

IN THE COURT OF APPEALS OF IOWA

No. 2-507 / 91-1966

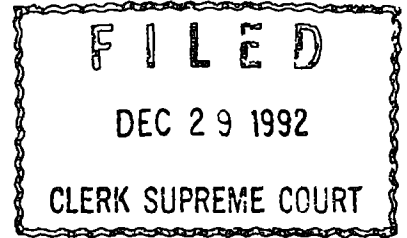
RICHARD MILLS and LAUREEN MILLS,

Plaintiffs-Appellants,

vs.

FEDERATED RURAL ELECTRIC INSURANCE CORPORATION,

Defendant-Appellee.



Appeal from the Iowa District Court for Dallas County,
Darrell Goodhue and Peter A. Keller, Judges.

The Mills appeal from a district court order granting the insurance company's motion for summary judgment and dismissing the Mills' claims for bad faith failure to settle. **AFFIRMED.**

David J. Welu of Welu & Welu, Redfield, for appellants.

Stephen R. Eckley of Duncan, Jones, Riley & Finley, P.C., Des Moines, for appellee.

Heard by Oxberger, C.J., and Donielson and Sackett, JJ. Schlegel, J., takes no part.

SACKETT, J.

Plaintiffs-appellants Richard Mills and Laureen Mills appeal following a trial court order dismissing their claims against defendant-appellee Federated Rural Electric Insurance Corporation for bad faith in failing to settle a liability claim plaintiffs had against defendant's insured, REC. We affirm.

In March 1986, a fire destroyed a farrowing barn on plaintiffs' farm. The fire was caused by a downed electric transmission wire. Plaintiffs purchased their electrical service from and were members of REC. REC was insured for liability in such cases by defendant. Defendant hired an independent adjuster to investigate the loss. The adjuster determined the fire was caused by the downed wire. Plaintiffs submitted a claim to defendant for \$125,484.29 for replacement of the farrowing barn and personal property, and compensation for lost profits. In October 1986, defendant offered plaintiffs \$90,000 to settle their claim. Plaintiffs rejected the offer and sued the REC. After a jury trial, plaintiffs were awarded \$30,062. Plaintiffs appealed and the Iowa Supreme Court considered the appeal in Mills v. Guthrie County Rural Elec. Coop., 454 N.W.2d 846 (Iowa 1990). In Mills the court addressed a number of issues raised by plaintiffs in the appeal. This included plaintiffs' claim for punitive damages, id. at 849, a claim of plaintiffs against REC for failure to

settle, id., a claim against REC for emotional distress, id. at 849-50, plaintiffs' claim for lost profits, id. at 850, the trial court's refusal to submit lost profits, id. at 850-51, the trial court's failure to allow recovery for replacement cost, id. at 852, and the failure to submit recovery on the negligence claim for emotional distress. Id..

The trial court was affirmed on all issues addressed by the supreme court except one. While finding the offers of proof on lost profits made by plaintiffs may have been too broad, the supreme court determined the trial court, rather than precluding any proof of lost profits as a measure of loss of use, should have pared either the claim, the evidence, or both so that the jury had only the elements of loss properly recoverable. Mills at 851.

Affirming in part and reversing in part, the court remanded the case for a new trial on the damage issue. Before the case was tried on remand, defendant settled the case with plaintiffs in 1990 for \$147,950.

Plaintiffs then filed suit against defendant contending (1) defendant had committed bad faith and intentional infliction of emotional distress, (2) defendant breached a duty created by Iowa Code section 668.9, (3) defendant intentionally interfered with contractual relations, (4) defendant intentionally interfered with the prospective business advantage, and (5) defendant breached public

policy. Ultimately, the trial court dismissed plaintiffs' claims on defendant's motion for summary judgment.

Plaintiffs have appealed contending (1) they should have first party status in pursuing their bad faith claims, (2) the trial court erred in not striking defendant's affidavits and in allowing plaintiffs' discovery requests, (3) the trial court erred in determining there was not substantial evidence of their intentional tort theories, and (4) the trial court should have recognized a third-party bad faith claim against defendant. We affirm.

This matter comes before us on an appeal from a motion for summary judgment. Summary judgment is only appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. See Iowa R. Civ. P. 237(c); Farm Bureau Mut. Ins. Co. v. Milne, 424 N.W.2d 422, 423 (Iowa 1988). Defendant is the moving party and has the burden to show the nonexistence of a material fact. See Milne, 424 N.W.2d at 423. We view the evidence in the light most favorable to plaintiffs, the resisting party. Thorp Credit, Inc. v. Gott, 387 N.W.2d 342, 343 (Iowa 1986).

Plaintiffs first contend they were first-party claimants because they are members of REC. Defendant says plaintiffs are not first-party claimants, but if they are,

they are not covered by the terms of the policy. We find it unnecessary to address the issue of whether plaintiffs are first-party claimants because if plaintiffs were policyholders, and we do not by this statement infer in any way they were, this loss would not have been covered as a first-party claim by the policy defendant wrote for REC. The policy defines "persons insured" and says:

3. any other person or organization but only with respect to their liability because of acts of omissions of an insured . . . (emphasis added).

The policy obligates defendant to provide insurance coverage to a person found liable due to actions or omissions of REC. It is liability coverage, not property damage coverage. Plaintiffs have not been found liable for any act or omission.

We address the balance of plaintiffs' claims collectively. Defendant offered an amount at or near the time of the fire that was comparable to the ultimate settlement figure when considering interest. A review of Mills makes it very clear there were a number of differences between plaintiffs and defendant about the elements of and the value of plaintiffs' claim. While the supreme court determined plaintiffs should have had lost profits submitted, they also noted plaintiffs' proof may have been too broad and they rejected a number of plaintiffs' claims for additional relief. Mills at 852. There were a number of fairly debatable issues. See M-2

Enters., Inc. v. Hawkeye-Security Ins. Co., 318 N.W.2d 408, 412-16 (Iowa 1982). The trial court was correct in dismissing plaintiffs' action.

The uncontroverted evidence is that defendant had the claim properly investigated. Defendant made a substantial offer to plaintiffs. There were genuine disputes between plaintiffs and defendant on a number of issues relevant to plaintiffs' claim. Plaintiffs were offered \$90,000 in 1986 and settled for \$147,950 nearly four years later. The ultimate settlement figure closely approximated the offer with accrued interest. There is absolutely no evidence of bad faith. See Dolan v. Aid Ins. Co., 431 N.W.2d 790, 794-95 (Iowa 1988).

We note too in examining the holding in Mills, 454 N.W.2d at 849, that some of plaintiffs' claims, if they had been viable, were litigated in that case and issue preclusion may apply.

We have considered all of the plaintiffs' claims and have either addressed them or found them to be without merit.

AFFIRMED.