

[Cite as *Toman v. State Farm Mut. Auto. Ins. Co.*, 2015-Ohio-3351.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102483

NICOLE TOMAN, ET AL.

PLAINTIFFS-APPELLANTS

vs.

**STATE FARM MUTUAL AUTOMOBILE INSURANCE
COMPANY**

DEFENDANT-APPELLEE

JUDGMENT:
REVERSED AND REMANDED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-13-809460

BEFORE: E.A. Gallagher, J., Jones, P.J., and S. Gallagher, J.

RELEASED AND JOURNALIZED: August 20, 2015

ATTORNEY FOR APPELLANTS

Michael D. Goldstein
Goldstein & Goldstein Co., L.P.A.
55 Public Square, Suite 2075
Cleveland, Ohio 44113

ATTORNEY FOR APPELLEE

Gregory H. Collins
Collins, Roche, Utley & Garner, L.L.C.
1225 West Market St.
Akron, Ohio 44313

EILEEN A. GALLAGHER, J.:

{¶1} Plaintiffs-appellants Nicole and Michael Toman (the “Tomans”) appeal from the decision of the Cuyahoga County Court of Common Pleas granting partial summary judgment in favor of defendant-appellee State Farm Mutual Automobile Insurance Company (“State Farm”) on the Tomans’ bad faith claim. The Tomans contend that a genuine issue of material fact exists as to whether State Farm lacked a reasonable justification for its failure to make Nicole Toman an offer to settle her underinsured motorist (“UIM”) claim under her automobile insurance policy with State Farm and that the trial court, therefore, erred in granting partial summary judgment in favor of State Farm. For the reasons that follow, we reverse the trial court’s judgment.

{¶2} At around midnight on January 23, 2011, 27-year-old Nicole Toman (“Nicole”) was driving home with her husband, Michael Toman (“Michael”), and her seven-year-old stepson when they witnessed an automobile accident on Interstate 90 in Euclid, Ohio. Michael, a firefighter-paramedic, asked Nicole to pull over so he could offer assistance to the individuals involved in the accident. Nicole pulled her vehicle onto the shoulder of the highway and put on her hazard lights. Michael exited the vehicle, and Nicole and her stepson remained in the vehicle while Michael went to assist the individuals involved in the accident. Nicole did not remove her seat belt.

{¶3} While Nicole and her stepson were waiting in the vehicle, a vehicle driven by Daniel Perme struck Nicole’s vehicle from behind. Nicole testified that when Perme’s

vehicle struck her vehicle, she “was projected forward and right.” She testified that her right side struck the right armrest “where the seat belt connects” and that her right knee struck the center console. Nicole immediately felt pain in her right hip and knee. As a result of the accident, the vehicle, a 2005 Honda Element, was “totaled.”

{¶4} Nicole testified that she injured her neck, back, right knee, left thumb and abdomen as a result of the accident. She was diagnosed with a sprain-strain of her neck, a deep tissue or soft tissue injury of her back, a sprain-strain and pulled ligaments in her left thumb, a deep bruise to her right hip and a deep bruise or strain to her right knee. Nicole testified that prior to her accident, she had never had any problems with these areas of her body and had never made any complaints to any medical provider regarding them.

{¶5} Following the accident, Nicole was transported by ambulance to the emergency room where she was treated for neck, head, knee and hip pain.¹ An x-ray was performed on her right knee and she was diagnosed with a deep bruise. Her knee was wrapped, she was given crutches and she was released with instructions to follow up with her primary care physician.

{¶6} A couple of days later, Nicole saw her primary care physician. He performed an x-ray of her neck, gave her a neck brace (which she wore for two weeks) and he recommended massotherapy. Due to continuing pain in her neck, back, right hip,

¹Nicole’s stepson was also examined at the emergency room but was not injured in the accident.

right knee, abdomen and thumb, over the next several months, Nicole continued to seek medical treatment for the injuries she sustained in the accident, including office visits and massotherapy with her primary care physician, physical therapy, an emergency room visit for abdominal pain and an MRI and an orthopedic surgery consult for pain and ligament damage to her left thumb. Nicole testified that at the end of May 2011, she discontinued the physical therapy because she “wasn’t getting anything out of it.” From May 2011 to January 2012, Nicole saw her primary care physician occasionally for the pain she was experiencing but sought no other treatment.

{¶7} At the time of the accident, Nicole worked part-time for a cleaning company and was attending classes full-time to become a medical assistant. She testified that, as a result of the accident, she missed “about a week” of classes (but was able to make up the course work) and two weeks of work resulting in approximately \$100 in lost wages.

{¶8} At the suggestion of one of her clinical teachers, in January 2012, Nicole began to see a chiropractor for continued neck and back pain. In a May 2012 report, chiropractor Dr. William Musser stated that Nicole was “suffering with mechanical neck and back pain” and “has signs of a severe lumbrosacral sprain/strain, which has left her with persistent nerve and muscle irritation in the lower lumbar spine” as well as “signs and symptoms of a significant cervical sprain/strain type injury, which has left her with a complete reversal of the normal cervical curve and moderate mechanical neck pain and headaches.” Although he indicated that “overall” Nicole had improved since she had begun treating with him (having undergone a total of 23 treatments from January 5, 2012

through May 31, 2012), he stated that “her pain is easily aggravated with simple activities” and that she was “presently being treated at a frequency of once per week.” Dr. Musser stated that, in his opinion, “based on reasonable clinical certainty,” Nicole’s neck and back pain were “directly related” to the accident.

{¶9} During her deposition in March 2014, Nicole testified that she was still receiving chiropractic treatments with varying frequency based on her activity levels. Nicole testified that the chiropractic treatments she received typically provided relief from her symptoms for “about five to seven days” but that, consistently, “right around that fifth day,” she begins experiencing headaches or backaches. Nicole testified that she anticipated continuing with her chiropractic treatments and that the “plan” was to get her to a point where she could experience “complete relief” but that her chiropractor had not yet indicated when that might be.

{¶10} Nicole testified that her injuries from the accident affected both her work as a medical assistant and her personal life and activities. With respect to the impact of the accident on her work, Nicole testified that her neck and back are “weaker” because of the accident and that being on her feet all day “aggravates” this condition. She also testified that “carrying things * * * is a tough challenge.” With respect to her personal life, Nicole testified that she can no longer play basketball, go motorcycle riding or sledding or do “any of the other stuff that requires * * * sitting, that there could be pressure on my back.” She also testified that she no longer drives on the highway due to fear from the accident.

{¶11} At the time of the accident, Nicole was insured under an automobile insurance policy issued by State Farm. The policy included \$100,000 per person uninsured/underinsured motorist coverage and \$10,000 of medical payments coverage. Perme's insurer offered and, with State Farm's consent, Nicole accepted its policy limits of \$12,500. State Farm paid Nicole \$13,150 for the damage to her vehicle, agreed to waive its subrogation rights to the \$12,500 Nicole received from Perme's insurer and issued payments under Nicole's medical payments coverage, exhausting the policy's \$10,000 "med-pay" limits.

{¶12} Nicole thereafter submitted a claim for UIM benefits.² In December 2012, Nicole's attorney submitted her medical bills and records to State Farm including reports from her chiropractor regarding the results of his examination, findings, diagnoses and course of treatment in support of her UIM claim. As of December 2012, Nicole had incurred over \$14,000 in medical bills and expenses related to the accident.

{¶13} On March 18, 2013, Nicole's counsel sent a letter to State Farm, inquiring as to the status of her UIM claim.³ On March 21, 2013, Thomas Ash, the State Farm claims representative assigned to handle Nicole's UIM claim, responded:

Based on the medical documentation submitted to date on behalf of your client Nicole Toman it appears that she has been fully compensated for her

²There is no dispute that Nicole had UIM coverage under her insurance policy with State Farm for the damages she sustained in the accident.

³Neither a copy of this letter nor counsel's submission to State Farm in December 2012 is included in the record. Accordingly, it is unknown exactly what information was communicated or provided to State Farm with respect to Nicole's UIM claim.

injuries resulting from the * * * motor vehicle accident. In my review of the claim file I note that she has collected \$10,000 under her medical payments coverage as well as \$12,500 from the underlying liability carrier * * *.

Ash concluded his letter with a request that he be contacted “[i]f you have any questions and would like to discuss this matter further.”

{¶14} Ash, a State Farm claims representative for over 31 years, testified that he first became involved with Nicole’s file as a potential UIM claim on February 2, 2011.⁴ He testified that on that date he contacted the claims representative for Perme’s insurer and learned that Perme had only state-mandated minimum coverage. Ash confirmed that Perme was determined to be “100 percent at fault” and that no negligence was attributed to Nicole for the accident.

{¶15} Ash testified that, after Nicole submitted her UIM claim, it was his responsibility to first set an “injury range of valuation” for the claim and then attempt to settle the claim within that range. He testified that setting an injury range of valuation is not “an exact art” because “[t]he only person that could establish what the claim is worth is a jury.” He testified that he does not use any computer software or follow any particular guidelines or formulas in establishing an injury range of valuation because “every claim will be totally different.” He testified that he believes that his evaluation

⁴Ash testified that he has exclusively handled Ohio uninsured/underinsured motorist claims for the last seven years and that other claims representatives, therefore, handled Nicole’s claims for medical payments coverage and collision coverage for the damage to her vehicle.

and settlement offers are generally in line with what juries are awarding injured parties because “[m]ost of my cases settle without lawsuits, with or without attorneys.”

{¶16} In this case, Ash set the injury range of valuation for Nicole’s UIM claim at \$12,000 to \$25,000. Ash testified that his valuation was based on “[t]he medical bills, the injuries, the diagnos[es], severity of the impact, *Robinson v. Bates* information,⁵ any narrative reports, [and] any other additional medical documentation supplied to [Ash],” including that Nicole was still treating with a chiropractor for nearly two years after the accident. However, Ash did not explain specifically how he used these materials and information to establish the injury range of valuation for Nicole’s injuries in this case other than to state that he evaluates each claim “on an individual basis” based on his education, experience and training⁶ and that the injury range of value represents his “personal opinion” of “[w]hat I believe the claim is worth.”

{¶17} Based on his injury range of valuation and the fact that “the moneys that [Nicole] had been paid and [State Farm] had waived” — i.e., the \$12,500 Nicole received

⁵*Robinson v. Bates* refers to the Ohio Supreme Court’s decision in *Robinson v. Bates*, 112 Ohio St.3d 17, 2006-Ohio-6362, 857 N.E.2d 1195, paragraph one of the syllabus, in which the court held that both the original medical bill and the amount accepted as full payment of that bill are admissible to prove the reasonableness and necessity of charges for medical and hospital care and that the collateral-source rule does not bar evidence of write-offs, i.e., the difference between the original amount of a medical bill and the amount accepted by the medical provider as the bill’s full payment. In this case, there was evidence that State Farm paid \$10,000 in med-pay benefits under the policy, that Nicole’s original medical bills totaled approximately \$14,000 as of December 2012 and that write-offs reduced that amount to \$6,346.

⁶Although Ash testified that he received annual training in claims handling, it is unclear from the record what, if any, training State Farm provided with respect to valuing injuries or UIM claims.

from Perme's insurer and State Farm's waiver of its subrogation rights to the \$10,000 it paid in med-pay benefits, totaling \$22,500 — are within "the high end" of that range, Ash testified that he decided to make no offer of payment to Toman on her UIM claim. Ash acknowledged that he has a duty "to settle each claim for a fair value" and testified that he believed the offer he made on Nicole's UIM claim was "for fair value."

{¶18} Ash's decision to offer Nicole nothing based on his "personal opinion" of the value of her injuries went unchecked. Ash testified that although his team manager reviewed his files periodically and would have, at that time, reviewed Ash's injury range of valuation for Nicole's claim, he did have authority to offer up to \$10,000 to settle claims without approval and no one at State Farm "approved" his decision not to offer Nicole any money on her UIM claim.

{¶19} Ash claimed that when he sent his March 21, 2013 letter to Nicole's counsel, he fully expected to hear back from him and to engage in continued settlement discussions with respect to Nicole's claim. Ash claimed that the use of the word "appears" in his March 21, 2013 letter — i.e., that "it *appears* that [Nicole] has been fully compensated for her injuries" (emphasis added) — was significant and that he purposefully used that term to indicate that he did not regard the "settlement" communicated in his March 21, 2013 letter as State Farm's last and best offer, but rather, that he had "left the door open" for further communications regarding the issue. To that end, Ash testified that he left Nicole's counsel a voicemail message asking him to respond to his letter. Ash testified that when he did not receive a response to his March

21, 2013 letter or a return phone call from Nicole's counsel to discuss his "settlement offer," he "presumed" Nicole and her counsel "were in line with it."

{¶20} On June 21, 2013, the Tomans filed a complaint for UIM coverage/med-pay benefits, insurer bad faith and breach of contract against State Farm, alleging that State Farm had breached its contract of insurance and its obligation to exercise good faith in the handling and payment of Nicole's UIM claim. Michael also asserted a claim for loss of consortium. With respect to their bad faith claim, the Tomans alleged that State Farm had acted in bad faith by (1) failing to pay Nicole's UIM claim, (2) "[f]ailing to negotiate in good faith and make a reasonable, good faith tender based on the extent of [her] injuries and medical bills," (3) "[a]ttempting to enforce contractual terms in violation of Ohio law and to [Nicole's] detriment," (4) refusing to pay Nicole's claim without "furnishing reasonable justification for same" and (5) "[o]therwise refusing to negotiate, handle and adjust [her] claims in good faith." The Tomans alleged that as a result of State Farm's bad faith, they "incurred additional expenses" and suffered "serious emotional distress and injury." The Tomans sought to recover compensatory damages "up to the maximum [UIM] and medical payment benefits available," prejudgment interest and costs and punitive damages on their bad faith claim. State Farm filed an answer denying the material allegations of the complaint and asserting various affirmative defenses.

{¶21} On July 30, 2014, State Farm filed a motion for partial summary judgment on the Tomans' bad faith claim. State Farm argued that the undisputed facts could not

support a finding that State Farm lacked a reasonable justification for its decision not to offer Nicole additional money on her UIM claim as a matter of law. In support of its motion, State Farm attached excerpts from Nicole's and Ash's depositions. The Tomans opposed the motion. In their opposition, the Tomans cited Nicole's and Ash's deposition testimony and attached copies of photographs and other documents evidencing the damage to Nicole's vehicle, a summary of Nicole's medical expenses and select medical records, an affidavit from Nicole regarding her injuries and dealings with State Farm, excerpts of her insurance policy with State Farm, Ash's March 21, 2013 letter and State Farm's "Auto Claim File."

{¶22} On December 8, 2014, the trial court granted State Farm's motion for partial summary judgment on the bad faith claim, concluding that State Farm "as a matter of law, * * * has reasonably justified its evaluation of the plaintiffs['] claims, and did not act in bad faith by not offering plaintiffs additional compensation on plaintiff[s'] underinsured motor vehicle claim."

{¶23} The Tomans filed a motion to amend the December 8, 2014 judgment entry, requesting that the court add Civ.R. 54(B) language to the order indicating that "there is no just cause for delay." The motion was unopposed, and on January 5, 2015, the trial court issued an amended journal entry, including the requested Civ.R. 54(B) language.

{¶24} The Tomans appeal the trial court's judgment, presenting the following assignment of error for review:

The trial court erred in granting appellee State Farm Mutual Automobile Insurance Company's motion for summary judgment.

Standard of Review

{¶25} An appeal of a trial court's summary judgment ruling is subject to a de novo standard of review. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 671 N.E.2d 241 (1996); *N.E. Ohio Apt. Assn. v. Cuyahoga Cty. Bd. of Commrs.*, 121 Ohio App.3d 188, 192, 699 N.E.2d 534 (8th Dist.1997). We accord no deference to the trial court's decision and independently review the record to determine whether summary judgment is appropriate.

Summary Judgment Standard

{¶26} Under Civ.R. 56, summary judgment is appropriate when (1) no genuine issue exists as to any material fact, (2) the party moving for summary judgment is entitled to judgment as a matter of law and (3) viewing the evidence most strongly in favor of the nonmoving party, reasonable minds can reach only one conclusion, which is adverse to the nonmoving party.

{¶27} The moving party carries an initial burden of setting forth specific facts that demonstrate its entitlement to summary judgment. *Dresher v. Burt*, 75 Ohio St.3d 280, 292-293, 662 N.E.2d 264 (1996). If the moving party fails to meet this burden, summary judgment is not appropriate; if the moving party meets this burden, summary judgment is appropriate only if the nonmoving party fails to establish the existence of a genuine issue of material fact. *Id.* at 293.

Bad Faith Claim

{¶28} An insurer has a duty to act in good faith in the handling and payment of an insured's claim. *Hoskins v. Aetna Life Ins. Co.*, 6 Ohio St.3d 272, 452 N.E.2d 1315 (1983), paragraph one of the syllabus. An insurer must "assess claims after an appropriate and careful investigation" and reach its conclusions as a result of the "weighing of probabilities in a fair and honest way." *Motorists Mut. Ins. Co. v. Said*, 63 Ohio St.3d 690, 699, 590 N.E.2d 1228 (1992). A breach of this duty gives rise to a cause of action by the insured for bad faith.

{¶29} An insurer acts in bad faith when it refuses to pay a claim without "reasonable justification." *Zoppo v. Homestead Ins. Co.*, 71 Ohio St.3d 552, 644 N.E.2d 397 (1995), paragraph one of the syllabus ("An insurer fails to exercise good faith in the processing of a claim of its insured where its refusal to pay the claim is not predicated upon circumstances that furnish reasonable justification therefor."). However, bad faith claims are not limited to "scenarios involving an outright denial of payment for a claim." *Drouard v. United Servs. Auto. Assn.*, 6th Dist. Lucas No. L-06-1275, 2007-Ohio-1049, ¶ 16. A bad faith claim can also arise from an insurer's "foot-dragging" in the handling or evaluation of a claim (even if a claim is ultimately paid), *id.*, an unreasonably low settlement offer, *Mundy v. Roy*, 2d Dist. Clark No. 2005-CA-28, 2006-Ohio-993, ¶ 21, or if the record otherwise shows that there were "no circumstances in the case that created a reasonable justification for the insurer's actions." *TOL Aviation, Inc. v. Intercargo Ins. Co.*, 6th Dist. Lucas Nos. L-05-1308 and L-06-1050, 2006-Ohio-6061, ¶ 64, quoting

Bennett v. Butler, 6th Dist. Lucas No. L-99-1151, 2000 Ohio App. LEXIS 2891, *19 (June 30, 2000). ““An insurer lacks reasonable justification when it acts in an arbitrary or capricious manner”” with respect to insured’s claim. *Gerken v. State Auto Ins. Co.*, 4th Dist. Washington No. 13CA14, 2014-Ohio-4428, ¶ 48, quoting *Captain v. United Ohio Ins. Co.*, 4th Dist. Highland No. 09CA14, 2010-Ohio-2691, ¶ 30; *Hoskins*, 6 Ohio St.3d at 277, 452 N.E.2d 1315.

{¶30} In this context, “arbitrary” has been defined as;

“[w]ithout fair, solid, and substantial cause and without reason given; without any reasonable cause; in an arbitrary manner * * * fixed or done capriciously or at pleasure; without adequate determining principle; not founded in the nature of things; nonrational; not done or acting according to reason or judgment depending on the will alone; absolutely in power; capriciously; tyrannical; despotic.”

Gerken, 2014-Ohio-4428 at ¶ 48, quoting *Thomas v. Mills*, 117 Ohio St. 114, 121, 157 N.E. 488 (1927), and *Captain*, 2010-Ohio-2691, at ¶ 30. Similarly, “caprice” has been defined as “[w]him, arbitrary, seemingly unfounded in motivation * * *.” *Gerken* at ¶ 48, quoting *Captain* at ¶ 30.

{¶31} Thus, where a bad faith claim is premised on an insurer’s failure to pay a claim either because it has determined that no coverage exists or, as here, the insurer concludes that the insured has already been fully compensated for her injuries, the “essential inquiry” is not whether the insurer’s decision was correct but whether that decision lacked a reasonable justification, i.e., whether it was arbitrary or capricious. *Keyser v. Unum Life Ins. Co. of Am.*, S.D. Ohio No. C2-03-138, 2005 U.S. Dist. LEXIS 48961, *25 (Sept. 12, 2005). Poor judgment or negligence in the evaluation or handling

of a claim does not establish bad faith. *See, e.g., Farmers Ins. of Columbus, Inc. v. Lister*, 5th Dist. Fairfield No. 2005-CA-29, 2006-Ohio-142, ¶ 69; *Klein v. State Farm Fire & Cas. Co.*, 250 Fed. Appx. 150, 156-157 (6th Cir. 2007), citing *Hart v. Republic Mut. Ins. Co.*, 152 Ohio St. 185, 187-188, 87 N.E.2d 347 (1949). Likewise, a refusal to pay a claim or a reasonable dispute as to the value of a claim does not, in and of itself, constitute bad faith. *Hoskins* at 277; *Baker v. State Farm Ins. Co.*, 5th Dist. Ashland No. 99-COA-1314, 2000 Ohio App. LEXIS 1948, *2-3 (Apr. 27, 2000); *Jenkins v. State Farm Mut. Auto. Ins. Co.*, 10th Dist. Franklin No. 11AP-1074, 2013-Ohio-1142, ¶ 41.

{¶32} The Tomans argue that the trial court erred in entering summary judgment in favor of State Farm on their bad faith claim because State Farm’s “only justification for denying its insured’s claim was the ‘personal opinion’ of [its] UIM adjustor.” The Tomans contend that the adjustor’s “conclusory opinion” did not constitute a “reasonable justification” for its decision as a matter of law and that, construing the evidence most strongly in their favor, a genuine issue of material fact existed as to whether State Farm lacked a reasonable justification for its handling of her UIM claim. We agree.

{¶33} The trial court concluded “as a matter of law” that “State Farm [had] reasonably justified its evaluation of the plaintiffs['] claims, and did not act in bad faith by not offering plaintiffs additional compensation” on Nicole’s UIM claim because a “veteran underinsured claims adjustor followed the routine procedures State Farm used to evaluate claims and concluded that plaintiffs have been fully compensated.” This is not, however, what the reasonable justification standard requires. Virtually all insurance

claims decisions involve the personal opinion of one or more insurance adjustors. An insurer cannot avoid a bad faith claim simply by establishing that its claims decision was based on the person opinion of a seasoned adjustor. Rather, the purpose of a bad faith inquiry is to determine whether the adjustor lacked a reasonable justification for that “personal opinion.” Denial of a claim may be reasonably justified only where “the claim was fairly debatable and *the refusal was premised on* either the status of the law at the time of the denial or *the facts* that gave rise to the claim.” (Emphasis added.) *Tokles & Son, Inc. v. Midwestern Indemn. Co.*, 65 Ohio St.3d 621, 630, 605 N.E.2d 936 (1992).

{¶34} In other words, it is not enough that Ash determined, purely as a matter of his personal opinion, that Nicole had already been fully compensated for her injuries and, therefore, was not entitled to any payment from State Farm on her UIM claim. Since Ash was the sole decisionmaker on Nicole’s claim, to prevail on its summary judgment motion, State Farm needed to present evidence establishing that there was no genuine issue of fact that its justification, i.e., Ash’s personal opinion of the valuation of Nicole’s injuries, was reasonably based on the relevant facts. Following our independent review of the record, we find that State Farm failed to meet this burden. Based on the evidence presented, we find that genuine issues of fact exist as to whether State Farm lacked a reasonable justification for its refusal to offer Nicole any money on her UIM claim and acted arbitrarily or capriciously in its handling of her claim.

{¶35} The record reflects that Nicole submitted her UIM claim in December 2012. Approximately three months later — only after Nicole’s counsel inquired as to the status

of her claim — Ash sent his March 21, 2013 letter, in effect denying her UIM claim, in which he stated that based on the \$10,000 in medical payments coverage and the \$12,500 Nicole received from Perme’s insurer, “it appears that [Nicole] has been fully compensated for her injuries resulting from the * * * motor vehicle accident.”

{¶36} Although Ash claimed that his valuation of Nicole’s injuries was based on a variety of facts and information, including the medical documentation and bills (including write-offs) submitted by counsel, the nature and extent of her injuries, her doctor’s diagnoses, the fact that Nicole was still treating with a chiropractor nearly two years after the accident, the absence of any relevant preexisting conditions and the severity of the impact, there is nothing in his deposition testimony (or otherwise in the record) that explains how these facts and information allegedly factored into his “personal opinion” of the value of Nicole’s injuries or specifically how he developed or calculated what he believed to be the value of Nicole’s injuries. For example, when asked what value, if any, he placed on the fact that Nicole was still treating with a chiropractor as part of his “range of value,” Ash could not answer the question, stating “I don’t have my full evaluation in front of me.” Further, although the trial court stated that Ash “followed the routine procedures State Farm uses to evaluate claims,” there is no evidence in the record regarding any specific policies, procedures or guidelines Ash followed in evaluating or valuing Nicole’s UIM claim. This gap in the record, i.e., the absence of any evidence demonstrating the reasoning behind Ash’s valuation of Nicole’s injuries and its

relationship to the facts, precludes a finding, as a matter of law, that State Farm had a reasonable justification for its decision not to offer Nicole any money on her UIM claim.

{¶37} In an attempt to demonstrate the reasonableness of Ash’s valuation, State Farm argued below that the \$22,500 in payments Nicole received “resulted in Plaintiff receiving almost four times the amount of her medical bills,” i.e., four times the amount of Nicole’s past medical expenses less the write-offs, and that “[g]iven what juries typically award in such cases, State Farm had ‘a reasonable justification’ for not offering Plaintiff additional money on her claim.” Although there is nothing in the record that indicates that this is the method Ash used in establishing his range of valuation for Nicole’s injuries — as indicated above, Ash did not explain how he came up with the numbers he placed on Nicole’s claim and testified that he had never been given any information regarding jury verdicts on similar claims — arbitrarily determining the value of an injury based solely on the *Robinson v. Bates* value of past medical expenses and a multiplier, without consideration of the underlying facts and circumstances, and then stating, without supporting evidence, that juries typically award a smaller number, is not evidence that Ash’s evaluation was reasonable as a matter of law. To the contrary, that alone lends itself to the opposite conclusion, particularly where, as here, the insured was still undergoing medical treatment for the injuries she sustained in the accident at the time she submitted her UIM claim and the insurer did not dispute the causation, nature or extent of her injuries or her need for further medical treatment.

{¶38} State Farm also argued below that its actions with respect to Nicole's claim were reasonable because Ash's March 21, 2013 letter setting out his valuation of Nicole's claim was not intended to be a "'line in the sand' as to what State Farm [would] pay on [her] claim" but rather, "an invitation for Plaintiff's counsel to submit further evidence or present additional arguments."

However, State Farm's reasonableness argument could, once again, just as easily lead to the opposite conclusion.

{¶39} The fact that Ash sent a letter to Nicole's counsel that, on its face, clearly and unequivocally sets forth State Farm's position that Nicole "has been fully compensated for her injuries" but then stated in his deposition that (1) the letter was not intended to be State Farm's final decision on her claim and (2) that he believed Nicole's counsel should have contacted him, *again*, after he received Ash's letter if Nicole wished to further pursue her UIM claim, could certainly be suggestive of bad faith negotiation. *See, e.g., CSS Publishing Co. v. Am. Econ. Ins. Co.*, 138 Ohio App.3d 76, 86, 740 N.E.2d 341 (3d Dist.2000) ("competing reasonable inferences could be drawn" as to whether insurer acted in bad faith based on evidence that insurer had assumed a "'get tough' position," i.e., that "they either take what we offer or they don't get anything," with respect to insured's claim).

{¶40} Based on the record before us, viewing the evidence in the light most favorable to the Tomans, we conclude that State Farm failed to meet its burden on summary judgment. We find that reasonable minds could reach different conclusions as

to whether Ash's "personal opinion" of the value of Nicole's injuries and subsequent decision to offer Nicole nothing on her UIM claim was made in good faith, based on a full and fair evaluation of the relevant facts, or lacked any reasonable justification. As such, a genuine issue of material fact exists as to whether State Farm's actions in the handling of Nicole's UIM claim were "predicated upon circumstances that furnish reasonable justification therefor." *Zoppo*, 71 Ohio St.3d 552, 644 N.E.2d 397, at paragraph one of the syllabus. The trial court, therefore, erred in entering partial summary judgment in favor of State Farm on the Tomans' bad faith claim. The Tomans' assignment of error is sustained.

{¶41} Judgment reversed. Case remanded for further proceedings consistent with this opinion.

It is ordered that appellant recover from appellee the costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

EILEEN A. GALLAGHER, JUDGE

LARRY A. JONES, SR., P.J., and
SEAN C. GALLAGHER, J., CONCUR