DA 21-0422

IN THE SUPREME COURT OF THE STATE OF MONTANA

2022 MT 148

CONNIE HUMES,

Plaintiff and Appellant,

v.

FARMERS INSURANCE EXCHANGE and
MID-CENTURY INSURANCE COMPANY,

Defendants and Appellees.

APPEAL FROM: District Court of the First Judicial District,
In and For the County of Lewis and Clark, Cause No. DDV 2018-465
Honorable Ed McLean, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Keif Storrar, Doubek, Pyfer & Storrar PLLP, Helena, Montana

For Appellees:

Christopher C. Voigt, Crowley Fleck PLLP, Billings, Montana

Submitted on Briefs: April 13, 2022

Decided: July 26, 2022

Filed:

Clerk

Justice Jim Rice delivered the Opinion of the Court.

¶1 Connie Humes appeals trial rulings by the First Judicial District Court, Lewis and Clark County, excluding evidence of certain settlement amounts paid by Farmers Insurance Group, in a trial of her claims under the Unfair Trade Practices Act (UTPA). Humes also challenges the District Court's denial of her motion for a new trial, based on the same evidentiary rulings. We address the following issue:

> *Did the District Court abuse its discretion by excluding evidence of settlement amounts paid in a global settlement of multiple claims by Farmers Insurance Group in a subsequent trial of claims under the UTPA?*

We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 On November 2, 2013, Barney Benkelman rear-ended Humes' vehicle at a stoplight in Helena, causing injury to Humes. Benkelman was covered by Farmers Insurance Exchange (FIE) for bodily injury liability, with a financial limit of $100,000. Humes was insured by Mid-Century Insurance Company (Mid-Century), including underinsured motorist coverage (UIM) with a $250,000 limit, and medical payment coverage (med-pay) with a $50,000 limit. FIE is the majority owner of Mid-Century, and is also one of the insurance exchanges comprising Farmers Insurance Group (Farmers). Mid-Century's insurance claims are adjusted by FIE employees. Farmers therefore considered the accident a "dual-insured" loss, which occurs when parties involved in the accident are insured by the same company.

¶3 Shortly after the accident, Humes made a third-party bodily injury claim against Benkelman's policy with FIE. FIE initially advanced payments for Humes' medical bills,

but it stopped paying after receiving the report of a medical examination of Humes.[1] Humes retained counsel, and in February 2015 she made first-party UIM and med-pay claims under her Mid-Century policy. Mid-Century requested Humes undergo another medical examination and subsequently denied continuing med-pay benefits. Humes then filed suit (underlying action), stating claims against Benkelman for negligence (Benkelman claim), and against Mid-Century for breach of contract for denying UIM coverage (UIM claim), breach of contract for denying med-pay coverage (med-pay claim), and breach of the implied covenant of good faith and fair dealing for alleged mishandling of her first-party claims (breach of covenant claim).

¶4 In November 2017, FIE offered Humes $40,000 to settle the Benkelman claim. Humes declined the offer, and in January 2018 all parties participated in a "global mediation" session. During the mediation, FIE and Humes settled the Benkelman claim for the policy limit of $100,000. About 48 hours thereafter, Humes and Farmers settled Humes' claims against Mid-Century for a payment of $220,000—$200,000 under the UIM policy and $20,000 under the med-pay policy. Thus, all four of Humes' claims in the underlying action were settled for payments totaling $320,000.

¶5 In May 2018, Humes brought this action, including first and third-party claims against Mid-Century and FIE, respectively, for alleged violations of the UTPA,

[1] The medical examination was arranged and paid for by FIE. The doctor concluded Humes did not experience a traumatic brain injury as a result of the car accident. His medical opinion conflicted with a diagnosis from Humes' doctors. This medical conflict was a central issue in the underlying litigation, but it is unrelated to the issues raised in this appeal.

§§ 33-18-201 and -242, MCA. Humes alleged the insurance companies, operating together as Farmers, acted in bad faith by taking advantage of the dual-insured loss and failing to timely settle the Benkelman claim for the liability policy limit. Humes further alleged Farmers violated its duty to independently evaluate the separate first and third-party claims and intentionally undervalued the Benkelman claim to avoid exposure under Humes' UIM policy.

¶6 In its trial memorandum filed less than a month before trial, Farmers asserted for the first time that it had paid a portion of the settlement to Humes in the underlying action with funds from its "SAE Group," a department assigned to handle bad faith claims. Farmers stated it "should be allowed to present evidence that [its] bad faith department paid an additional $50,000 on top of UIM and medical payments settlements" in the underlying settlement. Humes objected and asked the court to prohibit Farmers from using the SAE payment source as evidence it had settled Humes' bad faith claims in the underlying action, but she asked the court to take judicial notice of the payment and permit Humes to present evidence that she had no knowledge of the payment's source. The District Court issued an order denying the parties' requests, stating that "neither party will be allowed to introduce evidence of the underlying settlement agreement to prove matters of liability."

¶7 Humes moved for clarification of the Order, arguing it was overly broad because it could exclude introduction of any settlement offers or amounts. Humes stated she intended "to introduce settlement offers from the underlying motor vehicle crash claim not to prove liability for that underlying claim [] but . . . to show that Farmers engaged in bad faith

during the underlying claim by systematically undervaluing [her] claim." At trial, the District Court conferred with the parties about the motion, and Humes' attorney described to the court his intended use of the settlement amount: "The evidence of [Farmers'] offers finally show the full value of the claim that they denied throughout the four-year process . . . . We're going to have [the Farmers'] adjustor say one month they offered $40,000. Two months later they're offering $100,000, plus an extra $220,000." Farmers argued that Humes was attempting to use the final settlement amount as proof Farmers "valued her injuries at $320,000, and there's not foundation for that . . . . [T]hey want the jury to assume that because we paid 320 to resolve multiple claims, that that is an absolute slam dunk admission that our earlier offers for her [injury] damages were too low." To provide clarification, the District Court affirmed its exclusion of the $220,000 amount paid under Humes' Mid-Century policy and the total amount paid for all claims of $320,000. However, the court modified its Order to permit Humes to offer evidence that Farmers initially offered $40,000 to settle the Benkelman claim, while it was authorized to offer the entire $100,000 limit to settle the claim; that resolution of the Benkelman claim for the policy limit of $100,000 allowed Humes to seek payment of additional sums under her Mid-Century policy; that Farmers had settled these additional claims for "substantially more" than the $100,000 Benkelman claim; and that Farmers had "drug its feet" by taking four years to settle all of Humes' claims. Consequently, Humes was prohibited only from stating the specific amounts of the settlement under her Mid-Century coverage and the total Farmers had paid to settle all four claims.

¶8 Following a five-day trial, the jury determined FIE and Mid-Century did not violate the UTPA and that the insurance companies had a reasonable basis in law or fact for their conduct while negotiating Humes' claims. *See* § 33-18-242(5), MCA. Humes moved for a new trial under M. R. Civ. P. 59, arguing she did not receive a fair trial because the District Court's exclusion of the $220,000 and $320,000 numerical values prevented her from proving her claim under § 33-18-201(13), MCA, which provides that an insurer violates the UTPA if it "fail[s] to promptly settle claims, if liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage." Humes again argued the excluded values showed "the degree to which FIE significantly undervalued [her] injury." The District Court denied Humes' motion, reiterating its trial rulings. Humes appeals.

STANDARDS OF REVIEW

¶9 District courts have broad discretion when determining whether evidence is relevant and admissible. "Accordingly, we review a district court's evidentiary rulings for abuse of discretion." *Peterson v. Doctors' Co.*, 2007 MT 264, ¶ 31, 339 Mont. 354, 170 P.3d 459 (citing *Glacier Tennis Club v. Treweek Construction Co.*, 2004 MT 70, ¶ 47, 320 Mont. 351, 87 P.3d 431, overruled on other grounds by *Johnson v. Costco Wholesale*, 2007 MT 43, ¶ 21, 336 Mont. 105, 152 P.3d 727). The abuse of discretion standard also applies to a district court's decision to deny a motion for a new trial based on evidentiary rulings and further requires the abuse of discretion to be "'so significant as to materially affect the substantial rights of the complaining party.'" *Simmons Oil Corp. v. Wells Fargo Bank, N.A.*, 1998 MT 129, ¶ 18, 298 Mont. 119, 960 P.2d 291 (quoting *Hansen v. Hansen*, 254

Mont. 152, 160, 835 P.2d 748, 753 (1992)). "The abuse of discretion question is not whether this Court would have reached the same decision, but, whether the district court acted arbitrarily without conscientious judgment or exceeded the bounds of reason." *Vulles v. Thies & Talle Mgmt., Inc*., 2021 MT 279, ¶ 6, 406 Mont. 169, ___ P.3d ___ (citing *Chipman v. Northwest Healthcare Corp.*, 2012 MT 242, ¶ 17, 366 Mont. 450, 288 P.3d 193 (internal quotations omitted).

DISCUSSION

¶10 Humes argues the District Court's exclusion of the specific settlement values prevented her from "showing the degree to which Farmers intentionally undervalued Humes' claim against Benkelman" and thus from proving her case under § 33-18-201(13), MCA. Farmers argues, as it did in the District Court, that the excluded settlement amounts do not accurately reflect its valuation of Humes' injuries and, if so introduced, would have been both irrelevant and misleading because the $320,000 amount was for settlement of all four of Humes' claims in the underlying action—the Benkelman claim, the UIM claim, the med-pay claim, and the breach of covenant claim. In her briefing, Humes contends the evidence was highly relevant:

> [T]he relevance and probative value of the only evidence in this case that shows how the UIM claim was evaluated is critical to demonstrate that Farmers[] significantly undervalued the [Benkelman] claim, and that there is no reasonable way for one arm of the insurance company to posture the same claim is worth $40,000 while at the same time, the other arm of the same insurance company values the exact same claim for $320,000. [(Emphasis original.)]

¶11 The difficulty with Humes' argument is that Farmers did not pay $320,000 to settle "the exact same claim" for which it initially offered $40,000, nor, as further argued in her

briefing, was Farmers' ultimate settlement "eight times the value of its offer going into mediation." Humes' arguments compare apples and oranges. Rather, Farmers ultimately paid $100,000 to settle "the exact same claim," and the District Court permitted Humes to present these specific amounts to the jury. As we have held, "UTPA standards focus on what the insurer knows at a particular point in time" while evaluating the claim. *Graf v. Cont'l W. Ins. Co.*, 2004 MT 105, ¶ 17, 321 Mont. 65, 89 P.3d 22. *See also Peterson v. St. Paul Fire & Marine Ins. Co.*, 2010 MT 187, ¶ 32, 357 Mont. 293, 239 P.3d 904 ("the operative facts of the underlying accident, and the information available to the insurer during the adjusting process, are probative as to the merits of the UTPA claim"). Thus, the relevance of the settlement amounts excluded by the District Court is certainly debatable.

¶12 However, assuming, arguendo, that the specific excluded amounts are relevant due to being settled within 48 hours of the Benkelman claim, *see* M. R. Evid. 401 (evidence is relevant when it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence"), the District Court was concerned about juror confusion, reasoning that "[e]vidence of the amount of the underlying settlement has tremendous potential to confuse jurors into believing that [Farmers] paid that amount solely to cover the costs of Humes' injuries and not to cover the whole host of other matters which a settlement entails." Humes' attorney stated to the District Court that he intended to "show the full value" of the Benkelman claim by "hav[ing] [the Farmers'] adjustor say one month they offered $40,000. Two months later they're offering $100,000, plus an extra $220,000." Similarly, Humes argues on appeal that the excluded settlement amounts "constitute[] irrefutable

evidence that Farmers ultimately placed an aggregate value of $320,000 on Humes' personal injury claim," and that the District Court should have allowed her attorneys to ask witnesses the following "smoking gun question": "Isn't it true, however, that 48 hours later Farmers[] [offered] an additional $220,000 to settle Humes' claim?" Thus, the use of the $320,000 aggregate value as proposed by Humes was to "prove" the value of one claim, when, to the contrary, this amount settled four claims. We cannot conclude the District Court's determination that "[d]ue to the potential of such evidence to be greatly misleading if used in the manner described by Humes, the admission of this evidence would [] violate Rule 403," was an abuse of discretion. A trial court may exclude relevant evidence "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury." M. R. Evid. 403. "Unfair prejudice may arise from evidence that . . . confuses or misleads the trier of fact, or unduly distracts the jury from the main issues." *State v. Franks,* 2014 MT 273, ¶ 16, 376 Mont. 431, 335 P.3d 725 (citation omitted).[2]

¶13 Humes argues the District Court's Order prevented her from proving her case, but our review of the record reveals that Humes was given broad leeway to present significant evidence in support of her allegations of improper claims handling by Farmers. Humes elicited testimony demonstrating the adjustors evaluating the Benkelman claim and the UIM claim were supervised by the same Farmers supervisor, Terry Hunt. Humes' attorney

[2] Because we conclude the District Court did not abuse its discretion by excluding the evidence under M. R. Evid. 403, there is no need to address the District Court's alternative basis for excluding the evidence under M. R. Evid. 408.

questioned the adjustors and Hunt about their handling of Humes' claims and how their actions comported with Farmers' claim handling policies and Montana law. One adjustor testified about his valuation of the Benkelman claim, including specific values leading up to settlement. Humes presented notes from Mid-Century's file for her first-party claim that revealed Hunt told the UIM adjuster to delay referring Humes' UIM claim to a branch of Farmers that handles larger claims and more serious injuries, and instructed the adjustor to instead wait until medical evidence was reviewed in the Benkelman claim. Humes used this evidence to argue to the jury that Farmers violated its duty to evaluate the claims independently and stopped evaluating the UIM claim in order to leverage the Benkelman claim and avoid UIM exposure under Humes' Mid-Century policy.[3]

¶14 Further, Humes' attorney in the underlying action, Patrick Fox, testified concerning the progressive offers Farmers made to settle the Benkelman claim leading up to the settlement. Fox testified he offered to release Benkelman from liability if Farmers paid the policy limit of $100,000, and that he was surprised when Farmers responded with an offer for only $40,000. He testified the claim was settled for policy limits only two months later, and that, "nothing that significantly changed anybody's evaluation of the case against Benkelman" occurred between the $40,000 offer and the $100,000 settlement. He also shared that once the Benkelman claim was settled, "[t]hen 48 hours later, the entire case

[3] Humes also argues that, without the ability to introduce the value of the UIM settlement, it was "impossible" for her "to demonstrate sharing of information as between the third- and first-party claim adjusting." This statement is incorrect, as Humes offered an exhibit and elicited testimony from multiple witnesses at trial demonstrating Hunt shared information about the Benkelman claim with the UIM adjustor.

was settled." Humes introduced evidence of the short period of time between Farmers settling the Benkelman claim and then settling the Mid-Century claims multiple times, and she argued this demonstrated improper leveraging by Farmers. Humes presented correspondence showing Hunt had authority to settle for policy limits within a week after Fox demanded it, but instead gave Farmers' attorneys permission to offer only the $40,000.

¶15 Humes' expert, attorney John Morrison, opined that Farmers had engaged in leveraging, stating,

> [W]hat it looks like is that Farmers is conscious of the fact that if they pay the $100,000 policy limits under Benkelman's policy, that they are going to be piercing the UIM coverage and potentially exposing Farmers to a higher amount of liability to Connie through the UIM . . . . [W]hat it looks like to me, and I don't see any other indication or explanation, is that it is the beginning of a process of trying to contain the claim inside the policy limits of the [Benkelman claim] so as not to reach the UIM [coverage].

Morrison also testified that Farmers impeded the UIM adjustor's investigation, did "not make[] fair and equitable offers" to Humes, and that Farmers should have paid Benkelman's policy limit by early 2016, stating that "there was at least two years in my opinion that [Farmers] unreasonably lowballed before making a reasonable settlement." When asked about Hunt's $40,000 offer, Morrison commented that "it was only a month or a month-and-a-half later that Farmers comes in and pays, not only the full policy limits, but significantly more than that." The testimony from Fox and Morrison clearly supported Humes' theories that Farmers leveraged and undervalued the Benkelman claim. Thus, Humes was clearly able to present factual evidence and expert testimony supporting her argument that Farmers "failed to promptly settle" the Benkelman claim "in order to influence settlements under" her UIM policy, in violation of § 33-18-201(13), MCA.

¶16 In response, Farmers presented evidence to support its defenses that its adjustors had a reasonable basis for disputing the causation and severity of Humes' injuries, and that liability in excess of the policy limits for the Benkelman claim was not reasonably clear, justifying the delay in both third and first-party settlements. *See* § 33-18-242(5) ("An insurer may not be held liable under this section if the insurer had a reasonable basis in law or in fact for contesting the claim or the amount of the claim, whichever is in issue."); § 33-18-201(13), MCA (insurance companies have a duty to promptly settle claims "if liability has become reasonably clear"). The jury received this evidence, including almost three days of testimony in Humes' case-in-chief, and ultimately found Farmers' adjustors had acted reasonably. We have held that a district court abuses its discretion when its exclusion of evidence in an UPTA trial "prevent[s] the [plaintiff] from establishing the full extent of the information possessed by [the insurers] at the time it adjusted [the] claim, and from answering defenses raised by [insurers]," resulting in prejudice. *Doctors' Co.*, ¶ 35. Here, Humes presented significant evidence opposing Farmers' primary defense that its adjustors had acted reasonably. In addition to the evidence described above, she introduced medical evaluations and examined adjustors about why they had disputed her injuries, introduced early settlement demands from Fox and challenged adjustors on why they rejected those demands, and used claims files and employee correspondence to confront adjustors about their evaluation process. We cannot fault the District Court's determination that Humes was not "prevented from putting on evidence supporting her theories regarding how the insurers valued her claim. Rather, the order at issue only prevented Humes from

using one piece of evidence—the settlement amount—and its omission did nothing to prejudice her case."

¶17 Humes acknowledges her appeal of the order denying her motion for a new trial "hinge[s] on the same legal issue" as her challenge of the court's evidentiary rulings. We hold that the District Court did not abuse its discretion in its evidentiary rulings; for the same reasons, it likewise did not abuse its discretion in denying Humes' motion for a new trial. Considering the evidence Humes was able to present, the District Court's denial was not "'so significant as to materially affect [her] substantial rights.'" *Simmons Oil Corp.,* ¶ 18 (quoting *Hansen*, 254 Mont. at 160, 835 P.2d at 753).

¶18 Affirmed.

/S/ JIM RICE

We concur:

/S/ JAMES JEREMIAH SHEA
/S/ BETH BAKER
/S/ INGRID GUSTAFSON
/S/ DIRK M. SANDEFUR