

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**June 22, 2005**

Cornelia G. Clark  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2004AP2118**

**Cir. Ct. No. 2001CV1790**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

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**PATRICIA A. CAMP,**

**PLAINTIFF-APPELLANT,**

**V.**

**GENERAL CASUALTY COMPANY OF WISCONSIN,**

**DEFENDANT-RESPONDENT.**

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APPEAL from orders of the circuit court for Waukesha County:  
LEE S. DREYFUS, Judge. *Affirmed.*

Before Brown, Nettesheim and Snyder, JJ.

¶1 PER CURIAM. Patricia A. Camp appeals from the orders dismissing her complaint and granting summary judgment to General Casualty Company of Wisconsin, and denying her motion for reconsideration. She argues on appeal that the circuit court erred when it refused to award her interest under

WIS. STAT. § 628.46(1) (2003-04),<sup>1</sup> and when it dismissed her claim for bad faith against, and instead awarded judgment to, General Casualty. Because we conclude that Camp is not entitled to the statutory interest and that the circuit court properly dismissed her claim and awarded judgment to General Casualty, we affirm.

¶2 This case has a very long, complicated, and antagonistic procedural history. We need not repeat the entire history here, but will abbreviate it for purposes of this decision. In 2001, Camp sued General Casualty alleging property loss, interest under WIS. STAT. § 628.46(1), personal injury damages, and bad faith based on its handling of her claim for an automobile accident that she had involving an uninsured motorist. Camp claimed damages for the total loss of her vehicle. Both before and after the suit was filed, the parties attempted to reach an agreement about the value of Camp's vehicle. General Casualty made offers that Camp rejected. Ultimately, an arbitration umpire valued the car at an amount that was quite close to one of the earlier offers General Casualty had made.

¶3 In 2003, Camp filed a motion for summary judgment on her bad faith claim, and argued that interest should be imposed on the property damage claim under WIS. STAT. § 628.46(1). On August 15, 2003, the circuit court denied the motion, granted summary judgment to General Casualty on the bad faith claim, and denied Camp's request for interest. In 2004, a trial was held on Camp's personal injury claims. Camp subsequently moved the circuit court for reconsideration of the August 15, 2003, order granting summary judgment to

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

General Casualty and denying the request for interest. In June 2004, the circuit court denied Camp's motion for reconsideration, and now Camp appeals.

¶4 Camp first argues that the circuit court erred when it refused to grant her interest under WIS. STAT. § 628.46(1). This statute provides interest for claims that insurers do not timely pay. Camp argues that under *Upthegrove Hardware, Inc. v. Pennsylvania Lumbermans Mutual Insurance Co.*, 146 Wis. 2d 470, 484-85, 431 N.W.2d 689 (Ct. App. 1988), the only way an insurer can avoid the statutory interest assessment is by reasonable proof that it was not responsible for the payment.

¶5 In this case, the circuit court determined that General Casualty had, in fact, timely offered to pay Camp an amount that was very close to the amount ultimately determined to be the reasonable value of the vehicle. The court noted that Camp had rejected General Casualty's settlement offers. The court further found that the only reason General Casualty had not paid any sooner was because of the "intransigence on the part of the plaintiffs [sic] in terms of their view of what they should receive for the value of the vehicle." The court stated that if it were to accept the plaintiff's position on this issue, it would mean that any plaintiff could simply refuse a good faith offer of resolution and collect interest even if the offer is ultimately determined to be reasonable. "In effect, they're being rewarded for being unreasonable and being intransigent in terms of their handling of the case." The court concluded that the law does not intend that to occur. We agree with the circuit court that Camp is not entitled to additional statutory interest.

¶6 Camp next argues that the circuit court erred when it denied her summary judgment and, instead, granted summary judgment to General Casualty

on the bad faith claim. In order to establish bad faith by an insurer, the insured must first show an absence of a reasonable basis for denying policy benefits. *Trinity Evangelical Lutheran Church and School–Freistadt v. Tower Insurance Co.*, 2003 WI 46, ¶34, 261 Wis. 2d 333, 661 N.W.2d 789, *cert. denied*, 540 U.S. 1074 (Dec. 8, 2003) (No. 03-502). The test is whether the insurer acted with knowledge or reckless disregard of the lack of a reasonable basis for denying a claim. *Id.*, ¶37. Camp argues that this case is similar to and controlled by *Trinity*.

¶7 We agree with General Casualty, however, that its conduct was very different from that of the insurer in *Trinity*. In this case, General Casualty never argued that its policy did not provide coverage, as did the insurer in *Trinity*. Instead, General Casualty from the very first attempted to resolve the claim with Camp. Camp repeatedly rejected General Casualty’s attempts to settle her claim. In her brief, Camp identifies a number of points that she says support her claim that General Casualty acted in bad faith. We agree with General Casualty, however, that the record demonstrates that it repeatedly tried to settle Camp’s claims, and that the ultimate award Camp received was almost identical to one of General Casualty’s early offers. The circuit court properly found that it was Camp’s refusal to accept the settlement offered that caused the delay in this case. We conclude that the circuit court properly rejected Camp’s claim of bad faith, and awarded judgment to General Casualty. For the reasons stated, we affirm.

*By the Court.*—Orders affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

