

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

QUINLOCK SHOBE

Respondent

v.

ROXANNE KELLY AND ALLSTATE INSURANCE COMPANY

Appellants

DOCKET NUMBER **WD68712**

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: February 3, 2009

Appeal From:

Circuit Court of Jackson County, MO
The Honorable William Stephen Nixon, Judge

Appellate Judges:

Division Four: Thomas H. Newton, C.J., James M. Smart, Jr., and Victor C. Howard, JJ.

Attorneys:

Curtis E. Woods, Kansas City, MO

Counsel for Appellants

Attorneys:

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Co-Counsel for Respondent
Co-Counsel for Respondent

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

QUINLOCK SHOBE, Respondent, v.
ROXANNE KELLY AND ALLSTATE
INSURANCE COMPANY, Appellants

WD68712

Jackson County

Before Division Four Judges: Newton, C.J., Smart, and Howard, JJ.

Quinlock Shobe had an insurance policy with Allstate that covered her while driving “non-owned” vehicles. She was in an accident while driving a van she was considering buying. Allstate refused to provide liability coverage for the accident and rejected the injured parties’ offer to settle within Shobe’s policy limits. Shobe was sued for the injuries and subjected to an excess judgment. The injured parties sought collection of Shobe’s policy limit from Allstate; both a trial court and this court found Allstate’s policy covered Shobe’s accident. Allstate was required to pay the policy limit and interest. Shobe subsequently sued Allstate and Roxanne Kelly—the insurance claims adjuster handling the policy—for bad faith failure to settle within policy limits (BFFS). A jury awarded Shobe \$500,000 in actual damages and \$500,000 in punitive damages. Allstate and Kelly appeal.

REVERSED IN PART, AFFIRMED IN PART.

Division Four holds:

In their first point, Kelly and Allstate contend no cause of action for BFFS lies against an insurance claims adjuster. BFFS remedies an insurer’s disregard of the fiduciary duty it owes to its insured to evaluate and negotiate third-party claims in good faith. The tort thus presupposes that the tortfeasor is the insurer and has the power to settle the claim. Here, Kelly was acting as an agent of Allstate, not as a principal, and did not have the individual capacity to settle the claim. Thus, she cannot be held personally liable for BFFS in this case.

In its second point, Allstate argues Shobe failed to show Allstate assumed control of the proceedings or that she made a demand for settlement. Here, Allstate denied coverage, denied even a defense under a reservation of rights, and completely refused to engage in settlement negotiations; it cannot avoid liability by its wrongful refusal to assume control. Given its blanket rejection of responsibility, it also cannot avoid liability because Shobe failed to reiterate a settlement demand of which it was already aware. Allstate’s second point is denied.

In its third point, Allstate contends bad faith was not proven by sufficient evidence. Shobe offered evidence for the jury to find that Allstate acted in bad faith by giving no consideration to its insured’s interests; by starting with a presumption of no coverage, concluding no coverage, and denying coverage without full investigation of fact or law; as well as by deciding not to pursue remedies available for a good faith question of coverage. Allstate’s third point is denied.

In its fourth point Allstate argues actual damages are limited to the amount the insured pays on the unsettled claim and contests the evidence supporting the jury's award. We do not agree that BFFS damages are limited to the expense of the unsettled claim; a tortfeasor is liable for the damages proximately caused by the injury and the insured is entitled to be made whole. Hence, the jury's verdict was not manifestly unjust.

In its final point, Allstate contests the punitive damages award. Punitive damages require clear and convincing evidence that the defendant acted with evil motive or reckless indifference. Precedent shows they may be awarded in a BFFS suit where an insurer acts with reckless indifference to the interests of its insured. Here, the evidence offered to show Allstate's bad faith also supported this higher burden for punitive damages: *inter alia*, testimony established that her interests were not considered.

Opinion by Thomas H. Newton, C. J.

February 3, 2009

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