate inferences in the light most favorable to plaintiff, we disagree. See *Sniecinski*, *supra*.

The certificates of property insurance issued to Chem Strip by Emerson Prew stated, in pertinent part:

> This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policies below.
>
> * * *
>
> Coverages
>
> This is to certify that the policies of insurance listed below have been issued to the insured named above for the policy period indicated, notwithstanding any requirement, term or condition of any contract or other document with respect to

> which the certificate may be issued or may pertain. The insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies. Limits shown may have been reduced by paid claims.
>
> Cancellation
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> Should any of the above described polices be cancelled before the expiration date thereof, the issuing company will endeavor to mail 10 days written notice to the certificate holder named to the left but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives.

Defendants argue that plaintiff's reliance on the certificates of insurance was unreasonable in light of these provisions. We disagree.

In *Kaminskas v Litnianski*, 51 Mich App 40; 214 NW2d 331 (1973), the plaintiff sought to insure his motor vehicle, paid a portion of the premium to the insurance agency—which was to be credited toward the premium cost, and was issued a certificate of insurance by the agency. The certificate indicated that a policy number had not been assigned, but that a policy of insurance had been issued, and that the certificate could be presented as evidence of insurance. *Id*. at 42. About a month later, an insurance company issued the policy. However, in the interim, plaintiff's vehicle was in an accident and the insurance company and the insurance agency denied liability. *Id*. at 43. After a consent judgment was entered against the insurance agency, the agency appealed. *Id*. This Court held that the insurance agency was estopped from denying liability on grounds that included that plaintiff was told he was insured by the agency and the certificate of insurance represented to plaintiff and third parties that plaintiff was insured. *Id*. at 44-45.

The rationale in *Kaminskas* applies here. Plaintiff sought insurance coverage, paid a portion of the premium, was issued certificates of insurance, and was repeatedly assured that it had insurance coverage. Defendants' claim that plaintiff's reliance on the certificates of insurance, in particular, was unreasonable. Those certificates were given to plaintiff some days after he had tendered a check to defendants in the amount of $6,125 in partial payment of the premium. Plaintiff was repeatedly advised by Lys—as Lys admitted—that the policy, and future billings would be forthcoming, but that it could take months. McCann agreed that it could take several months to receive a policy. The provisions of the certificates of insurance, when reasonably read, indicate to the reader that insurance policies for the limits indicated had, in fact, been issued. This was a certified statement, as denoted by the words, "This is to certify that the policies of insurance listed below have been issued to the insured named above for the policy period indicated . . . ." That the insurance afforded was subject to the terms of the policy and that the policy could be cancelled does not negate the fact that the certificates indicate that the policy had been issued. That a third party, like a lienholder, could not rely on the coverage purportedly provided in no way nullifies the certified statement that the policy had, at least at one time, been issued.

Further, the trial testimony clearly supported plaintiff's position that its reliance on the certificates of insurance was reasonable. Lys testified that when he gave Danvers the first certificate of insurance, he "was giving him something to show that there was coverage in place, yes." Similarly, McCann testified that a certificate of insurance "is evidence to certificate

holders, banks, clients of the insured, suppliers . . . that there's insurance." McCann admitted that, with her thirty years of experience with insurance documents like binders and certificates of insurance, she would not expect a lay person to know what the procedures are with respect to those documents. She testified that it would be reasonable for someone like Danvers to assume that he had the policy of insurance and coverage indicated on the certificate of insurance. Petersen also testified that an ordinary person receiving a certificate of insurance that indicated there was a policy with St. Paul and that was signed by the president of Emerson Prew would reasonably believe they had insurance coverage.

Defendants' reliance on the Connecticut case of *Nazami v Patrons Mut Ins Co*, 280 Conn 619; 910 A2d 209 (2006) is misplaced. In that case, the plaintiff hired a home improvement contractor to renovate her home. She claimed to have relied on the contractor's certificate of insurance when she entered into the contract with the contractor. When the contractor's actions damaged her home, she filed a claim for damages with the contractor's purported insurance company. The insurance company denied the claim on the ground that the contractor's policy was cancelled due to nonpayment of premiums. She then sued the contractor and his insurance company. Her allegations included fraud, negligent misrepresentation, and negligence for failure to notify her of the cancellation of the contractor's policy. All of her claims failed essentially because the certificate of insurance contained clear disclaimers of liability in the event of cancellation and the certificate created no duty of notification.

The facts of this case clearly are more like the facts in *Kaminskas* and bear little resemblance to the facts of the *Nazami* case. This is not a case in which a third-party relied on a certificate of insurance to their detriment. The disclaimers in the certificate of insurance clearly apply to that situation. In this case, plaintiff paid for insurance coverage and, because in the normal course of business it takes several months to receive the policy, plaintiff was given certificates of insurance by defendants to prove that plaintiff had the insurance coverage purchased. As defendants reasonably expected, plaintiff relied on the certificates of insurance. Defendants' claim that the policy could have been cancelled is of no moment; because of defendants' actions, no policy existed to cancel. In summary, the trial court properly denied defendants' motion for JNOV premised on the ground that plaintiff's reliance on the certificates of insurance was unreasonable.

Next, defendants argue that plaintiff's expert's testimony was "riddled with inadmissible hearsay and clear violations of the plain language of Michigan Rules of Evidence 703 regarding the bases of expert opinion testimony." In its responsive brief, plaintiff argued that this evidentiary issue was not preserved for appellate review. We agree. To preserve an evidentiary issue, the party must object at trial and specify the same ground for objection that he asserts on appeal. MRE 103(a)(1); *People v Knox*, 469 Mich 502, 508; 674 NW2d 366 (2004); *In re Snyder*, 223 Mich App 85, 92-93; 566 NW2d 18 (1997). When it denied defendants' post-trial motions challenging the admissibility of this evidence, the trial court, too, noted that defendants did not object to Shipper's testimony before or during the trial. However, in their reply brief, defendants clarified that, on appeal, they are challenging the sufficiency of Shipper's testimony to support the jury verdict. As discussed above, this issue is without merit.

And to the extent Shipper's testimony included hearsay regarding a "specimen" insurance policy, defendants have failed to establish plain error that affected their substantial rights. MRE 103(d); *Wolford v Duncan*, 279 Mich App 631, 637; __ NW2d __ (2008). As previously

discussed, Shipper testified that he had worked in the insurance industry for about thirty-four years and had worked on thousands of fire cases. The methodology he used to calculate plaintiff's loss was based on his years of education and experience. Specifically with regard to his actual cash value calculation, Shipper testified that replacement cost less depreciation was a typical methodology applied throughout the property insurance industry and was probably the oldest method established. Defendants' own witness, Troski, agreed that actual cash value is generally considered replacement cost less depreciation. No other testimony challenged that position. Accordingly, Shipper's testimony was not "entirely based" on a "specimen" insurance policy as defendants argue, but on his own direct, personal knowledge. MRE 703 does not prohibit such testimony. *Morales, supra*.

Finally, defendants argue that the trial court reversibly erred when it granted plaintiff's motion for directed verdict while the jury was deliberating. It is unclear from defendants' brief on appeal whether they are challenging the timing of the ruling or the ruling itself. To the extent that defendants are arguing that the trial court was required to hear and decide the motion for directed verdict before the case was submitted to the jury, defendants have provided no such legal authority. We will not attempt to rationalize the basis of defendants' claims or search for legal authority to support such claims. See *Mudge v Macomb Co*, 458 Mich 87, 105; 580 NW2d 845 (1998); *Berger v Berger*, 277 Mich App 700, 715; 747 NW2d 336 (2008).

To the extent that defendants are arguing that plaintiff was not entitled to a directed verdict, we disagree. The trial court granted plaintiff's motion for directed verdict only as to the issue of negligence, not causation or damages. It was undisputed that defendants agreed to procure insurance for plaintiff, accepted payment for that insurance, issued certificates of insurance evidencing the fact that such policy was procured, repeatedly assured plaintiff that the insurance was, in fact, procured, and failed to timely notify plaintiff—in light of the nature of the plaintiff's business and the climate of the insurance industry—that it was not insured. Like the trial court, we conclude that no reasonable person would disagree that defendants were negligent. But, in any case, the jury was not apprised of the directed verdict and the jury rendered a verdict in plaintiff's favor. Thus, even if the trial court erroneously granted plaintiff's motion for directed verdict, the error was not decisive of the outcome and was harmless. See MCR 2.613(A); *In re Gazella*, 264 Mich App 668, 675; 692 NW2d 708 (2005).

Affirmed.

/s/ Mark J. Cavanagh
/s/ Kathleen Jansen
/s/ Patrick M. Meter