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Supreme Court of Kentucky

2020-SC-0284-DG

JAMES D. NICHOLS — APPELLANT

V.

ON REVIEW FROM COURT OF APPEALS
NO. 2019-CA-0071
JEFFERSON CIRCUIT COURT NO. 05-CI-08961

ZURICH AMERICAN INSURANCE COMPANY — APPELLEE

OPINION OF THE COURT BY JUSTICE VANMETER

REVERSING

In an insurance bad-faith cause of action, the claimant must prove the insurer (1) was obligated to pay the claim under the terms of the policy; (2) lacked a reasonable basis in law or fact for denying the claim; and (3) either knew it had no reasonable basis for denying the claim or acted with reckless disregard for whether such a basis existed. In the return of this case to this Court,[1] the primary issue we must resolve is whether the Jefferson Circuit Court, as affirmed by the Court of Appeals, erred in its conclusion that Zurich American Insurance Company had a reasonable basis to deny James Nichols'

[1] Our first opinion in this matter, *Nichols v. Zurich American Ins. Co.*, 423 S.W.3d 698 (Ky. 2014), held that a defense of mutual mistake was not available to Zurich in its effort to reform the policy so as to exclude underinsured motorist ("UIM") coverage.

claim for underinsured motorist benefits under a policy issued by Zurich to Nichols' employer. We hold that the trial court did err and therefore reverse the Court of Appeals and remand this matter to the Jefferson Circuit Court for further proceedings consistent with this opinion.

I. Factual and Procedural Background

The facts of this matter were extensively set forth in our previous opinion. *Nichols,* 423 S.W.3d at 701-02. In summary, Zurich issued a commercial fleet policy to Nichols' employer, Miller Pipeline Corporation, with an effective date of April 1, 2002. As we held, the policy when issued provided UIM coverage of $1,000,000. *Id.*

Following issuance of the policy, Nichols was severely injured, on June 4, 2002, in an automobile collision in Jefferson County. Over the ensuing two years and eight months, he and his counsel negotiated with Zurich over the UIM coverage. During this period, as documented by Zurich's files, no fewer than seven Zurich employees[2] examined the policy terms and acknowledged the policy included UIM coverage with $1,000,000 limits. Nichols' counsel was so informed and, as we previously observed, Nichols relied on this representation in settling with the tortfeasor. *Id.* at 705-06. As late as

[2] Those employees included Najwa Loh, Kevin McClanahan, Dennis Painter, Nancy Rummel, Larry Fry, Patrick Burnett and David Gusman. In fact, on August 2, 2004, Painter entered a note that Rummel "confirmed the policy period for this [date of loss] had the high [UM] limits. [T]he policy period post [date of loss] had reduced limits."

November 2004, Zurich, through David Gusman, discussed reaching a settlement with Nichols.

Only in February 2005 did Zurich, through Gusman, advise Nichols' counsel that the policy did not include UIM coverage.[3] In response, Nichols requested a certified copy of the policy, which Zurich was initially unable to produce. In fact, internal Zurich documents show that Gusman's request to Zurich underwriter Rummel produced the original policy indicating the UIM coverage. Rummel apparently refused to comply with Gusman's request for an endorsement showing no UIM coverage. Zurich ultimately produced an endorsement "effective 04/01/02" which was created in September 2005. Significantly, under the section for "Premium changes," this endorsement was stated to result in no additional premium and no return of premium, and, to remove any doubt, the second page provided "No Change in Premium."

In October 2005, Nichols filed this action to collect under the UIM provision, following Zurich's denial of coverage. Initially, Zurich defended on grounds that the endorsement explicitly excluded UIM coverage and filed a motion for summary judgment on that basis:

> Nichols assumes that Miller Pipeline had purchased UIM coverage from Zurich American for the truck. That is an incorrect assumption. Miller Pipeline expressly rejected UIM coverage in Kentucky [referring to the Common Policy Endorsement Number 002 to Zurich's policy]. Thus, Miller Pipeline had no UIM coverage for Nichols's accident and Nichols has no UIM claim against Zurich American. It's that simple.

[3] In Zurich's claim file, designated as "Znotes," Gusman, on February 2, 2005, stated that Zurich had previously set a reserve of $400,000 for Nichols' claim.

Zurich Memorandum in Support of Summary Judgment, August 11, 2006. The trial court, however, denied that motion noting a number of discrepancies: (1) Zurich never made any assertion of lack of UIM coverage until almost three years after the accident; (2) the policy set forth effective premiums for UIM coverage, but the changed endorsement made no mention of premium refund; (3) the rejection forms were dated sixteen days after the accident; and (4) no indication of when the coverage was alleged to have been rejected. Order Denying Summary Judgment, Nov. 28, 2006.[4] Almost three years later, and after Nichols filed a motion for summary judgment that the UIM coverage was included, Zurich changed strategy and asserted for the first time that the policy's UIM coverage was issued due to mutual mistake and should be reformed. Zurich Memorandum in Support of Summary Judgment, July 27, 2009, 2 (ironically, and contrary to its assertion three years earlier, Zurich now advised the trial court that resolution "[u]nfortunately, it is not that simple[]"). In October 2009, the trial court granted Zurich's motion to amend its answer to assert its claim of mutual mistake and to request the remedy of reformation. In 2010, the trial court granted Zurich's motion for summary judgment on this basis. Following this summary judgment, Nichols moved to amend his

[4] The case has been heard in Jefferson Circuit Court, Tenth Division. Judge Kathleen Voor Montano was the initial Jefferson Circuit Judge presiding over the case. Judge Montano died in 2008 and was replaced by Judge Irv Maze. Following Judge Maze's appointment to the Court of Appeals in 2012, Judge Angela McCormick Bisig has presided.

complaint to assert an insurance bad faith claim. The trial court denied this motion. A three-judge panel of the Court of Appeals affirmed these decisions.

On discretionary review to this Court, we unanimously reversed, holding that mutual mistake was not available as grounds to reform the policy since no facts indicated that Zurich, as insurer, was aware of Miller Pipeline's desire to exclude optional coverages, such as UIM and uninsured motorist coverage. 423 S.W.3d at 703-04; *see also Abney v. Nationwide Mut. Ins. Co.*, 215 S.W.3d 699, 704 (Ky. 2006) (mutual mistake analysis requires that the parties had actually agreed upon terms different from those expressed in the written agreement[]).

Significantly, we noted the following:

> Based upon these governing principles, to establish a mutual mistake justifying reformation in this case, there must be proof that both Miller Pipeline and Zurich had a meeting of the minds, "a common intent," to enter into an insurance contract that excluded UIM coverage but, because of their mistake, the resulting policy included "what neither intended"—*i.e.* UIM coverage. For a reformation of the policy under the doctrine of mutual mistake, both Miller Pipeline and Zurich must have intended to execute an insurance contract that excluded UIM, but executed instead a contract that did not conform to their shared intent. *That*, however, is not what the facts show.
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> Construed most favorably to Zurich, the evidence indicates that at the time the insurance contract was formed, the minds of the contracting parties, Miller Pipeline and Zurich, did not meet with the common intent to execute a policy that excluded UIM coverage. There is no evidence that when it issued the policy on April 1, 2002, Zurich intended for the policy to exclude UIM coverage but mistakenly issued a policy that included UIM coverage. The evidence is that Zurich intended to issue a policy with UIM coverage because it had not been informed of Miller Pipeline's desire to reject UIM coverage until *after* the accident occurred.

> The undisputed evidence reveals that before the policy was executed, Miller Pipeline's Director of Risk Management, Jeanne Fuqua, informed Kathy Kebo, who worked as a "producer" at M.J. Insurance, that Miller Pipeline wanted a policy that rejected UIM coverage in every state where it could legally do so. Miller Pipeline was one of her clients, and so she handled the procurement of the 2002 Miller Pipeline/Zurich insurance policy. Kebo testified to the general procedures for relaying "data" about M.J. Insurance's clients to insurance companies during the policy procurement process, but significantly, she did not testify that Miller Pipeline's intention to reject UIM coverage was communicated to Zurich in relation to the policy under review. Fuqua also testified that she did not inform Zurich about Miller Pipeline's desire to reject UIM. Thus, Miller Pipeline's intention about UIM coverage is well-established. But, there was no evidence at all that when the policy was executed, Zurich intended to provide a policy that excluded UIM coverage. Indeed, the record actually demonstrates exactly the opposite—that Zurich intended to issue the policy that it did in fact issue because it had no actual knowledge that Miller Pipeline wanted something different.

423 S.W.3d at 703–04.

Our summary of the record noted undisputed facts:

- Nichols was an employee of Miller Pipeline.
- Miller Pipeline obtained a policy of commercial automobile insurance from Zurich effective April 1, 2002—April 1, 2003.
- As conceded by Zurich, in its Response to Nichols's motion for discretionary review, "the original version of [the policy] provided that Miller Pipeline had $1,000,000 in Kentucky UIM coverage."
- Nichols was injured on June 4, 2002 while operating one of Miller Pipeline's insured vehicles.
- Miller Pipeline signed and submitted the forms to reject UIM coverage on June 20, 2002, sixteen days after the accident.
- Nichols properly employed the *Coots* process prior to asserting his claim for UIM coverage.

Id. at 707.[5] As a result, we held that Nichols was entitled to partial summary judgment on the issue of UIM coverage. *Id.* at 706-07.

As to Nichols' motion to amend his complaint to assert a bad faith claim, we noted that Zurich did not claim prejudice as a result of an untimely motion but rather defended on the merits. *Id.* at 707. We concluded by noting that due to our reversal and remand of the case to the trial court, "[t]he circumstances relevant to the issue of amending the complaint will have significantly changed. It is, therefore, appropriate that upon remand, the trial court shall re-evaluate Nichols's motion to amend the complaint and consider, in light of current circumstances, what "justice so requires" under CR[6] 15.01." *Id.* at 708.

On remand, the trial court entered an order granting Nichols' motion to amend his complaint to assert violations of KRS[7] 304.12-230-.12-235 (violation of Unfair Claims Settlement Practice Act ("UCSPA")), common law bad faith, and violation of KRS 304.12-010 (unfair or deceptive acts in the business of insurance). Zurich settled Nichols' UIM claim for the policy limits of $1,000,000, and the trial court entered an agreed order of partial dismissal regarding that original claim.

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[5] We stated that issues may remain as "to apportionment of fault for the collision, the nature and extent of Nichols's injuries, and the reasonable compensation therefore, but the foregoing establish that Nichols was entitled to partial summary judgment on the issue of UIM coverage." 423 S.W.3d at 707.

[6] Kentucky Rules of Civil Procedure.

[7] Kentucky Revised Statutes.

The parties then commenced discovery with respect to the bad faith claim. As to discovery of Zurich's claim file, Zurich objected, and Nichols filed a motion to compel which was denied by the Jefferson Circuit Court. Nichols also sought access to the entirety of Zurich's post-litigation communications and post-litigation conduct. The trial court granted Nichols' discovery requests in part, limiting it specifically to Zurich's settlement conduct. Thereafter, Nichols and Zurich filed cross motions for summary judgment and partial summary judgment. The trial court granted Zurich's motion for summary judgment on the bad faith claims, which Nichols appealed. The Court of Appeals affirmed the trial court and this Court then granted discretionary review.

II. Standard of Review

Summary judgments are legal questions and reviewed *de novo*. *Ashland Hosp. Corp. v. Lewis*, 581 S.W.3d 572, 576 (Ky. 2019). Granting summary judgment is only appropriate when there is "no genuine issue as to any material fact[,]" entitling the moving party to "judgment as a matter of law." CR 56.03. On review, "[t]he record must be viewed 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, Inc. v. Scansteel Serv. Ctr., Inc.*, 807 S.W.2d 476, 480 (Ky. 1991).

III. Analysis

When insurance companies investigate the applicability of policy provisions to individual claims, their conduct is governed by the UCSPA as well

as common law principles of good faith and fair dealing. KRS 304.12-230; *Indiana Ins. Co. v. Demetre*, 527 S.W.3d 12, 26 (Ky. 2017). Among other practices, the UCSPA prohibits parties from "[m]isrepresenting pertinent facts or insurance policy provisions"; "[f]ailing to acknowledge and act reasonably promptly upon communications"; and "[n]ot attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear[.]" *Id.* As we stated in *Davidson v. American Freightways, Inc.*, "[t]he gravamen of the UCSPA is that an insurance company is required to deal in good faith with a claimant, whether an insured or a third-party, with respect to a claim which the insurance company is *contractually obligated* to pay." 25 S.W.3d 94, 100 (Ky. 2000).

In turn, an insurance company acts in bad faith when the company is: (1) "obligated to pay the claim under the terms of the policy;" (2) "lack[s] a reasonable basis in law or fact for denying the claim;" and (3) "the insurer either knew there was no reasonable basis for denying the claim or acted with reckless disregard for whether such a basis existed." *Demetre*, 527 S.W.3d at 26 (citation omitted). During this case's first visit to this Court, we determined unequivocally that Zurich was obligated under the policy to pay for Nichols' UIM claim, thereby satisfying the first element of bad faith. *Nichols*, 423 S.W.3d at 706.

A. Zurich did not have a reasonable basis for denying the claim.

Zurich's fundamental defense asserts that Miller Pipeline's rejection of the UIM policy amounted to a material error on the face of the contract and

presented the court with a novel legal question, thereby making its denial of Nichols' claim reasonable. In support, Zurich relies heavily on *Guaranty National Insurance Co. v. George*, 953 S.W.2d 946 (Ky. 1997). In *Guaranty National*, the underlying insurance dispute involved two nearly identical 1988 Volvo trucks owned by the same family but used for different purposes. One of the Volvo trucks was the primary delivery vehicle in a mail service, while the other was a family vehicle. *Id.* at 947. The Georges intended to procure a commercial policy on the truck used in the mail service but because of an error by the insurance agent, the wrong vehicle was insured. *Id.*

When the commercial truck was involved in an accident, Guaranty National informed the Georges that it would provide them with counsel, pursuant to the contract, but that it reserved the right to deny coverage if the policy allowed. *Id.* Immediately, the Georges sued Guaranty National for bad faith, who countersued and sought a declaration of rights on the coverage question. The court granted partial summary judgment to the Georges on the coverage matter and Guaranty National quickly settled the original case. However, the Georges continued to pursue their bad faith claim. *Id.*

Zurich's reliance on *Guaranty National* is misplaced, however. In *Guaranty National*, a material mistake appeared on the policy: the wrong, but otherwise identical, family vehicle had been included on the face of the policy. Consequently, an immediate question was raised as to Guaranty National's liability under the policy provisions. Moreover, the fact that Guaranty National maintained "an independent action to determine liability coverage[]"

concurrently did not deprive the Georges of the policy benefits in any meaningful way.

By contrast, the contract involved in this action was complete, agreed upon, and paid in full by Miller Pipeline. Despite Zurich's present contentions to the contrary, no material error was presented on the face of the policy document. As we explained in *Nichols*, mutual mistake is an equitable remedy which requires "both Miller Pipeline and Zurich [to] have intended to execute an insurance contract that excluded UIM but executed instead a contract that did not conform to their shared intent." 423 S.W.3d at 703-04. Since Zurich always intended to provide the UIM coverage, no mutual mistake existed. *Id.* at 704. Moreover, because Zurich failed to act until well after Nichols had relied on the UIM policy provision to settle his claim with the tortfeasor, no question existed as to the availability of that remedy because Nichols' rights under the policy as a third party would have been "unfairly affected." *Id.* at 703 (quoting Restatement (Second) of Contracts § 155 (Am. Law Inst. 1981)).

Our conclusion also precludes Zurich's contention that the UIM rejection presented a novel legal question requiring the court's resolution. Unlike the situation discussed in *Empire Fire & Marine Insurance Co. v. Simpsonville Wrecker Service, Inc.*, 880 S.W.2d 886 (Ky. App. 1994), relied on by Zurich, the coverage here was clear. In *Empire*, the claimant was transporting a large piece of equipment which was damaged while driving under an overpass. *Id.* at 887. Empire Insurance initially denied the claim because it contended that the insurance policy only extended to the vehicle and not the equipment. *Id.*

While Empire Insurance was ultimately found liable under the terms of the contract, our Court of Appeals concluded that it acted reasonably because the terms of the policy were ambiguous and because the equipment damage presented a novel legal question under the general liability provisions of an insurance contract. *Id.* at 888.[8] In this case, the commercial policy between Miller Pipeline and Zurich was clear and included the UIM provision. Moreover, and crucially, mutual mistake is not a novel question before the court. Consequently, Nichols has presented sufficient evidence from which a jury could determine that Zurich did not act reasonably in denying his claim.

B. Zurich acted with reckless disregard.

We turn to the question of whether Zurich "either knew there was no reasonable basis for denying the claim or acted with reckless disregard for whether such a basis existed." *Demetre*, 527 S.W.3d at 26 (citation omitted). In doing so, we note that successful bad faith actions involving delays in payment must be accompanied by "an affirmative act of harassment or deception." *Motorists Mut. Ins. Co. v. Glass*, 996 S.W.2d 437, 452 (Ky. 1997). This means that the insured must present "proof or evidence supporting a reasonable inference that the purpose of the delay was to extort a more favorable settlement or to deceive the insured with respect to the applicable coverage." *Id.* at 452–53. In *Glass*, the insureds failed to prove bad faith

[8] Empire's argument was bolstered by the fact that the insured failed to procure an "all risks" endorsement which had traditionally been used in such instances and would have clearly provided coverage.

because *they* were responsible for the delays. At every step the insurers offered to pay their policy limits and were rebuffed. *Id.* By contrast, Zurich has been the constant source of delay in this litigation.

Additionally, much of Zurich's post-litigation behavior directly implicates KRS 304.12-230. For instance, Zurich's failure to respond to Nichols' *Coots* notice amounts to "[f]ailing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies"; as well as "[f]ailing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed[.]" KRS 304.12-230(2),(5).[9] Also, when Gusman, an adjuster employed by Zurich, was informed of Miller Pipeline's initial rejection of the UIM policy provision nearly three years had passed since the underlying accident occurred and notably Nichols had relied on Zurich's inaction to his detriment. Moreover, Gusman's subsequent behavior, refusing to send Nichols' counsel the full contract and instead sending him only the undated policy rejection, was in direct contravention to KRS 304.12-230(1), which commands parties not to "[m]isrepresen[t] pertinent facts or insurance policy provisions relating to coverages at issue[.]"[10] The underlying reality of Zurich's actions is inescapable. For four years after the accident Zurich failed to investigate, negotiate, or otherwise meaningfully

[9] Zurich's delay and ultimate denial is doubly perplexing because Zurich's internal communications clearly reflect its belief that the UIM policy provision was applicable and Zurich set aside $400,000 in reserve to settle the UIM claim.

[10] Instead, certain Zurich employees attempted for months to convince an adjuster to retroactively attach the undated UIM rejection to the original policy prior to sending Nichols' attorney the full documentation to which he was entitled.

interact with Nichols. Thereafter, Zurich continued to delay and litigate despite having no legal foundation upon which to base its case, only fulfilling its contractual obligations nine years after Nichols' accident. Nichols presents enough evidence to survive the motion for summary judgment.

C. The additional discovery requests.

Next, Nichols argues he is entitled to certain post-litigation discovery materials. Specifically, Nichols seeks the entire claim file for his case as well as any documents Zurich relied on when initially evaluating his claim. Nichols asserts that at least the second set of documents are necessary because Zurich failed to engage in any settlement discussions with Nichols for years, despite not asserting defenses such as reformation or mutual mistake during that time. We review the trial court's evidentiary decisions for abuse of discretion and will not disturb those decisions unless they are "arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Superior Steel, Inc. v. Ascent at Roebling's Bridge, LLC*, 540 S.W.3d 770, 787 (Ky. 2017).

In *Knotts v. Zurich Insurance Co.*, 197 S.W.3d 512 (Ky. 2006), we crafted an exception to the general prohibition on the admissibility of settlement behavior and litigation tactics found in KRE[11] 408. We predicated our decision in *Knotts* on the understanding that the insurer's duty of good faith to the insured does not end until the claim has been settled. *Id.* at 518. However, this Court declined to take a categorical approach by which all such possibly

[11] Kentucky Rules of Evidence.

admissible evidence is discoverable. Instead, we bifurcated the classes of potentially admissible evidence which arise during bad-faith litigation. The first class involves an insurance company's settlement behavior, and the second involves litigation tactics and strategies used on the insurance company's behalf. *Id.* at 519. Ultimately, we concluded that only evidence of an insurer's settlement behavior is admissible because the Rules of Civil Procedure provide adequate remedies for other litigation abuses. *Id.* However, even evidence of settlement behavior is not automatically admissible. Courts must be sure to carefully weigh the evidence's probative value against its prejudicial effect prior to admission. *Id.* at 523.

Recently, we applied this reasoning in a case in which the insured sought access to the insurer's claim file as well as evidence of the insurer's behavior during mediation. *Mosley v. Arch Specialty Ins. Co.*, 626 S.W.3d 579, 582 (Ky. June 17, 2021). This Court denied the insured's request for the claim file because "of the availability of trial court oversight[.]" *Id.* The mediation conduct, however, was properly admissible because "no procedural device under the law to remedy [the insurers'] potential bad-faith conduct that occurred at these mediations." *Id.*[12]

In this case, Nichols' attempt to reach the claim file fails for the same reasons that we expressed in *Mosley*. Zurich handed over large portions of its

[12] Ultimately, we determined that because Mosley only alleged "proper claim negotiation techniques" and not the "improper leveraging of claims" the mediation evidence would not have been probative since an insurer cannot act in bad faith by simply utilizing permissible settlement negotiation techniques. *Id.* at *593.

claim file and provided a privilege log for the remaining information which it was not disclosing. The trial court was the appropriate oversight authority and our rules of civil procedure provide adequate remedies for any litigation abuses. However, Nichols is entitled to the internal Zurich documents relating to the insurer's initial denial of his claim. Given the extraordinary delay between Nichols' notice to Zurich and Zurich taking any action, as well as Zurich's failure to meaningfully engage with Nichols for years before it ever sought reformation, evidence of Zurich's initial analysis regarding its own liability is highly probative to Nichols' bad-faith suit. We note that Zurich's behavior in this case is an extreme outlier and that in all circumstances trial courts must remain vigilant and cautious prior to admitting any post-litigation evidence. However, since Zurich simply opted out of engaging in the settlement process entirely, Nichols has no other remedy under our procedural rules.

D. Nichols is not a named insured person.

When conducting statutory interpretation "[o]ur primary goal is to discern the intent of the General Assembly, and we discern that intent, if at all possible, simply from the language the General Assembly chose[.]" *Ballinger v. Commonwealth*, 459 S.W.3d 349, 354 (Ky. 2015). However, while we are charged with liberally construing statutes to "promote their objects," KRS 446.080(1), we cannot "add to or subtract from the statutory language." *Ballinger*, 459 S.W.3d at 354. When the General Assembly's intent is not "perfectly apparent from the statute alone, we have recourse to the statutory context; to the legislative history, if there is any; [and] to the 'historical settings

and conditions out of which the legislation was enacted[.]'" *Id.* at 355 (quoting *Commonwealth v. Howard*, 969 S.W.2d 700, 705 (Ky. 1998)).

Nichols asserts that he is entitled to the twelve percent interest rate in KRS 304.12-235(2) for Zurich's failure to make a "good faith" attempt to settle the claim within thirty days per KRS 304.12-235(1).[13] Zurich counters by arguing that only Miller Pipeline qualifies as a "named insured person" as contemplated by KRS 304.12-235(1). We addressed the meaning of an "insured person" in *Glass*, in which we concluded that KRS 304.12-235(3)'s provision for attorney fees only applied "to an insurer's negotiations with its own policyholder or the policyholder's health care provider." 996 S.W.2d at 455. Since Nichols is neither the named insured individual nor a healthcare provider he is not entitled to the interest or attorney fees. Consequently, the

[13] The full language of KRS 304.12-235 states:

> (1) All claims arising under the terms of any contract of insurance shall be paid to the named insured person or health care provider not more than thirty (30) days from the date upon which notice and proof of claim, in the substance and form required by the terms of the policy, are furnished to the insurer.
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> (2) If an insurer fails to make a good faith attempt to settle a claim within the time prescribed in subsection (1) of this section, the value of the final settlement shall bear interest at the rate of twelve percent (12%) per annum from and after the expiration of the thirty (30) day period.
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> (3) If an insurer fails to settle a claim within the time prescribed in subsection (1) of this section and the delay was without reasonable foundation, the insured person or health care provider shall be entitled to be reimbursed for his reasonable attorney's fees incurred. No part of the fee for representing the claimant in connection with this claim shall be charged against benefits otherwise due the claimant.

Court of Appeals did not err by affirming the trial court's grant of Zurich's motion for summary judgment with regards to attorney fees and interest.

IV. Conclusion

For the foregoing reasons we reverse the Court of Appeals' opinion with regards to Nichols' bad faith claims and remand to the Jefferson Circuit Court for further proceedings consistent with this opinion.

All sitting. All concur.

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