Filed 4/26/18 Maslo v. Ameriprise Auto & Home Ins. CA2/4

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

| | |
|---|---|
| TED MASLO,<br><br>Plaintiff and Appellant,<br><br>v.<br><br>AMERIPRISE AUTO & HOME INSURANCE,<br><br>Defendant and Respondent. | B278987<br><br>(Los Angeles County Super. Ct. No. LC097118) |

APPEAL from a judgment of the Superior Court of Los Angeles County, Frank L. Johnson, Judge. Affirmed.

Law Offices of Steven B. Simon, and Lawrence P. Perle for Plaintiff and Appellant.

Woolls Peer Dollinger & Scher and H. Douglas Galt for Defendant and Respondent IDS Property Casualty Insurance Company, also known as Ameriprise Auto & Home Insurance.

## INTRODUCTION

This case is before us a second time. Appellant Ted Maslo sustained injuries following a 2008 traffic accident involving an uninsured motorist. Appellant sought payment from his insurer, respondent IDS Casualty Property Insurance Company (IDS), for the full $250,000 policy limit, which IDS refused.[1] The parties arbitrated the uninsured motorist claim in 2011, and appellant was awarded $164,120.91. Subsequently, appellant filed a complaint against IDS, alleging that IDS had breached the covenant of good faith and fair dealing by unreasonably delaying payment and forcing appellant to arbitrate his claim. After the trial court sustained IDS's demurrer to the complaint, appellant appealed. We concluded that allegations pleaded in the complaint set forth a cause of action for insurer bad faith, and reversed. (See *Maslo v. Ameriprise Auto & Home Ins. Co*. (2014) 227 Cal.App.4th 626.) After the matter was remanded, IDS moved for summary adjudication of appellant's request for punitive damages, which the trial court granted. Following trial, the jury returned a verdict in favor of IDS and against appellant on the bad faith claim. IDS sought costs, and appellant filed a motion to tax costs, which the trial court partially granted.

Appellant now appeals, contending (1) that the jury's verdict was not supported by substantial evidence, (2) that the issue of punitive damages should have been submitted to the jury, and (3) that the trial court erred in awarding unrecoverable

---

[1] Ameriprise Auto & Home Insurance, named in the caption, is the parent company of IDS Casualty Property Insurance Company.

costs to IDS. For the reasons set forth below, we find no reversible error. Accordingly, we affirm.

## FACTUAL BACKGROUND & PROCEDURAL HISTORY

### A. *Appellant's Second Amended Complaint*

In his second amended complaint (SAC) -- the operative complaint -- appellant alleged a single cause of action for breach of the covenant of good faith and fair dealing. According to the SAC, appellant was an insured on an automobile insurance contract that provided up to $250,000 in coverage for injuries and damages resulting from the negligence of an uninsured motorist. During the policy term, on September 3, 2008, an uninsured motorist allegedly struck appellant's vehicle from the rear, forcing it to collide with a third vehicle. As a result of the accident, appellant suffered numerous bodily injuries, including a severe injury to his shoulder.

The SAC alleged that "[a]t no time did [appellant] contribute any fault or negligence concerning said accident." The SAC further alleged that on or about September 3, 2008, the accident was investigated by the Los Angeles Police Department (LAPD), which prepared a traffic collision report. The report concluded the uninsured motorist was the sole cause of the accident.

The SAC alleged that appellant reported the accident to IDS on September 3, 2008. The following day, appellant provided a statement about the accident, stating that "he was rear ended by the uninsured motorist and pushed into the vehicle in front of him." The insurer also received a copy of the LAPD traffic collision report. On August 13, 2009, appellant supplied IDS with copies of all his medical records and billing statements

regarding his treatment. The SAC alleged that although appellant had repeatedly sought settlement and even offered to mediate his uninsured motorist claim, the insurer "refused to participate in the Mediation process, refused to make any offer of settlement to Plaintiff, and refused to respond to Plaintiff's policy limits demand." Instead, IDS retained counsel for a November 2011 arbitration proceeding on appellant's claim. At the conclusion of the arbitration, the arbitrator awarded appellant $64,120.91 in medical damages and $100,000 in general damages, for a total award of $164,120.91.

The SAC alleged that the insurer's failure and refusal to make any offer of settlement prior to arbitration was contrary to Insurance Code section 790.03, subdivision (h)(5), which provides that it is an unfair claim settlement practice not to "'attempt[] in good faith to effectuate [a] prompt, fair, and equitable settlement[] of claims in which liability has become reasonably clear.'" The SAC further alleged that liability was reasonably clear as of the date of the accident, and that the insurer failed to comply with the Insurance Code when it made no offer of settlement.

The SAC prayed for compensatory and consequential damages for the delay and withholding of benefits under the uninsured motorist provisions of the automobile insurance policy, for reimbursement of all costs and attorney fees, for general damages, for punitive damages, for all costs of the lawsuit, and for interest on all sums.

B. *IDS's Motion for Summary Adjudication*

On June 17, 2015, IDS filed a motion for summary adjudication on the issue of punitive damages. IDS argued that punitive damages were not recoverable, as it had acted on advice

of counsel in refusing to settle and proceeding to arbitrate appellant's uninsured motorist claim. IDS further argued that its counsel's advice was reasonable, as "the physical evidence show[ed] no damage to the rear of Maslo's vehicle and only the slightest damage to the front end of the uninsured motorist's vehicle."

Appellant opposed the motion, arguing that the evidence did not establish that the claims adjusters relied on the advice of counsel in refusing to settle the claim. He further contended that there were triable issues concerning whether IDS made full disclosure of all relevant facts to counsel.

On December 21, 2015, the trial court granted IDS's motion for summary adjudication on the issue of punitive damages. The court concluded "there [was] an insufficient showing of malice, fraud or oppression to support punitive damages." Appellant moved for reconsideration based on "newly discovered facts" consisting of "opinion [from an] expert witness on bad faith claims [that would] bear[] directly on the issue of punitive damages." The trial court denied the motion, finding that appellant had not shown that he could not have obtained the new "facts" with due diligence. Additionally, the court found there were no new facts or evidence presented.

C. *Jury Trial*

The following evidence was presented at trial. On September 3, 2008, appellant's wife called IDS to report the accident and file a claim. According to the intake note in IDS's diary for appellant's claim (the claims diary), appellant's wife stated that he was at a "complete stop at the stop light when [the uninsured motorist] approached at a high speed and [was] unable to stop in time." The uninsured motorist "hit front end to rear

end of [appellant's vehicle], which caused [appellant's vehicle] to hit front end to rear end of [the vehicle in front]." The claim was assigned to IDS claims adjuster Roman Cardenas.[2]

Cardenas had appellant's vehicle appraised the same day. The appraisal indicated substantial damage to the front end of the vehicle, and the vehicle was declared a total loss.

Cardenas interviewed appellant the following day. According to Cardenas's notes, appellant stated: "I drive in left lane, traffic ok, everybody stopped, Hummer in front of me, I started to slow, almost stopped behind Hummer, somebody hit me very strong in [the] back, he pushed me on the Hummer, I lost control of everything, I wasn't looking back, I was slowing for cars in front." Appellant also stated that he was wearing his seat belt at the time, described the force of impact as "very hard," and complained of pain to his neck, left shoulder, left arm and back.[3]

Subsequently, Cardenas summarized appellant's claim. He repeated verbatim the initial description of the accident provided by appellant's wife: that appellant's vehicle and the Hummer were "at a complete stop at the stop light" when the uninsured motorist "approached at a high speed" and rear-ended appellant's vehicle, causing appellant's vehicle to rear-end the Hummer.

---

[2] Cardenas was not called as a trial witness. His videotaped deposition was played for the jury, but there is no transcript of the deposition in the record on appeal.

[3] By the time the parties engaged in discovery for the arbitration, the actual recorded statement no longer existed. It had been "dropped" from the recording system, as more than a year had passed.

Cardenas noted that appellant complained of soreness to his back, neck and shoulder.

On September 9, 2008, Cardenas approved a $260 payment to appellant for loss of use under the rental coverage provision. On September 12, 2008, Cardenas spoke with appellant's wife, advising her that IDS would make a $13,585.76 payment for the total loss of the vehicle once IDS received the signed title for the vehicle. Appellant's wife informed Cardenas that an attorney had been retained for the claim for bodily injuries. The total loss payment was made September 16, 2008.

On September 12, 2008, Cardenas attempted to contact the uninsured motorist, O'Bryant Muralles. Muralles's mother would not allow her 16-year old son to speak with Cardenas. However, she relayed that her son had told her "he heard tires and a crush [*sic*], he then braked, barely touched [appellant's] Lexus, no damage to driver."[4] Cardenas had Muralles's vehicle appraised the same day; the appraisal showed minor damage to the front-end of the vehicle.

Cardenas reviewed the appraisal of appellant's vehicle. After observing that the photos of the vehicle showed no rear-end damage, Cardenas decided to have appellant's vehicle reinspected for rear-end damage. Cardenas subsequently made the following entry in the claims diary: "DO NOT PAY UM [uninsured motorist claim], NEED TO CONFIRM FACTS."

In December 2008, appellant's attorney sent a copy of the LAPD vehicle collision report to IDS. The LAPD report stated that Muralles "told the police he was traveling about 25 miles per

---

[4] Muralles was later deposed and the transcript of his testimony was admitted at trial.

hour when he saw traffic in front of him and he couldn't stop in time." The report also stated appellant told the police he was stopped behind the Hummer when he was struck in the rear and pushed into the Hummer. The report placed the primary responsibility for the accident on Muralles. According to the report, there was major damage to the front-end of appellant's vehicle, but no damage to the rear-end. Additionally, it identified no damage to Muralles's vehicle [a Toyota Tundra] or the Hummer.

After the reinspection confirmed the absence of damage to the rear-end of appellant's vehicle, Cardenas's supervisor expressed concern that the physical evidence suggested that appellant might have rear-ended the Hummer before Muralles struck his vehicle. After the matter was referred to the special investigations unit (SIU), an SIU investigator opined that the physical evidence suggested two possibilities: (1) If Muralles struck appellant hard enough to cause appellant to lose control, then Muralles would be at fault for the accident; (2) If Muralles struck appellant after appellant had collided with the Hummer, then appellant would be at fault. The investigator stated that appellant's recorded statement was consistent with the first scenario, but recommended that a scene/accident reconstructionist be retained to determine the sequence of events and speeds involved. Subsequently, Cardenas retained Roderick Stroud, Ph. D., as an accident reconstructionist.[5]

In August 2009, IDS received a UM settlement demand from appellant for the $250,000 policy limit, which included

---

[5] Stroud died prior to trial. However, his report and the transcript of his deposition were admitted into evidence.

$69,000 in medical damages. IDS also received copies of appellant's medical records relating to the demand. The medical records reflect that appellant was admitted to Valley Presbyterian Hospital immediately following the accident. According to the treating physician's notes, appellant was a "restrained driver in a motor vehicle accident at low speeds." His physical exam was unremarkable except for tenderness at the "C7, T-spine" in his neck. Specifically, an examination of the shoulders revealed that "Bilateral shoulders and scapulae and claviculae are all nontender."

Appellant's medical records showed he continued to complain to various medical providers about pain in his left shoulder. Ten weeks after the accident, appellant was evaluated by Dr. Hekmat, an orthopedic surgeon. According to Dr. Hekmat's notes, appellant stated he was involved in a "severe rear-ending accident" and was "severely jolted as he was holding onto the steering wheel." Dr. Hekmat ordered an MRI of appellant's left shoulder, which revealed "tearing of the glenoid labrum as well as impingment syndrome."

On October 13, 2009, appellant's claims file was transferred to Stacey Harrish, who handled bodily injury claims for IDS. Harrish testified she reviewed "everything that was in the file." She considered all the evidence, including evidence that was favorable to appellant's claim. Harrish testified she spoke with Stroud, who opined that "[i]f the rear vehicle [Tundra] did make contact with the insured vehicle, it would be [at] approximately 4 miles per hour, not enough to push the insured into the front vehicle."

Harrish later sent Stroud copies of appellant's medical records for his review and opinion "whether the forces involved in

the accident could have caused [appellant's] injury." Subsequently, in a March 3, 2010 report, Stroud opined that based on the description of the accident in the LAPD report and the physical evidence, Muralles's vehicle did not push appellant's vehicle into the Hummer. Rather, it was "probable" that appellant's vehicle hit the Hummer first at a closing speed of 13 to 15 miles per hour. Stroud further opined: "The damage to the front of Mr. Maslo's Lexus established that the speed change for that vehicle was 10 to 12 miles per hour. This would have produced an acceleration of 3 to 4 g's. In the driver's position, Mr. Maslo would have experienced lap and shoulder harness forces tending to slow him down as his vehicle was slowed by the collision at the front. The acceleration was not sufficient to cause the air bag to deploy, and the forces acting on Mr. Maslo would have been minimal. There was no mechanism to cause an injury to his left shoulder or lower back. . . . The contact to the rear of his vehicle was completely minor. The acceleration would have been less than 1 g, and the injury potential from that impact would have been zero."

Harrish also testified that in January 2010, she received a settlement demand letter for the $250,000 policy limit under the uninsured motorist provision, plus $5,000 under the medical payment provision. The letter further stated: "If this settlement demand is not accepted within two weeks from [the] date of [this] letter, a demand is hereby made on behalf of my client to proceed by way of arbitration." Harrish considered the letter a demand for arbitration pursuant to the insurance policy, and she retained attorney Mark Cunningham to handle the arbitration.

After Cunningham took appellant's deposition, he verbally informed Harrish that appellant would not make a "good

witness." According to Cunningham, appellant had stated that he "was almost stopped behind the Hummer when [a] terribly strong impact from the rear made him go into the Hummer in front." Cunningham believed that based on the photos of the vehicles and Stroud's report, IDS would prevail at arbitration. Harrish stated that even after receiving Cunningham's verbal report, she had not formed an opinion on the value of appellant's claim, as the issues of liability, causation and amount of damages had not been resolved. Shortly thereafter, Harrish transferred the claims file to Rick Getsfried, who worked on claims that would be arbitrated or litigated.

Getsfried testified that when he took over the claims file, he reviewed the materials in the file to determine how the accident had occurred and why the case was in "litigation." After Muralles and Stroud were deposed, Getsfried also reviewed their deposition testimony. Muralles testified that he was driving when he heard what sounded like a collision and "the car in front of [him] stopped." As soon as he heard the collision, he slammed on his brakes. He made contact with the car in front and felt a "slight thump." After exiting his vehicle, Muralles did not observe any damage to the rear of appellant's vehicle.

At Stroud's deposition, Stroud stated that although he was not a physician, he had a Ph.D. in biomedical engineering, which required taking courses equally distributed between the college of engineering and the school of medicine. Stroud reaffirmed his opinion that based on the g forces and "occupant dynamics," there was no potential for injury to appellant to his left shoulder or lower back as a result of the collision with Muralles's vehicle. Stroud further opined that "the energy associated with the damage at the front of the Lexus is a lot more than the energy we

can identify at the rear." Accordingly, if "Mr. Maslo was moving when he was struck at the rear by the Toyota, then he was going to hit the Hummer anyway, because there's just too much energy at the front."

Getsfried stated that IDS considered appellant's version of events numerous times during the investigation, noting references in the claims file to appellant's recorded statement, his deposition testimony, and the conclusions of appellant's retained accident reconstructionist, David King. Getsfried testified that in March 2010, appellant's attorney stated that appellant was willing to mediate the matter, if the insurer would pay the mediation fees. Getsfried declined to mediate because there was no requirement to mediate, and IDS would have to pay the fees. On February 22, 2011, Getsfried spoke with Cunningham about making a settlement offer pursuant to Code of Civil Procedure section 998 (CCP 998). Cunningham informed Getsfried that he believed the insurer's maximum exposure was $8,000 to $9,000. Getsfried authorized an offer of $20,000. However, no CCP 998 offer was ever made before arbitration.[6]

Mark Cunningham testified that after being retained, he reviewed the claims file. He considered all evidence favorable to appellant's claim when evaluating it. However, he did not find the evidence persuasive, "which is why this case ended up going to arbitration." Cunningham testified that he believed Muralles was not responsible for appellant's injuries, as he concluded from a review of the evidence that Muralles made contact with appellant's vehicle after appellant had collided with the Hummer.

---

[6] After appellant filed the instant lawsuit, IDS made a CCP 998 offer of $30,000 on June 9, 2016.

However, he did consider that the arbitrator could apportion fault between appellant and Muralles on a 70/30 basis, which was how he came up with the $8,000 to $9,000 valuation of the claim. Cunningham stated that he was "shocked and embarrassed" about the arbitration award in favor of appellant.

Joanna Moore, IDS's insurance industry expert, noted that IDS promptly investigated the claim, determined that the vehicle was a total loss, and paid the total loss collision claim and rental car claim "right away." As to the UM claim, Moore opined that the claims adjusters "never really gave up trying to reconcile how the discrepancy [in the accounts of the accident] and the damages could make sense. They also, I think that they handled their ongoing investigation and the ultimate resolution of the claim in a manner that is consistent with standard industry practices and procedures [and] in accordance with the policy contract under the uninsured motorist coverage provisions."

David Peterson, appellant's insurance industry expert, had a contrary and negative opinion of the claims adjusters. On cross-examination, Peterson was asked when "liability became reasonably clear." He answered: "Well, it fluctuated, to be honest with you. At one point, it was 100 percent reasonably clear, and then it became unclear, and then they went to the arbitration and in the arbitration, the court [*sic*] found that it was reasonably clear."

D. *Jury Instructions and Verdict*

The jury was instructed on the implied obligation of good faith and fair dealing: "To fulfill its implied obligation of good faith and fair dealing, an insurance company must give at least as much consideration to the interests of the insured as it gives to its own interests." (CACI No. 2330.) "To breach the implied

obligation of good faith and fair dealing, an insurance company must unreasonably act or fail to act in a manner that deprives the insured of the benefits of the policy." The jury also was instructed that appellant was claiming that IDS had acted unreasonably by failing to conduct a proper investigation of his claim. The jury was further instructed that "[w]hen investigating Ted Maslo's claim, IDS had a duty to diligently search for and consider evidence that supported coverage of the claimed loss."

The jury was presented with a special verdict form, which, though not in the record, was described by appellant's counsel in closing argument as follows: "You're going to be asked: Did IDS Property Casualty Insurance Company delay payment of the policy benefits to Ted Maslo[?] If you agree, you'll then be asked whether that delay in payment was unreasonable or without proper cause. If you agree, you're going to be asked whether their delay was a substantial factor in causing harm to Mr. Maslo. And if you agree to that, you'll go to the final section which asks you about his damages."

After deliberations, the jury answered "No" to the first question, "Did IDS Property Casualty Insurance Company delay payment of policy benefits to Ted Maslo?" As instructed, the jury did not answer any of the other questions on the special verdict form.

E. *Maslo's Motion to Tax Costs*

IDS sought costs as follows: Item 1 (filing and motion fees) - $2,156; Item 4 (deposition costs) - $4,579; Item 8 (witness fees) - $7,626; Item 11 (models, blowups, and photocopies of exhibits) - $852; and Item 13 (other: messenger fees, filing fees, trial attendance) - $1,698.

Appellant filed a motion to tax costs, challenging the requested amounts. The trial court granted appellant's motion to tax costs as to Item 1 (filing fees); it struck those costs. As to Item 4 (deposition costs), the court denied the motion, concluding that those costs were appropriate. As to Item 8 (witness fees), the court found the fees not excessive. "As to the argument that the defendant's offer per CCP Section 998 was made in bad faith, the Court finds that it is neither timely nor compelling." As to Item 11 (models, etc.), the court noted that the request had been withdrawn. As to Item 13 (other costs), the court noted that it had heard further argument, and partially granted the motion to tax costs by reducing the amount to $1,000.

A judgment on the jury's special verdict was entered August 2, 2016. Appellant timely appealed.

## DISCUSSION

### A. *Jury Verdict*

As noted, the jury determined that IDS had not breached the covenant of good faith and fair dealing, finding that IDS did not delay payment of policy benefits to appellant. Appellant contends there was insufficient evidence to support the jury's verdict, arguing that the evidence presented at trial "overwhelmingly" showed that IDS breached the covenant of good faith and fair dealing when it focused "solely" on attempting to disprove and deny his uninsured motorist claim.

#### 1. *Standard of Review*

When a jury's factual determination is challenged on appeal, we must determine whether any substantial evidence supports the jury's conclusion. (*Piedra v. Dugan* (2004) 123 Cal.App.4th 1483, 1489.) We review the entire record in the light

most favorable to the judgment below and presume in support of the judgment the existence of every fact the jury could reasonably deduce from the evidence. (*Jonkey v. Carignan Construction Co.* (2006) 139 Cal.App.4th 20, 24.) ""[W]hen two or more inferences can reasonably be deduced from the facts, a reviewing court is without power to substitute its deductions for those of the [fact finder]. If such substantial evidence be found, it is of no consequence that the [jury] believing other evidence, or drawing other reasonable inferences, might have reached a contrary conclusion." [Citation.]" (*Piedra v. Dugan*, *supra*, at p. 1489, italics omitted.) "One credible witness may constitute substantial evidence to support the judgment." (*Mariscal v. Old Republic Life Ins. Co.* (1996) 42 Cal.App.4th 1617, 1623 (*Mariscal*).)[7]

---

[7] We note that appellant's opening brief failed to present the evidence favorable to the jury's verdict. Such failure warrants summary disposition of appellant's contention that the jury's verdict was not supported by substantial evidence. (See, e.g., *Schmidlin v. City of Palo Alto* (2007) 157 Cal.App.4th 728, 738 ["Where a party presents only facts and inferences favorable to his or her position, 'the contention that the findings are not supported by substantial evidence may be deemed waived.' [Citation.]"]; *Toigo v. Town of Ross* (1998) 70 Cal.App.4th 309, 317 [appellant forfeited challenge to a factual finding by failing to state the evidence used to support that finding].) Nevertheless, we discuss the sufficiency of the evidence supporting the jury's verdict.

2. *Substantial Evidence Supports the Jury's Verdict*

As an initial matter, we note that IDS promptly paid appellant's total loss collision coverage and rental coverage claims. The only disputed claim was for bodily injuries under the uninsured motorist (UM) coverage. As to the UM claim, the jury's verdict is an implied finding that IDS paid the claim once its liability became reasonably clear, viz., following arbitration. (See *Waller v. Truck Ins. Exchange, Inc.* (1995) 11 Cal.4th 1, 36 ["'delayed payment based on inadequate or tardy investigations'" may breach the implied covenant of good faith and fair dealing because it frustrates the insured's right to receive "'prompt compensation for losses'"]; Ins. Code, § 790.03, subd. (h)(5) [unfair claim settlement practice not to "'attempt[] in good faith to effectuate [a] prompt, fair, and equitable settlement[] of claims in which liability has become reasonably clear'"].) As explained in greater detail below, that finding was supported by IDS's evidence. Additionally, we note that appellant's own expert Peterson testified that IDS's liability "became unclear" during the investigation into the claim, and "then they went to the arbitration and in the arbitration, the [arbitrator] found that it was reasonably clear."

The jury's implied finding that IDS's liability on the UM claim was not reasonably clear until after arbitration is supported by substantial evidence in the record. The LAPD report and appellant's wife's initial statement suggest that appellant was at a complete stop behind the Hummer when Muralles approached at a high speed, collided with appellant's vehicle and pushed it into the Hummer. However, the minor damage to the front end of Muralles's vehicle and the lack of

damage to the rear end of appellant's vehicle indicate that the rear impact was minor and unlikely to cause a stopped vehicle to crash into the Hummer.

Even were appellant slowing down and not at a complete stop, the physical evidence could support two scenarios: (1) Despite attempting to slow down, appellant crashed into the Hummer before Muralles struck him; or (2) Appellant was slowing down when he was hit from behind by Muralles, causing his vehicle to crash into the Hummer. As to the latter scenario, Stroud opined that based on the extensive damage to the front of appellant's Lexus, the absence of damage to the rear of the Lexus, and the negligible damage to Muralles's Tundra, the force from the Tundra's collision with the Lexus was too minor to have caused appellant to strike the Hummer with such force that the Lexus was totaled. Stated differently, it was not any impact from the Tundra that caused the Lexus to hit the Hummer. As to the former scenario, Stroud opined that the impact from Muralles's vehicle striking appellant's lacked the potential to cause injuries to appellant's shoulder and lower back. In addition, even were Muralles completely at fault for the accident, appellant's medical records suggested that his shoulder tear was not caused by the collision. Immediately after the accident, an examination of his shoulder area revealed no tenderness. It was only 10 weeks later that appellant was diagnosed with the shoulder tear. Such evidence supported a finding that IDS did not act unreasonably in withholding payment of policy benefits to appellant until the issues of liability, causation and amount of damages were resolved in arbitration.

Appellant contends that the evidence "overwhelmingly" showed IDS failed to give at least as much consideration to his

interest as it gave to its own interest, and that IDS failed to investigate facts favorable to his claim. (See *Wilson v. 21st Century Ins. Co.* (2007) 42 Cal.4th 713, 720 (*Wilson*) [to fulfill its implied obligation of good faith and fair dealing, "'an insurer must give at least as much consideration to the interests of the insured as it gives to its own interests'"].) We agree that "[a] trier of fact may find that an insurer acted unreasonably if the insurer ignores evidence available to it which supports the claim." (*Mariscal, supra,* 42 Cal.App.4th at p. 1623.) However, a trier of fact is not required to find a breach of the covenant of good faith and fair dealing simply because an insurer investigates conflicting accounts of an accident. This is not a case where an insurer denied a claim or delayed payment "on a basis unfounded in the facts known to the insurer, or contradicted by those facts." (*Wilson*, *supra*, at p. 721.) Evidence suggesting that Muralles's acts did not cause appellant's injuries was discovered from routine investigative tactics, such as appraisals of the vehicles involved, police reports and statements from percipient witnesses. The physical damage to the vehicles suggested that Muralles's vehicle did not strike appellant's with sufficient force to cause appellant's vehicle to collide with the Hummer. In addition, the medical records cast doubt on whether appellant suffered a shoulder tear as a result of the accident. Because the evidence conflicted with appellant's account, it was reasonable for IDS to retain an accident reconstructionist, and Stroud subsequently concluded that IDS was not liable on the UM claim.

Appellant identifies certain aspects of IDS's investigation that he contends establish as a matter of law that it conducted an inadequate investigation. First, he contends that IDS ignored his recorded statement about the accident, and instead credited

Muralles's account of the accident. However, Getsfried, Harrish, and Cunningham all testified they considered all evidence when evaluating appellant's claim. As Cunningham explained, the evidence supporting appellant's claim was not persuasive in light of other evidence suggesting that the rear impact was too minor to push appellant's car into the Hummer, which was why appellant's claim was arbitrated.

In a related contention, appellant argues that Cardenas misstated his recorded statement when Cardenas made an entry that appellant was at a "complete stop" when the accident occurred, and contends this misstatement "tainted the remainder of IDS's handling of his claim over the next three years." However, Cardenas's entry repeats verbatim the statement that appellant's wife made to IDS. The reasonable inference is that Cardenas was repeating appellant's wife's statement, not misstating appellant's recorded statement. Moreover, appellant does not claim that IDS mishandled his claims for total loss and loss of use. Cardenas authorized those payment after making this entry. Finally, Harrish and Getsfried testified they considered appellant's deposition testimony -- which was consistent with his recorded statement -- in evaluating his claim. Thus, any mistaken belief that appellant had stated he was completely stopped when the accident occurred was corrected.

Appellant also contends that IDS's failure to conduct a medical examination or interview his treating physician demonstrates the investigation was inadequate. However, IDS never disputed that appellant suffered injuries and was receiving medical treatment. In fact, IDS stipulated to the amount of medical damages at arbitration. Rather, IDS disputed whether appellant's injuries could have resulted from the accident. This

dispute was reasonable based on (1) the physical evidence showing that the rear impact was minor, (2) medical records showing appellant did not report tenderness in his shoulder immediately following the accident, and (3) Stroud's opinion that the forces involved in the collision lacked the potential to cause injury to appellant's shoulder.

Finally, appellant contends that the claims adjusters' admission during their depositions that they treated first-party claims (such as appellant's) in the same manner as third-party claims established that IDS failed to comply with the implied covenant of good faith and fair dealing, as with respect to third-party claims, IDS had no obligation to give the same consideration to the insured's interest as to its own interest. We disagree. Appellant merely speculates that first-party claims were treated as unfavorably as third-party claims when the reverse could be true -- that third-party claims were treated as favorably as first-party claims. More important, the evidence established that the claims adjusters considered appellant's version of events, but found that other evidence submitted in connection with the claim or obtained during investigation of the claim contradicted that version. The adjusters withheld payment until they could determine which version was factually accurate. The covenant of good faith and fair dealing requires that an insurer give at least the same consideration to its insured's interests as it gives to its own interests. It does not require the insurer to credit its insured's statement of events when other evidence undermines that account. (See *Wilson*, *supra*, 42 Cal.4th at p. 722 [insurer not obliged to accept insured's evidence without scrutiny or investigation; "To the extent it had good faith doubts, the insurer would have been within its rights to

investigate the basis for [the insured's] claim"].) To do so would elevate the interests of the insured over the interests of the insurer (and its shareholders or other policyholders). (See *Love v. Fire Ins. Exchange* (1990) 221 Cal.App.3d 1136, 1148-1149 ["An insurer, however, may give its own interests consideration equal to that it gives the interests of its insured [citation]; it is not required to disregard the interests of its shareholders and other policyholders when evaluating claims [citation]"].) The jury had before it ample evidence that in investigating appellant's claim, the claims adjusters gave at least as much consideration to the evidence favorable to the claim as they gave to evidence adverse to the claim, and that IDS did not unreasonably delay in paying the claim. In short, substantial evidence in the record supports the jury's verdict.

B. *Any Error in the Trial Court's Order Granting IDS's Motion for Summary Adjudication was Harmless*

Appellant contends the trial court erred in granting IDS's motion for summary adjudication on the issue of punitive damages, arguing that IDS did not meet its burden to demonstrate that no reasonable jury could find IDS's conduct warranted an award of punitive damages. Appellant also argues that the trial court erred in denying his motion for reconsideration of the issue. We find no reversible error. The jury determined that appellant failed to prove an essential factual element of his bad faith claim; it found IDS did not delay payment of policy benefits. In addition, as explained above, there was substantial evidence to support the implied finding that IDS gave at least as much consideration to appellant's interests as it gave to its own. In light of those findings, there was no factual basis to support an award of punitive damages against IDS.

Accordingly, any error in granting the summary adjudication motion or in denying the motion for reconsideration was harmless. (See Cal. Const., art. VI, § 13 ["No judgment shall be set aside, or new trial granted, in any cause, . . . for any error as to any matter of pleading . . . , unless, after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice."].)

C. *The Court did not Err in its Award of Costs to IDS*

Appellant contends the trial court erred in awarding IDS costs not expressly recoverable. He repeats verbatim the arguments made in his motion to tax costs, and ignores the trial court's order partially granting his motion. In the court's order, it granted appellant's motion to tax costs sought in Item 1 (filing and motion fees), and noted that IDS had withdrawn the request for costs sought in Item 11 (models, blowups, and photocopies). As to appellant's remaining challenges to the cost award, we review the court's order for abuse of discretion. (*El Dorado Meat Co. v. Yosemite Meat & Locker Services, Inc.* (2007) 150 Cal.App.4th 612, 617.)

With respect to the costs sought in Item 4 (deposition costs), these were costs to obtain deposition transcripts. Although appellant argues that IDS could have made copies of the deposition transcripts, IDS correctly observes that doing so would have violated the court reporter's copyright in the work. Thus, the court properly awarded these costs.

With respect to costs sought in Item 8 (witness fees) pursuant to CCP 998, appellant argues that IDS failed to produce the CCP 998 document or adequately document the costs. We

disagree, as IDS's request for costs included a copy of the CCP 998 offer and documentation of the one witness's expenses.

Finally, as to the costs sought in Item 13 (messenger fees, filing fees, trial attendance), appellant argues there was inadequate documentation provided with the request. However, the record shows invoices were submitted with IDS's request for costs. In addition, the trial court heard further argument before partially reducing the requested amount to $1,000. On this record, we find no abuse of discretion in the court's award of costs to IDS.

## DISPOSITION

The judgment is affirmed. Respondent is awarded its costs on appeal.

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.**

MANELLA, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.