COURT OF APPEALS
DECISION
DATED AND FILED

May 2, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

No. 99-1052

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

DARCI K. DANNER, FREDERICK DANNER AND RITA DANNER,

PLAINTIFFS-RESPONDENTS,

v.

AUTO-OWNERS INSURANCE,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Oneida County: ROBERT A. KENNEDY, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Auto-Owners Insurance appeals a judgment awarding Darci Danner, Frederick Danner and Rita Danner $142,967.10 for attorney fees they incurred pursuing this bad faith action against Auto-Owners. The judgment also awards $81,012.97 for attorney fees the Danners incurred

pursuing the underlying underinsurance claim against Auto-Owners, including arbitration. Auto-Owners argues that it is entitled to judgment as a matter of law because: (1) no bad faith claim can arise when the parties to an insurance contract choose to arbitrate the insured's legal entitlement to recover damages; (2) the issues of negligence, causation and value of Darci's underinsurance claim were fairly debatable; (3) credible evidence supports the jury's findings respecting the amount of attorney fees incurred; and (4) the trial court erroneously changed the verdict answers. We reject Auto-Owners' arguments and affirm the judgment.

FACTS

¶2 In April 1990, Darci Danner was injured when Tod Kraus collided into her car while he was attempting a left-hand turn in his pickup truck. Kraus was cited for failure to yield the right-of-way. Kraus claimed that after he activated his turn signal, he stopped to avoid hitting some bicyclists. Despite Kraus's contention, other witnesses stated that he did not signal his turn, there were no bicyclists and Kraus turned right in front of Danner's on-coming vehicle. Kraus carried a $25,000 liability policy with Dairyland Insurance.

¶3 Auto-Owners insured the vehicle that Danner was driving. Danner lived with her parents, and Auto-Owners also insured two other family vehicles. Each of the three vehicles carried $100,000 underinsurance coverage. The parties do not dispute that under Wisconsin law at the time, the policies could be stacked to afford total underinsurance limits of $300,000. On May 21, 1991, Auto-Owners acknowledged receipt of Danner's notice of claim for underinsured motorist benefits.

¶4 By November 1992, Auto-Owners had retained attorney Todd McEldowney to represent it regarding Danner's underinsurance claim. In April

1993, McEldowney transmitted the statements of three witnesses to Auto-Owners, stating: "In light of the contents of said statements, we will not be providing the same to opposing counsel or the court."

¶5 In May 1993, McEldowney provided a case summary and evaluation to Auto-Owners, reporting that three witnesses at the scene indicated that Kraus did not have on his left turn signal, that Danner was operating at a prudent speed and that Kraus caused the accident. McEldowney advised that a 90/10 percent allocation of negligence was not inconceivable, a jury would likely believe that the accident caused Danner's present complaints and award her $22,000 in medical specials. On May 20, Auto-Owners gave McEldowney $10,000 settlement authority.

¶6 In June 1993, McEldowney asked whether to invoke the policy's mediation provisions, and Auto-Owners advised, "leave it in litigation. We are not interested in mediation or arb." In August, the Danners invoked the policy's arbitration clause. In June, the court entered an order staying Auto-Owners' involvement in the underlying action until the underlying action was complete.

¶7 In May 1994, McEldowney wrote Auto-Owners' Green Bay claims office that because of Danner's substantial medical expenses, Kraus's attorney was considering offering the policy limits; however, "I have attempted to talk her out of that telephonically and have followed up said conversations with the attached letter." His May 16 letter to Kraus's attorney stated:

> In the meantime, from my obviously biased perspective, I would like to see this case settled for less than your policy limits. I would tend to believe that Auto-Owners Insurance Company would be willing to pay an amount to your company to help defray costs, settlement offers, etc.,

> provided that you would be able to resolve this case for less than policy limits.

¶8 On May 31, 1994, Auto-Owners Green Bay claims office advised its home office legal department as follows:

> As you know, we put all discovery on the back burner, awaiting the outcome of Dairyland's claim. There was the possibility that they would settle within their limits and we would be out of this matter. However, since that has not happened and they have now paid their limits, we will resume our investigation of the injury and the medical discovery.

In June, Dairyland settled with Danner for the policy limits of $25,000.

¶9 By August 10, 1994, Auto-Owners had copies of deposition transcripts of Danner's treating physician. On August 11, in response to the Danners' settlement demand of $300,000, McEldowney informed them that it was Auto-Owners' position that only $100,000 of underinsured motorist benefits were available under their policy. The Danners' attorney advised McEldowney that stacking three policies provided a legal basis for the Danners' claim.

¶10 In October 1994, Auto-Owners initiated surveillance of Danner by Investigation & Research Services. In November, in response to a request for admissions, Auto-Owners denied that $300,000 was their liability limit under the three policies and denied that the amount paid by Dairyland should be deducted from Danners' total damages instead of Auto-Owners total liability limits. In December, McEldowney advised the Danners' attorney that he believed the three $100,000 policies should be stacked and would discuss his views with Auto-Owners the following week. On December 22, 1994, more than four years after

the accident, Auto-Owners made its initial settlement proposal to the Danners in the amount of $10,000.

¶11 On February 15, 1995, Dr. Joseph Tambornino, the physician who examined Danner at the behest of Auto-Owners, reported that Danner had pre-existing back pain and that there did not appear to be a clear relationship between the accident and her subsequent back surgery.

¶12 In April 1995, Robert Ellis of Auto-Owners legal department, who was responsible for valuing the claim, wrote to the Green Bay claims office that he did not "have a good handle on the limits issue" and was unsure whether the Danners would be able to stack all three policies. McEldowney, however, never had any doubt that Danner was a member of her parent's household, thus enabling her to stack the policies. In June, however, Auto-Owners home office considered bringing a declaratory judgment action to determine whether Danner was living at her parent's home at the time of the accident.

¶13 On July 31, 1995, the Danners were awarded $220,050 after the arbitration hearing. Auto-Owners forwarded a draft for $196,797.39, on the premise that $25,000, representing Dairyland's payment, should be deducted to prevent double recovery. In August, the circuit court granted the Danners' motion to confirm the entire award and entered judgment for $220,050.

¶14 In December 1995, the Danners brought this bad faith action against Auto-Owners. The jury found that Auto-Owners exercised bad faith by denying the Danners' claim. The jury awarded $125,000 attorney fees for prosecuting the bad faith action, but awarded no attorney fees for the underlying claim or any other compensatory or punitive damages. At post-verdict proceedings, the trial court denied Auto-Owners' motion for judgment notwithstanding the verdict. It

granted the Danners' motion to change the attorney fees award on the bad faith claim from $125,000 to $142,967.10 and awarded $81,012.97 attorney fees on the underlying claim.

ANALYSIS

¶15 Auto-Owners argues that "no bad faith can arise when the parties exercise a contractual right to arbitrate legal entitlement to recovery" and, accordingly, the trial court erroneously denied its motion for judgment notwithstanding the verdict. Auto-Owners premises its argument on policy language that provides Auto-Owners "will pay all sums which an insured person is legally entitled to recover as damages: (1) because of bodily injury … and (2) arising out of the ownership, maintenance or use of an automobile which is underinsured." The policy provides that in the event the parties disagree as to the amount of or legal entitlement to damages, "either party may make a written demand for arbitration."

¶16 Auto-Owners contends that it was undisputed that the parties could not agree as to the value of the case and that the Danners chose to arbitrate. It contends, as a matter of law, that no cause of action for bad faith failure to pay could arise until after the arbitration award established legal entitlement. We are unpersuaded.[1]

[1] Auto-Owners cites foreign jurisdictions to support its proposition that the underinsured carrier has no duty until after the arbitration award is fixed. *See* ***Voland v. Farmers Ins. Co.***, 943 P.2d 808, 810 (Arizona Ct. App. 1997); ***LeFevre v. Westberry***, 590 So. 2d 154 (Ala.1991); ***Quick v. State Farm Mut. Auto. Ins. Co.***, 429 So. 2d 1033 (Ala. 1983). These cases are not controlling in Wisconsin, and we do not find them persuasive.

¶17 The parties agree that a trial court's decision whether to grant a judgment notwithstanding the verdict is a question of law we review de novo. *See* ***Logterman v. Dawson***, 190 Wis. 2d 90, 101, 526 N.W.2d 768 (Ct. App. 1994). A motion for judgment notwithstanding the verdict admits for purposes of the motion that the verdict's findings are true, but asserts that judgment should be granted to the moving party for reasons other than those decided by the jury. *See* ***Management Computer Servs., Inc. v. Hawkings, Ash, Baptie & Co.***, 206 Wis. 2d 158, 177, 557 N.W.2d 67 (1996).

¶18 An insurance policy is a unique contract in which an "insurer has a special 'fiduciary' relationship to its insured which derives from the great disparity in [their bargaining positions]." *See* ***DeChant v. Monarch Life Ins. Co.***, 200 Wis. 2d 559, 570, 547 N.W.2d 592 (1996). "It is well-settled that if an insurer fails to deal in good faith with its insured by refusing, without proper cause, to compensate its insured for a loss covered by the policy, such conduct may give rise to a cause of action in tort for bad faith." ***Id.*** at 569.

¶19 The underinsurance contract carries with it an obligation to investigate, evaluate and make a good faith effort to negotiate a claim. *See* ***Rhiel v. Wisconsin County Mut. Ins. Corp.***, 212 Wis. 2d 46, 52-53, 568 N.W.2d 4 (Ct. App. 1997). "'To show a claim for bad faith, a plaintiff must show the absence of a reasonable basis for denying benefits of the policy and the defendant's knowledge or reckless disregard of the lack of a reasonable basis for denying the claim.'" ***Radlein***, ***v. Industrial Fire & Cas. Ins.***, 117 Wis. 2d 605, 626, 345 N.W.2d 874 (1984) (quoting ***Anderson v. Continental Ins. Co.***, 85 Wis. 2d 675, 691, 271 N.W.2d 368 (1978)). An insurance company, however, may "challenge claims which are fairly debatable and will be found liable only where it has intentionally denied (or failed to process or pay) a claim without a reasonable

basis." ***Id***. (citing ***Anderson***, 85 Wis. 2d at 693). "'[I]n a case where a claim was not fairly debatable, refusal to pay would be bad faith and, under appropriate facts, could give rise to an action for tortious refusal to honor the claim.'" ***Id***. (quoting ***Anderson***, 85 Wis. 2d at 693).

¶20 At the outset, we note Auto-Owners concedes that its withholding of $25,000 to seek "clarification" after the arbitration awarded the Danners $220,050 would support the jury's finding of bad faith. Consequently, a decision to invoke arbitration has no bearing on Auto-Owners' bad faith if, as Auto-Owners suggests, its bad faith occurred after arbitration. Therefore, Auto-Owners' entire dispute essentially goes to the amount of damages claimed, not whether there is a legal obstacle to the jury's verdict finding bad faith. And, as we discuss later, no facts were presented showing a breakdown of attorney fees to support an award less than that ordered by the trial court. Therefore, we reject Auto-Owners' argument.

¶21 In any event, we conclude that Auto-Owners' policy language does not support its theory that the insured must demonstrate "legal entitlement" by obtaining an arbitration award. In the absence of ambiguity, we must give the policy language its common and ordinary meaning. *See* ***Cieslewicz v. Mutual Serv. Cas. Ins. Co.***, 84 Wis. 2d 91, 97-98, 267 N.W.2d 595 (1978). We recognize that in an underinsured motorist claim, the insured bears the burden of establishing the negligence and resulting liability of the underinsured motorist. *See* ***Radlein***, 117 Wis. 2d at 625. Auto-Owners, however, identifies no policy language that requires the insured to invoke arbitration in order to determine legal entitlement. The policy's plain meaning does not require arbitration as a precondition to Auto-Owners' duty of good faith claim negotiation. We conclude, therefore, that Auto-

Owners' duty of good faith under its insurance contract exists independently of its arbitration clause.[2]

¶22 Also, Auto-Owners' reliance on ***Radlein*** is misplaced. ***Radlein*** holds that the insured has the burden of proving legal entitlement to uninsurance benefits after sustaining a loss. *See* ***id.*** at 620. It does not require the insured seeking uninsured or underinsured motorist benefits obtain an arbitration award or judgment to demonstrate legal entitlement. Auto-Owners' position finds no support in the law. "We caution that an insurer who dispenses with the investigation, evaluation and negotiation of an uninsured motorist claim does so at its peril." ***Rhiel***, 212 Wis. 2d at 53. We conclude that this reasoning holds true for an underinsurance carrier as well. "If the claimant is attempting to negotiate a settlement and the insurer neither evaluates the claim in good faith nor presents an offer, a fact finder may find bad faith." ***Id***. ***Rhiel*** leaves no doubt that "[f]ailing to properly assess the negotiating posture of the insured places the insurer in jeopardy if it elects not to evaluate and attempt to negotiate a fair and reasonable settlement." ***Id.*** at 53-54.

¶23 The presence of an arbitration clause in an underinsurance contract does not permit the insurer to sit back and do nothing for years, waiting until the insured resorts to arbitration. While an insured's arbitration demand may be one factor for the jury to consider in evaluating the insurer's conduct, it is not determinative. We acknowledge that "[t]he doctrine of good faith does not require an insurer to engage in unproductive and irrelevant conduct solely for the sake of form." ***Id.*** at 54. Nonetheless, the test to be applied is not whether the insured

[2] Auto-Owners concedes that the arbitration clause did not require arbitration, but provided that either party may elect it.

invokes arbitration, but rather whether a reasonable insurer under the particular facts and circumstances would have denied payment of the claim. *See* ***Anderson***, 85 Wis. 2d at 692. This is an objective test. *See* ***id.*** The insurer's decision, in order to be made in good faith, must be based upon knowledge of the facts and circumstances upon which liability is predicated; therefore, the lack of reasonable diligence to determine the nature and extent of liability evinces bad faith. *See* ***id.*** at 688. We reject Auto-Owners' argument that an insured's invocation of an arbitration clause in an underinsurance policy insulates the insurer from liability for bad faith.

¶24 In a related argument, Auto-Owners contends that because liability is predicated on a third party's conduct, a bad faith claim against an uninsured or underinsured carrier must be analyzed differently than a first-party claim. It notes that the underinsured carrier "steps into the shoes of the uninsured," a party adverse to the uninsured motorist, and that the insurance contract allows an insurance company to raise any defense that could be raised by the uninsured and underinsured motorist. *See* ARNOLD P. ANDERSON, WISCONSIN INSURANCE LAW § 9.12, at 9-54-55 (4th ed.1999).

¶25 We agree that the underinsurance carrier may raise any defenses available to the underinsured motorist. *See* ***Radlein***, 117 Wis. 2d at 622-23. This rule does not extend, however, to permit the underinsurer to raise spurious issues in an attempt to wear down its insured. Nor does it eliminate the underinsurer's duty to fairly investigate and evaluate the claim to determine what potential defenses are supportable by the law and facts. *See* ***Anderson***, 85 Wis. 2d at 688.

¶26 In ***Sahloff v. Western Cas. & Surety Co***., 45 Wis. 2d 60, 70, 171 N.W.2d 914 (1969), our supreme court contrasted a claim for uninsured motorist coverage against one for liability coverage:

> In settling a claim under the endorsement, the insurer does not represent the uninsured motorist but rather itself on its own contract against its own insured who has paid a premium for this indemnity feature in his liability policy. It is neither necessary under the coverage nor desirable public policy to place the indemnity insurer in exactly the same position of a liability insurer of an uninsured motorist. Consequently the claim against the insurer on the endorsement should be and is treated differently than the cause of action the insured has against the uninsured motorist.
>
> We are not sympathetic with the argument that because the plaintiff's claim against his insurer is founded upon the negligent tort of the uninsured motorist it should be governed by the same considerations as an action for negligence. This is another phase of the argument that the insurer stands in the shoes of the uninsured motorist and therefore should have all his rights. The insurer has not so contracted in the uninsured motorist endorsement. We think it clear the action by an insured against his insurer under the uninsured motorist endorsement is an action on the policy and sounds in contract although in order to recover the insured must prove the negligence of an uninsured motorist.

¶27 We conclude that this reasoning also applies to a contract for underinsured motorist coverage. Every insurance contract carries with it an implied covenant of good faith and fair dealing. *See* ***Anderson***, 85 Wis. 2d at 689. Because the Danners' claim is based on their insurance contract, as opposed to a claim based purely on negligence, Auto-Owners' right to raise the underinsured motorist's defenses must be exercised within the parameters imposed by its duty to honestly, fairly and diligently evaluate the insured's claim.

¶28 Next, Auto-Owners contends that in this case negligence, causation and case value were all "fairly debatable" and, as a matter of law, it had a reasonable basis to deny payment of the Danners' claim, precluding a finding of bad faith.

¶29 It is well settled that when a claim is fairly debatable, the insurer is entitled to debate it without incurring liability for bad faith. *See* ***Anderson***, 85 Wis. 2d at 691.

> In order to establish a claim for the tort of bad faith the insured must prove the absence of a reasonable basis for denying benefits of the policy and the insurer's knowledge or reckless disregard of the lack of a reasonable basis for denying the claim. The first component of this two-part test is based on an objective standard: would a reasonable insurer under the circumstances have denied or delayed payment of the claim under the facts and circumstances. When either the law or facts supporting a claim are "fairly debatable," a reasonable insurer is entitled to debate the claim, and doing so is not considered bad faith.

Samuels Recycling Co. v. CNA Ins., 223 Wis. 2d 233, 248, 588 N.W.2d 385 (Ct. App. 1998) (citations omitted).

¶30 In third-party claim situations, it is not bad faith for an insurer to refuse to settle a victim's claim "under the bona fide belief that the insurer might defeat the action ...." ***Mowry v. Badger State Mut. Cas. Co.***, 129 Wis. 2d 496, 516, 385 N.W.2d 171 (quoting ***Johnson v. American Family Mut. Ins. Co.***, 93 Wis. 2d 633, 646, 287 N.W.2d 729 (1980)). That coverage under the policy was ultimately established fails to prove the insurer denied the policy claim in bad faith. *See* ***id.*** Whether an issue is fairly debatable is based on the information available to the insurance company at the time the demand is presented. *See* ***Rhiel***, 212 Wis. 2d at 56.

¶31 Auto-Owners relies on ***Samuels*** for the proposition that "when an objectively reasonable basis to deny coverage exists, as it does here, it is not necessary to consider evidence of investigation flaws or the subjective element of bad faith." ***Id.*** at 250. It argues that the court need not even consider the subjective component of a bad faith analysis, because evidence adduced at trial objectively demonstrates that the claim was fairly debatable.

¶32 Auto-Owners is correct that both an objective and a subjective component are required to show bad faith. "[W]hile the subjective element can be inferred from an investigation that recklessly disregards the facts, the objective element must also be shown." ***Mills v. Regent Ins. Co.***, 152 Wis. 2d 566, 575, 449 N.W.2d 294 (Ct. App. 1989) (citation omitted). "This requires establishing that a reasonable insurer, proceeding under the facts and circumstances that a proper investigation would have revealed, would not have denied payment of the claim." ***Id.*** (citation omitted). We conclude that on the record before us, whether a reasonable insurer would have denied payment of the claim under the circumstances presented factual issues for the jury to decide. This case contrasts with ***Samuels***, for example, in which the reasonableness of the insurer's conduct turned solely on a question of law. *See* ***id.*** at 248-49.[3] Because evidence supports the finding that a reasonable insurer would not have denied payment, we do not overturn the verdict on appeal.

[3] The ***Samuels*** court concluded as a matter of law that it was reasonable for the insurer to delay defending the insured because the "law concerning whether private lawsuits for environmental cleanup costs triggered coverage under CGL policies" was in the development stage in Wisconsin until 1995. ***Samuels Recycling Co. v. CNA Ins.***, 223 Wis. 2d 233, 249, 588 N.W.2d 385 (Ct. App. 1998).

¶33 Auto-Owners' argument essentially contends that an insurer may deny a claim without investigation or a reasonable basis, resulting in the insured having to incur litigation costs to establish its entitlement. Under Auto-Owners' theory, if five years later an insurer obtains a medical report to debate the claim, it would be immunize itself for its bad faith conduct. This position is not supportable in light of ***Anderson.*** It is the insurer's duty to assess a claim as a result of an appropriate and careful investigation so that its conclusions are the result of weighing probabilities in a fair and honest way. *See* ***Anderson***, 85 Wis. 2d at 688. Such a decision, in order to be made in good faith, must be based upon knowledge of the facts and circumstances upon which liability is predicated. Therefore, the lack of reasonable diligence to determine the nature and extent of the liability evinces bad faith. *See* ***id.***

¶34 While a fairly debatable claim allows an insurer to debate it *fairly*, without incurring liability for bad faith, there is no support for the proposition that a debatable claim permits an insurer to "recklessly ignore" the facts and law necessary to evaluate the claim. *See* ***Anderson***. The fairly debatable nature of a claim is not license to an insurer to dispense with negotiations altogether and to conduct itself in reckless disregard of the facts and law. "[A]n insurer who dispenses with the investigation, evaluation and negotiation of an uninsured motorist claim does so at its peril." *See* ***Rhiel***, 212 Wis. 2d at 53.

¶35 The record supports the determination that Auto-Owners did not engage in fair debate. There is no dispute on appeal that Auto-Owners made its first settlement offer of $10,000 on December 22, 1994, more than three and one-half years after it received formal notice of the claim and four and one-half years after the accident. Yet, in April of 1995, Auto-Owners legal department still did not "have a good handle on the limits issues." The jury could find that Auto-

Owners' failure to act on the Danners' claim was not the result of exercising its right to fairly debate it.

¶36 Next, Auto-Owners argues that "personal injury actions are fairly debatable as a matter of law because, unlike for instance, property claims, valuing personal injury claims involves multiple factors subject to substantial differences of opinion." This argument implies that an insurance carrier has no duty of good faith to negotiate an insured's personal injury claim as a matter of law. This is an incongruous result in light of ***Anderson*** and its progeny. We reject the contention that an insurer may never be liable for bad faith for a personal injury claim simply because all personal injury claims are fairly debatable as a matter of law.

¶37 Finally, Auto-Owners challenges the trial court's decision to change the jury's answers to the verdict's damage questions. The jury answered the verdict as follows:

> QUESTION #1:
> Did Auto-Owners Insurance Company exercise bad faith in denying the claim of the plaintiffs?
> ANSWER: YES
> QUESTION #2:
> If you answered Question #1 "Yes", then answer this question:
> Was such bad faith a cause of compensatory damages to the plaintiff?
> ANSWER: YES
> QUESTION #3:
> If you answered Question #2 "Yes", then answer this question:
> What sum of money will fairly and reasonably compensate the plaintiffs for their damages in the following respects:
>
> (a) Attorney fees and costs incurred by the plaintiffs which are the proximate result of prosecuting their bad faith claim?
> ANSWER: $125,000.
>
> (b) Attorney fees and costs incurred by the plaintiffs in the underlying claim, which included the arbitration hearing, caused by the bad faith of the defendant?
> ANSWER: $ 0

> (c) All other compensatory damages incurred by the plaintiffs which are the proximate result of the defendant's bad faith conduct?
>
> ANSWER: $ 0

¶38 The trial court determined that the only evidence in the record relating to attorney fees was $142,967.10 for prosecuting the bad faith claim and $81,012.97 for the underlying claim, including arbitration. Therefore, it changed the jury's answers to questions 3(a) and (b) to reflect those amounts.

¶39 Auto-Owners argues that the trial court erred because the record supports the jury's finding of only $125,000. It argues that a jury could find that none of Auto-Owners' tactics preceding arbitration were in bad faith, and that the only basis for bad faith was Auto-Owners withholding payment of $25,000 after arbitration. It claims, therefore, that the jury had a factual basis for awarding less than the sum demanded. We conclude that the record fails to support Auto-Owners' contention.

¶40 Our review is guided by the following standards. A motion challenging the sufficiency of the evidence to support a verdict may not be granted "unless the court is satisfied that, considering all credible evidence and reasonable inferences therefrom in the light most favorable to the party against whom the motion is made, there is no credible evidence to sustain a finding in favor of such party." WIS. STAT. § 805.14(1). This "standard applies to both the trial court and this court on appeal." ***Richards v. Mendivil***, 200 Wis.2d 665, 670, 548 N.W.2d 85 (Ct. App. 1996). When there is any credible evidence to support a jury's verdict, "even though it be contradicted and the contradictory evidence be stronger and more convincing, nevertheless the verdict ... must stand." ***Id.*** at 672. "The credibility of witnesses and the weight given to their testimony are matters left to

the jury's judgment, and where more than one inference can be drawn from the evidence, the trial court must accept the inference drawn by the jury." ***Id.*** at 671.

¶41 Therefore, we review the evidence cited by both the Danners and Auto-Owners to determine whether credible evidence exists that supports the jury's answers to the damage questions. At trial, the Danners produced evidence that they incurred attorney fees of $142,967.10 for prosecuting the bad faith claim and $81,012.97 for the underlying claim, including arbitration. The record contains no evidence of any breakdown showing what fees were incurred before or after arbitration. We conclude that the trial court was correct; the record does not support $125,000 in attorney fees for pursing the bad faith claim or zero for pursing the underlying claim. Therefore, the trial court correctly changed the answers to reflect the unrefuted evidence at trial.

By the Court.—Judgment affirmed.

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