

No. 97-1284

STATE OF WISCONSIN

IN COURT OF APPEALS  
DISTRICT IV

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PETER DREGNE, D/B/A DREGNE CONSTRUCTION  
COMPANY,

PLAINTIFF-RESPONDENT,

v.

WEST BEND MUTUAL INSURANCE COMPANY,

DEFENDANT-APPELLANT.

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ERRATA SHEET

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PLEASE TAKE NOTICE that the attached page four is to be substituted for page four in the above-captioned opinion which was released on January 29, 1998.

Dated this 9th day of February, 1998.

The crux of Dregne's bad faith claim is that, once West Bend obtained its appraiser's opinion that vandalism was not the cause of damage, it ignored and did not follow up on opinions presented by Dregne that the damage was caused by vandalism. West Bend contends that the average juror does not know anything about standard insurance company practices and procedures, and therefore does not know whether a reasonable insurer would have conducted any further investigation once it received the information supplied by Dregne.

In *Weiss*, the court considered whether it is necessary in all tort causes of action alleging an insurer's bad faith that the insured produce an expert witness to testify about what a reasonable insurer would have done under the particular facts and circumstances. *Weiss*, 197 Wis.2d at 374, 541 N.W.2d at 755. In *Weiss*, the claim was for loss to a fire in the insured's home. *Id.* at 375-76, 541 N.W.2d at 756. The claim was denied because the insurer believed that the plaintiff intentionally set fire to his home. *Id.* at 376, 541 N.W.2d at 756. The plaintiff claimed that the insurer's incomplete and slipshod investigation prevented it from learning the facts on which the claim was based. *Id.* at 383, 541 N.W.2d at 759. The court first decided that expert testimony to establish a bad faith claim is unnecessary when a claim involves facts and circumstances within the common knowledge or ordinary experience of an average juror. *Id.* at 382, 541 N.W.2d at 758-59. Expert testimony is necessary only when there are unusually complex or esoteric matters "beyond the ken of the average juror." *Id.*

The court then decided that the case before it did not involve unusually complex or esoteric issues requiring expert testimony. In reaching this conclusion, the court reviewed the evidence presented in the plaintiff's case in chief, which consisted of evidence contradicting each of the reasons the insurer gave for denying the claim. The court concluded that the facts presented were

