

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**October 30, 2008**

David R. Schanker  
Clerk of Court of Appeals

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**Appeal No. 2007AP2333**

**Cir. Ct. No. 2002CV1234**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**PATRICK MUNRO AND CLAUDETTE MUNRO,**

**PLAINTIFFS-APPELLANTS-CROSS-RESPONDENTS,**

**v.**

**GOLDEN RULE INSURANCE COMPANY,**

**DEFENDANT-RESPONDENT-CROSS-APPELLANT.**

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APPEAL and CROSS-APPEAL from a judgment of the circuit court for Milwaukee County: DAVID A. HANSHER, Judge. *Affirmed.*

Before Dykman, Vergeront and Lundsten, JJ.

¶1 LUNDSTEN, J. This case involves a dispute between Golden Rule Insurance and its insureds, Patrick and Claudette Munro, who sued Golden Rule for denying health insurance claims in bad faith. After a jury found that Golden

Rule did not engage in bad faith, the circuit court entered a judgment dismissing the Munros' complaint. The Munros appeal the judgment.

¶2 The appeal raises three issues: (1) whether Golden Rule's interpretation of the Munros' insurance policy is unreasonable; (2) whether the Munros were entitled to a determination of bad faith as a matter of law because Golden Rule denied the Munros' claims based solely on an unreasonable interpretation of their policy; and (3) whether the verdict should be set aside because the circuit court improperly failed to instruct the jury that Golden Rule's interpretation of the policy was unreasonable.

¶3 We agree with the Munros that Golden Rule's interpretation of the insurance policy is unreasonable. However, we conclude that the Munros were not entitled to a legal determination by the circuit court that Golden Rule denied their claims in bad faith based solely on an unreasonable interpretation of their policy. Finally, the Munros have failed to persuade us that the failure of the court to instruct the jury on the reasonableness of Golden Rule's policy interpretation warrants setting aside the verdict. Accordingly, we affirm the circuit court's judgment.<sup>1</sup>

### ***Background***

¶4 The Munros purchased a "major medical expense" policy from Golden Rule. Coverage under the policy included medically necessary "charges

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<sup>1</sup> Golden Rule cross-appeals, requesting that, if we reverse the circuit court's judgment for any reason advanced by the Munros, we also revisit the circuit court's decision denying Golden Rule's motion for summary judgment. Because we reject the Munros' proffered grounds for reversal, we do not reach Golden Rule's cross-appeal.

... made by a hospital for ... daily room and board and nursing services ... not to exceed the applicable maximum limits in Section 1.”

¶5 From 1999 through March 1, 2002, Claudette Munro incurred roughly \$290,000 in medical bills, which included several stays at St. Luke’s hospital. Golden Rule paid most but not all of these charges. As relevant here, the Munros filed a complaint with the state insurance commissioner, alleging that Golden Rule failed to pay \$9,551.78 in claims.

¶6 In response, a senior claims analyst at Golden Rule investigated and sent a letter to the Munros. The letter explained that the outstanding claims were for nursing services and that, in Golden Rule’s view, nursing services were not covered when, as in the Munros’ situation, a hospital bills those services separately from the hospital room. The letter further explained that, in cases like the Munros’, Golden Rule calculates benefits by checking national and “geographical area” averages for the most common semi-private room rates. If either of these rates is higher than the room rate the patient was charged, Golden Rule uses the higher amount to calculate benefits for room, board, and nursing services. Because these rates were higher than St. Luke’s room rates and Golden Rule paid the higher amount, Golden Rule had, in effect, already paid some of Claudette Munro’s nursing services. In addition, Golden Rule’s letter explained that, after receiving the Munros’ complaint to the insurance commissioner, Golden Rule contacted the hospital as part of its investigation and decided it could allow an additional portion of the Munros’ outstanding claims. The amount that remained in dispute was \$3,885.01.

¶7 With \$3,885.01 in claims unpaid, the Munros brought suit against Golden Rule. The Munros alleged bad faith, and were therefore required to prove

“the absence of a reasonable basis for denying benefits of the policy *and* the defendant’s knowledge or reckless disregard of the lack of a reasonable basis for denying the claim.” *Poling v. Wisconsin Physicians Serv.*, 120 Wis. 2d 603, 607, 357 N.W.2d 293 (Ct. App. 1984) (citation omitted; emphasis added).

¶8 Both parties moved for summary judgment. The circuit court, Judge Daniel A. Noonan, denied the motions. The court concluded that the insurance policy was ambiguous and that Golden Rule had no reasonable basis for denying the Munros’ claims based on the policy. The court also concluded, however, that there were one or more factual disputes remaining as to whether Golden Rule had knowledge of or recklessly disregarded the lack of a reasonable basis for denying the claims.

¶9 The case was transferred from Judge Noonan to Judge David A. Hansher. Before trial, Golden Rule moved to bar the Munros from arguing to the jury that Judge Noonan had previously ruled as a matter of law that Golden Rule had no reasonable basis for denying a portion of the Munros’ claims. Judge Hansher granted Golden Rule’s motion, concluding that Judge Noonan’s summary judgment decision contained inconsistencies and that the question of whether Golden Rule had a reasonable basis to deny the Munros’ claims was a question for the jury.

¶10 The Munros moved to exclude or limit the admissibility of the insurance policy, arguing that the interpretation of the policy was a question for the court. They argued that the circuit court was required to declare the meaning of the insurance policy because, if Golden Rule’s interpretation of the policy was adopted, then the Munros were completely excluded from coverage for nursing services. The circuit court denied the Munros’ motion.

¶11 At the close of evidence, the Munros moved for a directed verdict. They argued that Golden Rule engaged in bad faith as a matter of law because Golden Rule denied their claims based solely on its unreasonable interpretation of the insurance policy. The circuit court denied the Munros' motion, and the jury found that Golden Rule did not engage in bad faith. The circuit court entered judgment for Golden Rule.

### *Discussion*

#### *1. Whether Golden Rule's Interpretation Of The Policy Is Unreasonable*

¶12 The Munros argue that Golden Rule's interpretation of the insurance policy is unreasonable. This issue presents a question of law for our *de novo* review. *Aul v. Golden Rule Ins. Co.*, 2007 WI App 165, ¶17, 304 Wis. 2d 227, 737 N.W.2d 24, *review denied*, 2007 WI 134, 305 Wis. 2d 128, 742 N.W.2d 526 (No. 2006AP1035). We interpret the terms in an insurance policy to mean what a reasonable insured would understand them to mean. *Id.*

¶13 The pertinent coverage provision in the Golden Rule policy states that “[c]overed expenses are limited to charges ... made by a hospital for ... daily room and board and nursing services ... not to exceed the applicable maximum limits in Section 1.” Section 1 of the policy, the limits provision, reads as follows:

Limits:

Daily hospital room and board and nursing services[:]  
The hospital's most common daily semi-private room  
rate.

Thus, the policy provides that hospital charges for “daily room and board and nursing services” are covered, and that the limit on those charges is “[t]he hospital's most common daily semi-private room rate.”

¶14 Golden Rule interprets the policy as not covering *any* nursing services when nursing services are not included in a hospital room rate. We agree with the Munros that Golden Rule’s interpretation is unreasonable.

¶15 The policy does not define the phrase “most common daily semi-private room rate.” The parties appear to agree that it is a technical or industry term. Golden Rule’s interpretation of the phrase operates as a total exclusion on coverage for nursing services whenever a hospital, as here, itemizes charges for those services. No reasonable insured would expect coverage for nursing services in a hospital to fall away solely because of the happenstance that some hospitals itemize charges for those services instead of including them in room rates. To a reasonable insured, this would be a wholly arbitrary basis on which to deny coverage and one that is not required by any policy language.

## 2. *Whether Golden Rule Acted in Bad Faith As A Matter Of Law*

¶16 The Munros argue that Golden Rule acted in bad faith as a matter of law by denying their claims based solely on an unreasonable policy interpretation. The Munros cite no authority directly supporting this argument, and we reject it. Specifically, we disagree that an insurer *necessarily* knows or recklessly disregards the lack of a reasonable basis for denying claims whenever the insurer relies on an unreasonable interpretation of its policy to deny those claims. Although bad faith may often involve an insurer’s unreasonable interpretation, this is not, by itself, sufficient to show bad faith. *See Jones v. Secura Ins. Co.*, 2002 WI 11, ¶29, 249 Wis. 2d 623, 638 N.W.2d 575 (“Compared to California’s bad faith action ..., which requires an insured only to establish that the insurer unreasonably interpreted the insurance contract, Wisconsin’s bad faith claim is considerably more narrow.” (citation omitted)); *see also Mowry v. Badger State*

**Mut. Cas. Co.**, 129 Wis. 2d 496, 517, 385 N.W.2d 171 (1986) (“A finding of bad faith must not be measured solely against a backdrop that coverage was ultimately found to exist under the policy.”).

¶17 Rather, each case depends on its facts. “[T]o determine whether the insurer acted in bad faith the trier of fact measures the insurer’s conduct against what a reasonable insurer would have done *under the particular facts and circumstances* to conduct a fair and neutral evaluation of the claim.” **Weiss v. United Fire & Cas. Co.**, 197 Wis. 2d 365, 378, 541 N.W.2d 753 (1995) (emphasis added). Bad faith results when there is an “absence of honest, intelligent action or consideration based upon a knowledge of the facts and circumstances upon which a decision in respect to liability is predicated.” **Trinity Evangelical Lutheran Church & Sch.-Freistadt v. Tower Ins. Co.**, 2003 WI 46, ¶34, 261 Wis. 2d 333, 661 N.W.2d 789 (quoting **Anderson v. Continental Ins. Co.**, 85 Wis. 2d 675, 692, 271 N.W.2d 368 (1978)); *see also Anderson*, 85 Wis. 2d at 692 (the question is whether “a claim was properly investigated and whether the results of the investigation were subjected to a reasonable evaluation and review”).

¶18 Here, the facts before the jury included that, although Golden Rule interpreted its policy as excluding coverage for Claudette Munro’s nursing services, Golden Rule nonetheless covered most of the nursing services. Golden Rule covered at least some of the services from the outset and, after the Munros objected, Golden Rule investigated and made additional adjustments. These, along with many other facts and circumstances of the Munros’ case that we need not detail here, were relevant to the question of whether Golden Rule acted in bad faith.

¶19 The Munros seem to be arguing that the existence of a Golden Rule “Claims Bulletin” shows that Golden Rule knew that its interpretation of the insurance policy was unreasonable and, therefore, that Golden Rule committed bad faith as a matter of law. The claims bulletin authorizes adjusters to use various means to allow coverage for nursing services in situations where hospitals do not include nursing services in room rates. The Munros appear to argue that this bulletin is effectively an admission by Golden Rule that Golden Rule’s interpretation was unreasonable because the bulletin essentially tells adjusters to work around Golden Rule’s own policy interpretation. We agree that the bulletin supports the Munros’ argument, but disagree with the Munros that the bulletin compels a bad faith finding. Indeed, the bulletin cuts both ways. It also supports a finding that Golden Rule was attempting to ameliorate the effects of its policy language as Golden Rule construed it.

*3. Whether The Verdict Should Be Set Aside Because The Circuit Court Improperly Failed To Instruct The Jury That Golden Rule’s Interpretation Of The Policy Was Unreasonable*

¶20 The Munros argue that the circuit court erred by failing to definitively tell the jury the meaning of the insurance policy, instead allowing the jury to interpret the policy. The specifics of this argument are not clearly presented, but, as we understand them, the Munros are arguing that the circuit court should have instructed the jury that Golden Rule’s interpretation of the policy was unreasonable and that, because the jury was not so instructed and found for Golden Rule, the jury must have incorrectly concluded that Golden Rule’s interpretation of the policy was reasonable.

¶21 To prevail on this argument, the Munros must show that the circuit court erred by failing to properly instruct the jury and that the error affected the



Munros' substantial rights. *See Nommensen v. American Cont'l Ins. Co.*, 2001 WI 112, ¶49, 246 Wis. 2d 132, 629 N.W.2d 301 (“[Nommensen] has not shown that his ‘substantial rights’ were affected by the instruction, which is the burden he is required to meet on appeal.”); *see also id.*, ¶¶53-54. For an error to affect the “substantial rights” of a party, there must be a reasonable possibility that the error contributed to the outcome of the proceeding. *Id.*, ¶52. “A reasonable possibility of a different outcome is a possibility sufficient to ‘undermine confidence in the outcome.’” *Id.* (citation omitted).

¶22 We will assume, for argument’s sake, that the circuit court should have declared the meaning of the policy and should have instructed the jury that Golden Rule’s interpretation of the policy was unreasonable. Still, the Munros do not develop any argument explaining why such an error necessarily affected the verdict. It is not self-evident, as the Munros seem to believe, that the jury must have concluded that Golden Rule’s interpretation of the policy was reasonable.

¶23 First, the circuit court did not instruct the jury that it had to find Golden Rule’s interpretation of the insurance policy reasonable in order to find no bad faith. Rather, the circuit court instructed the jury, consistent with the law, on the somewhat different proposition that bad faith required the Munros to show that Golden Rule had “no reasonable basis ... to delay or deny the Munros’ claim for benefits under their policy.” The court further instructed the jury that bad faith depends on the facts as found by the jury and that the jury was required to determine whether Golden Rule adequately and honestly investigated and reviewed the Munros’ claims. The instruction does not focus attention on policy interpretation, but rather more broadly speaks of “no reasonable basis,” which may depend on insurance company actions in a particular case rather than on the resolution of a policy interpretation dispute.

¶24 Second, although the Munros argued to the jury that Golden Rule’s interpretation was unreasonable, Golden Rule did not respond by affirmatively arguing that it reasonably interpreted its policy. Rather, Golden Rule asserted only briefly that it could have denied benefits for all of Claudette Munro’s nursing services under a “strict” interpretation of the policy, and focused its jury argument on the proposition that Golden Rule nonetheless covered most of those services. Golden Rule drew the jury’s attention to all of the facts and circumstances of the case, and argued that what those facts and circumstances showed was that Golden Rule treated the Munros reasonably and fairly in light of its overall conduct. Thus, Golden Rule all but conceded that it would have been unreasonable to have outright denied payment for all of Claudette Munro’s nursing services.

¶25 Accordingly, we are unable to conclude, based on the Munros’ limited argument, that the jury must have interpreted the insurance policy and concluded that Golden Rule’s interpretation was reasonable. Without further explanation by the Munros, we do not overturn the verdict on this basis.

*By the Court.*—Judgment affirmed.

Not recommended for publication in the official reports.

