

COMMONWEALTH OF KENTUCKY
KENTON CIRCUIT COURT
DIVISION IV
CASE NO. 01-CI-00992

AURELIA AND DONALD WILES

PLAINTIFFS

vs

TRIAL JUDGMENT AND VERDICT

THE MEDICAL PROTECTIVE COMPANY

DEFENDANT

This matter proceeded to trial, pursuant to previous order of this Court, on May 12, 2009, and said trial was concluded on May 20, 2009. The case was officially recorded and the following jury of thirteen (13) was selected:

1. Robert Case
2. Carol Dailey
3. Tresa Bleser
4. Betty Gambrell
5. Beth Duncan
6. Roger Brewer
7. Richard Grothaus
8. Jon Dennis
9. Terry Hamm
10. Sharon Harris
11. Karen Beckerich
12. Sherrill Harber
13. Michael Brown

The parties proceeded with proof and testimony concerning the Plaintiff's complaint. All motions, objections and ruling were preserved in the Court record. At the conclusion of all proof, the Court then instructed the jury as to the applicable law, and said jury instructions were filed in the record. During the trial, Juror Robert Case was excused. The remaining twelve (12) jurors then retired for deliberations and subsequently returned to the Court with the following verdict:

INSTRUCTION NO. 4
QUESTION NO. 1

Do you believe from the evidence that the Medical Protective Company:

(1) Lacked a reasonable basis to deny payment of the claims of Aurelia and Donald Wiles;

AND,

(2) EITHER,

(A) knew there was no reasonable basis for such denial,

OR

(B) acted with reckless disregard for whether such a basis existed.

_____ Yes

_____ No

Instruction No. 4, Question No. 1, was signed by Jon Dennis as foreperson on behalf of the entire jury.

INSTRUCTION NO. 5
QUESTION NO. 2

Do you believe from the evidence that the Medical Protective Company:

(1) Lacked a reasonable basis to delay payment of the claims of Aurelia and Donald Wiles;

AND

(2) EITHER,

(A) knew there was no reasonable basis for such delay,

OR

(B) acted with reckless disregard for whether such a basis existed.

_____ Yes

No

Instruction No. 5, Question No. 2, was signed by Jon Dennis as foreperson on behalf of the entire jury.

INSTRUCTION NO. 6
QUESTION NO. 3

Do you believe from the evidence that the Medical Protective Company:

(1) Failed to acknowledge and act reasonably promptly upon communications with respect to the claims of Aurelia and Donald Wiles;

AND,

(2) EITHER,

(A) knew there was no reasonable basis for such failure,

OR,

(B) acted with reckless disregard for whether such a basis existed.

Yes

_____ No

Instruction No. 6, Question No. 3 was signed by the following ten (10) jurors:

Terry Hamm

Beth Duncan

Michael E. Brown

Carol Dailey

Richard Grothaus

Sharon Harris

Betty Gambrell

Roger Brewer

Karen Beckerich

Tresa Bleser

INSTRUCTION NO. 7
QUESTION NO. 4

Do you believe from the evidence that the Medical Protective Company:

(1) Failed to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;

AND,

(2) EITHER,

(A) knew there was no reasonable basis for such failure,

OR,

(B) acted with reckless disregard for whether such a basis existed.

√ Yes _____ No

Instruction No. 7, Question No. 4 was signed by the following ten (10) jurors:

Terry Hamm

Beth Duncan

Michael E. Brown

Tresa Bleser

Richard Grothaus

Carol Dailey

Betty Gambrell

Sharon Harris

Karen Beckerich

Sherrill Harber

INSTRUCTION NO. 8
QUESTION NO. 5

Do you believe from the evidence that the Medical Protective Company:

(1) Refused to pay the claims of Aurelia and Donald Wiles without conducting a reasonable investigation based upon all available information;

AND,

(2) EITHER,

(A) knew there was no reasonable basis for such refusal,

OR,

(B) acted with reckless disregard for whether such a basis existed.

Yes No

Instruction No. 8, Question No. 5 was signed by the following nine (9) jurors:

Michael E. Brown

Carol Dailey

Betty Gambrell

Sharon Harris

Karen Beckerich

Roger Brewer

Sherrill Harber

Tresa Bleser

Beth Duncan

INSTRUCTION NO. 9
QUESTION NO. 6

Do you believe from the evidence that the Medical Protective Company:

(1) Did not attempt in good faith to effectuate a prompt, fair and equitable settlement of the claims of Aurelia and Donald Wiles after liability had become reasonably clear;

AND,

(2) EITHER,

(A) knew there was no reasonable basis for such failure,

OR,

(B) acted with reckless disregard for whether such a basis existed.

Yes

No

Instruction No. 9, Question No. 6 was signed by the following ten (10) jurors:

Terry Hamm

Carol Dailey

Michael E. Brown

Sherrill Harber

Betty Gambrell

Sharon Harris

Karen Beckerich

Roger Brewer

Tresa Bleser

Beth Duncan

INSTRUCTION NO. 11

If you have answered "NO" to all of Questions 1 through 7, you have found for Defendant, the Medical Protective Company, and your verdict is complete. Please return to the Courtroom.

If you have answered "YES" to any of Questions 1, 2, 3, 4, 5, 6 or 7, please proceed to Instruction No. 12.

INSTRUCTION NO. 12

You have found for the Plaintiffs, Aurelia and Donald Wiles. You must now determine from the evidence what sum of money will reasonably compensate them for their damages.

VERDICT NO. 1

We, the jury, have found for the Plaintiffs, Aurelia and Donald Wiles, and find that the sum of \$350,000.00 (not to exceed \$400,000.00) will reasonably compensate them for their emotional pain and suffering, stress, worry and inconvenience caused by the actions of the Defendant, the Medical Protective Company.

Verdict No. 1, was signed by Jon Dennis as foreperson on behalf of the entire jury.

INSTRUCTION NO. 13

You have found that Defendant, the Medical Protective Company, acted in bad faith in the handling of the claims of Aurelia and Donald Wiles and have awarded compensatory damages to plaintiffs. You may, in your discretion, award punitive damages against Defendant in addition to the compensatory damages awarded in Verdict No. 1.

Punitive damages are damages awarded against a defendant for the purpose of punishing it for its misconduct in this case and for deterring it, and others, from engaging in similar conduct in the future. Punitive damages must be fixed with calm discretion and sound reason and must

not be awarded, or fixed in amount, on the basis of sympathy or bias or prejudice with regard to any party to the case.

Your discretion to determine and award an amount, if any, of punitive damages is limited to the following factors:

- (a) the likelihood, at the time of such misconduct by defendant, that serious harm would arise from it;
- (b) the degree of defendant's awareness of that likelihood;
- (c) the profitability of the misconduct to defendant;
- (d) the duration of the misconduct, and any act of concealment of it by defendant;
- (e) any actions by defendant to remedy the misconduct once it became known to defendant.

Evidence of the Medical Protective Company's conduct occurring outside Kentucky may be considered only in determining whether the Medical Protective Company's conduct occurring in Kentucky was reprehensible, and, if so, the degree of reprehensibility. However, you must not use out of state evidence to award Aurelia and Donald Wiles punitive damages against the Medical Protective Company for conduct that occurred outside of Kentucky.

VERDICT NO. 2

USE ONLY ONE OF THE FOLLOWING:

We, the jury, do not award punitive damages against the Defendant, the Medical Protective Company: _____.

OR,

In addition to the compensatory damages awarded under Verdict No. 1, we, the jury, find that an award of punitive damages against the Defendant, the Medical Protective Company, is

appropriate and hereby award the sum of \$2.2 mil (\$2,200,000.00) (not to exceed \$4,000,000.00) as punitive damages.

Verdict No. 2 was signed by the following eleven (11) jurors:

Jon Dennis

Tresa Bleser

Terry Hamm

Beth Duncan

Michael Brown

Carol Dailey

Betty Gambrell

Sharon Harris

Karen Beckerich

Roger Brewer

Sherrill Harber

When asked by the Court, the jurors indicated that the verdict as announced by the Court, in fact, reflected their verdict. The jurors were not individually polled.

The Plaintiffs properly preserved the issue of their entitlement to the attorney's fees they incurred in the underlying medical malpractice case, as well as the issue of their entitlement to interest pursuant to KRS 304.12-235 and prejudgment interest on the statutory interest. In Kentucky, the law clearly provides that the determination of the reasonableness of attorney's fees was a question of law for the Court, rather than a question of fact for the jury. *Inn-Group*

Management Services, Inc., v. Greer, Ky. App. 71 S.W.3d 125, 129 (2002) and cases cited therein.¹ This Judgment is thus not final until those issues are briefed and decided by the Court.

IT IS HEREBY ORDERED AND ADJUDGED that the Plaintiffs are granted Judgment against the Medical Protective Company in the amount of \$2,550,000.00, together with interest thereon at the rate of twelve percent (12%) per annum from the date of entry of this Judgment until paid, plus Plaintiffs' taxable costs.

This _____ day of _____, 2009.

THE HONORABLE PATRICIA SUMME
JUDGE, KENTON CIRCUIT COURT

¹ Alexander v. S&M Motors, Inc., Ky., 228 S.W.3d 303 (2002); Dingus v. Fada Service Co., Inc., Ky. App., 856 S.W.2d 45 (1993); Myers v. Chapman Printing Co., Inc., Ky., 840 S.W.2d 814 (1992); Capital Cadillac Olds, Inc. v. Roberts, Ky., 813 S.W.2d 287 (1991); and Woodal v. Grange Mutual Casualty Co., Ky., 648 S.W.2d 871 (1983).

DISTRIBUTION:

**M. Austin Mehr
Philip G. Fairbanks
Austin Mchr Law Offices, P.S.C.
145 West Main Street, Suite 300
Lexington, Kentucky 40507**

**Kathie Grisham
813 Deena Drive
Villa Hills, KY 41017**

**Frank V. Benton IV
528 Overton Street
PO Box 72218
Newport, KY 41072-0218**

**Sean M. Hanifin
Steven W. McNutt
Troutman Sanders LLP
401 9th Street, N.W.
Suite 1000
Washington, D.C. 20004-2134**

KENTON CIRCUIT COURT CLERK DATE