

ARKANSAS COURT OF APPEALS HELD THAT IN AWARDING SUMMARY JUDGMENT TO APPELLEE, THE CIRCUIT COURT MADE FINDINGS OF FACT AS TO APPELLEE'S STATE OF MIND AND ITS REASONABLENESS OF INTERPRETATION OF POLICY AND QUESTIONS OF THOSE TYPE SHOULD BE DECIDED BY THE JURY.

The case was brought before the Arkansas Court of Appeals after the circuit court awarded summary judgment to the defendants.<sup>1</sup> The appellants sued the appellee, a life insurance company, for breach of contract, bad faith, and fraudulent suppression, claiming that the appellee had underpaid benefits. Initially the appellee paid "actual charges" billed by healthcare providers, but later unilaterally changed their payment policy to "fee-scheduled" charges that providers receive from claim payers.<sup>2</sup>

The Appellee moved for summary judgment and, in response, appellants offered numerous definitions of "actual charges," in depositions from several witnesses, including a "certified legal nurse consultant."<sup>3</sup> The circuit court dismissed the breach of contract and fraudulent-suppression claims because the parties had settled them prior to trial. The court granted summary judgment to appellee with regard to the bad-faith and punitive damages claims. The circuit court held that there was no evidence that the appellee engaged in affirmative misconduct, that the conduct was not "dishonest, oppressive, or malicious" and that the actions were not carried out with "hatred, ill-will, or with a spirit of revenge."<sup>4</sup>

On appeal, the Court must only decide if summary judgment was appropriate based on the evidence presented by the appealing party left a question of material fact.<sup>5</sup> A trial court may only grant summary judgment when the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits "clearly show that there are no genuine issues of material fact to be litigated."<sup>6</sup> In making the decision, the court views the evidence in a light most favorable to the non-moving party.<sup>7</sup> Summary judgment should be denied if reasonable minds might reach different conclusions from the undisputed facts.<sup>8</sup> "Bad faith has been defined as dishonest, malicious, or oppressive conduct in order to avoid a just obligation . . . , carried out with a state of mind characterized by hatred, ill will, or a spirit of revenge."<sup>9</sup> The bad faith standard can be difficult to prove because there must be affirmative misconduct and not just a mere denial of a claim.<sup>10</sup>

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<sup>1</sup> Edgin v. Central United Life Ins. Co., 2013 Ark. App. 233, 1 (2013).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 1–2.

<sup>4</sup> *Id.* at 2.

<sup>5</sup> *Id.* at 2.

<sup>6</sup> *Id.* at 2 (citing Grayson & Grayson, P.A. v. Couch, 2012 Ark. App. 20, 388 S.W.3d 96).

<sup>7</sup> Edgin, 2013 Ark. App. 233, 2–3.

<sup>8</sup> *Id.* at 3.

<sup>9</sup> *Id.* at 3 (citing Watkins v. S. Farm Bureau Cas. Ins. Co., 2009 Ark. App. 693, 370 S.W.3d 848).

<sup>10</sup> *Id.* at 3.

In the case before the court, the insurance contract did not define the disputed term, “actual charges.”<sup>11</sup> The Appellee decided that it was overpaying after reviewing the issue with private consultants and staff attorneys, who could find no legal authority on the subject, and promptly changed their payment policy.<sup>12</sup> The Appellee did not inform its customers until at least five months after the changes were implemented.<sup>13</sup>

The Court held that an insurance company’s refusal to pay a claim cannot constitute malicious conduct by itself, but when analyzed against the backdrop of the circumstances surrounding the change of the policy that led to the denial of the claims, the Court found that there could be an “actual controversy.”<sup>14</sup> For this reason, the Court reversed and remanded the circuit court’s summary judgment in favor of Central United Life Insurance Company because the circuit court made findings of fact as to appellee’s state of mind and reasonableness of their policy changes that are best left for a jury to decide.<sup>15</sup>

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<sup>11</sup> *Id.* at 3.

<sup>12</sup> *Id.* at 3–4.

<sup>13</sup> Edgin, 2013 Ark. App. 233, at 4.

<sup>14</sup> *Id.* at 4.

<sup>15</sup> *Id.* at 4.