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IN THE
COURT OF APPEALS OF INDIANA

Christopher Brandell,

Appellant-Plaintiff,

v.

Secura Insurance, a Mutual Company, and Progressive Southeastern Insurance Company,

Appellees-Defendants,

June 14, 2021

Court of Appeals Case No. 20A-CT-2322

Appeal from Allen Superior Court

The Honorable Jennifer L. DeGroote, Judge

Trial Court Cause No. 02D03-1801-CT-46

Robb, Judge.

Case Summary and Issue

[1] Christopher Brandell appeals the trial court's grant of partial summary judgment in favor of Secura Insurance, a Mutual Company ("Secura"), and raises one issue for our review, which we restate as whether the trial court erred in granting partial summary judgment to Secura on his bad faith claim. Concluding no genuine issues of material fact exist and Secura is entitled to judgment as a matter of law, we affirm.

Facts and Procedural History

[2] On May 2, 2016, Brandell was working in a construction zone on I-469. Brandell was employed by Three Rivers Barricade & Equipment Company, Inc. ("Three Rivers") as a driver. Three Rivers was a subcontractor in charge of traffic maintenance and construction zone signage on a contract between the Indiana Department of Transportation ("INDOT") and a contractor, Primco, Inc. On the day of the accident, Brandell was adjusting traffic control devices on the interstate when he was struck by a truck driven by Roger Caley. Brandell suffered extensive injuries.[1] A police crash report was filed regarding the

[1] Brandell's injuries included "Emergency Heart Surgery[,] Tear in Kidney and spleen[,] 3 broken ribs[, and] Concussion[.]" Appellant's Appendix, Volume 3 at 206.

accident that stated Brandell was a pedestrian.[2] *See* Appellant's Appendix, Volume 3 at 66-67.

[3] Caley had liability insurance with a policy limit of $25,000. At the time of Brandell's accident, Secura provided three separate insurance policies to Three Rivers: a worker's compensation policy, a commercial general liability ("CGL") policy, and a commercial auto policy. The commercial auto policy included underinsured motorist ("UIM") benefits. Brandell also had a personal auto policy through Progressive Southeastern Insurance Company under which he also may have been eligible for UIM benefits. *See id.*, Vol. 6 at 59-60.

[4] On May 3, Brandell made a worker's compensation claim under the Three Rivers Policy. The worker's compensation first report of injury form included, in pertinent part, the following information:

Department or location where accident / exposure occurred N/A	All equipment, materials, or chemicals involved in accident VEHICLE
Specific activity engaged in during accident / exposure EE WAS ADJUSTING TRAFFIC CONTROL DEVICES INSIDE A WORK ZONE AREA VEHICLE	Work process employee engaged in during accident / exposure
How injury / exposure occurred. Describe the sequence of events and include any relevant objects or substances. MULTIPLE INJURIES; A VEHICLE CORSSED THRU TRACFFIC CONTROL DEVICES & STRUCKED	Cause of injury code 77

Id., Vol. 5 at 60.[3] On June 22, Secura Senior Subrogation Representative Patti Rutzinski sent an internal email regarding Brandell's worker's compensation

[2] Secura also received over fifty photographs from the Allen County Sheriff's Department. *See* Appellant's App., Vol. 5 at 102-59. The photos show a Three Rivers' truck near the work zone. *Id.*

[3] Injury Code 77 "[a]pplies when a person is struck by a motor vehicle[.]" Workers Compensation Insurance Organizations, *Injury Description Codes Cause of Injury*, page 4 (February 2021),

claim noting the seriousness of Brandell's injuries, that over $85,000 had already been paid out for Brandell's injuries, and that the worker's compensation reserves were $215,000.[4] *Id.* at 67. Further, Rutzinski stated that "we would not be entitled to UIM if claim is made by Mr Brandell." *Id.*

[5] On October 17, 2016, Brandell served a Tort Claim Notice on INDOT and other governmental entities. Subsequently, the Indiana Office of the Attorney General sought defense and indemnification from Primco who in turn demanded that Three Rivers provide a defense and contractual indemnification against Brandell's tort claim. Secura then opened a liability claim under Three Rivers' CGL policy and assigned Claims Adjuster Jessica Prall to investigate and evaluate Primco's claim for contractual liability against Three Rivers. In her notes, Prall summarized a conversation she had with a subrogation claims representative regarding whether Brandell planned on making a UIM claim on his own personal policy; the representative was not aware of any UIM claims being made. *See id.* at 197; *id.*, Vol. 6 at 69 (Deposition of Crystal Uebelher). On January 25, 2017, Secura denied Primco's tender for defense and indemnity as to Three Rivers. *See id.*, Vol. 3 at 174-75.

[6] On September 15, 2017, Brandell's counsel contacted Prall and inquired as to whether Three Rivers had UIM coverage because Brandell intended to make a

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https://www.wcio.org/Active%20PNC/WCIO_Cause_Table.pdf (last visited May 28, 2021) [https://perma.cc/S9LH-BTC7].

[4] Rutzinski's email states that $4,378,22 in TTD and $85,606.31 in medical had been paid out to date.

UIM claim. *See id.* at 175. That same day, Secura opened a UIM claim for Brandell and assigned his claim to Claims Adjuster Eric Seefeldt. Seefeldt conferred with Secura's in-house counsel and determined that Brandell did not qualify for UIM coverage under Three Rivers' auto policy. The auto policy states, in relevant part:

> *A. Coverage*
>
> > 1. We will pay all sums the "insured" is legally entitled to recover as compensatory damages from the owner or driver of an "underinsured motor vehicle". The damage must result from "bodily injury" sustained by the "insured" and caused by an "accident" with an "underinsured motor vehicle".
>
> * * *
>
> *B. Who Is An Insured*
>
> If the Named Insured is designated in the Declarations as:
>
> * * *
>
> 2. A partnership, limited liability company, corporation or any other form of organization, then the following are "insureds":
>
> > a. Anyone "occupying" a covered "auto" or a temporary substitute for a covered "auto". The covered "auto" must be out of service because of its breakdown, repair, servicing, "loss" or destruction.

b. Anyone for damages he or she is entitled to recover because of "bodily injury" sustained by another "insured".

* * *

F. Additional Definitions

As used in this endorsement:

* * *

2. "Occupying" means in, upon, getting in, on, out or off. . . .

Id. at 53-54, 56.

[7] On September 18, 2017, Brandell sent a letter informing Secura that he had retained counsel who had an attorney fee lien on any settlement and that he would be pursuing a UIM claim under the theory that "Brandell was placing barriers down on 469 when he was struck by Mr. Caley." *Id.* at 206. On September 25, Seefeldt sent Brandell a letter stating that Brandell did not fit Secura's definition of an "insured" under the UIM endorsement but asked Brandell to forward any information he believed would change their analysis.[5] *See id*. at 219-20. Brandell subsequently requested a complete copy of Three

[5] Secura internally denied the UIM claim on September 22, 2017. *See* Appellant's App., Vol. 5 at 176.

Rivers' auto policy which Secura provided him. Brandell then sent Secura a letter objecting to Secura's UIM coverage determination. *See id.* at 226.

[8] On October 13, 2017, Secura sent Brandell a letter stating that based on the information it had been provided, Brandell "was not using the vehicle at the time and would not be considered an insured under the liability policy" and again requested that he forward any additional information he "believe[d] would change [their] analysis of coverage[.]" *Id.*, Vol. 5 at 184.

[9] On November 7, Brandell sent another letter to Secura disputing its coverage determination and asserting that while Brandell was replacing the barricades on I-469, he "was operating a stake bed truck owned by Three Rivers[ ] with another employee as a passenger." *Id.,* Vol. 3 at 232. Brandell stated that he had an "active" relationship with the truck at the time of the accident and therefore, he was "using" it. *Id.* Brandell's activity at the time of the accident was described as follows:

> [Brandell] would drive a short distance, stop the vehicle in the shoulder with the two rotating flashing lights on the top of the vehicle and the four-way hazards on, get out of the vehicle on foot, move the barrels, get back into the driver's seat and then drive forward a small distance and do the same thing.

Id.

[10] Secura then retained counsel to review and evaluate Brandell's claim for UIM coverage. On December 20, Secura's counsel contacted Brandell to schedule an examination under oath ("EUO") to learn more facts needed to determine

coverage for Brandell's UIM claim. However, before an EUO could be conducted, Brandell filed this lawsuit. Brandell asserted claims of negligence against Caley, and asserted claims for UIM benefits against his own insurer, Progressive; Secura; and Travelers, which issued an auto policy to Primco. Brandell then amended his complaint to assert a bad faith claim against Secura. Brandell claimed that Secura acted in bad faith by making an unfounded refusal to pay UIM coverage proceeds. Travelers and Caley were both subsequently dismissed from the case.

[11] On August 21, 2019, Secura filed a motion for partial summary judgment on Brandell's bad faith claim. Following a hearing on the motion, the trial court entered an order granting Secura's motion for partial summary judgment. The trial court found that neither the police crash report nor the worker's compensation report indicated that Brandell was operating, using, maintaining, or even near a vehicle insured by Secura at the time of the accident. Therefore, the record indicated that Secura denied coverage because it rationally determined Brandell was not eligible for coverage under Three Rivers' auto policy. *See* Appealed Order at 4, 13. The order was interlocutory, as Brandell's UIM claim remained pending. However, after conducting limited discovery and taking Brandell's deposition, Secura accepted Brandell's UIM claim, and the parties settled the claim. On November 20, 2020, the trial court made final its order granting Secura's motion for partial summary judgment on the bad faith claim. Brandell now appeals.

Discussion and Decision

I. Standard of Review

[12] On appeal, we review a summary judgment with the same standard employed by the trial court: relying only on the evidence designated by the parties and construing all facts and reasonable inferences in favor of the non-moving party, we will affirm the grant of summary judgment "if the designated evidentiary matter shows that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Ind. Trial Rule 56(C); *see City of Beech Grove v. Beloat*, 50 N.E.3d 135, 137 (Ind. 2016). The moving party has the initial burden to show the absence of any genuine issue of material fact as to a determinative issue. *Hughley v. State*, 15 N.E.3d 1000, 1003 (Ind. 2014). Indiana law requires the moving party to "affirmatively negate an opponent's claim." *Id.* (quotation omitted). The burden then shifts to the non-moving party to come forward with contrary evidence showing an issue to be determined by the trier of fact. *Id.* The non-prevailing party has the burden of persuading us that the trial court's ruling was erroneous. *Id.*

[13] Here, the trial court issued a lengthy and thorough order explaining its decision. A trial court's findings on summary judgment are helpful in clarifying its rationale, but they are not binding on this court on review. *Biedron v. Anonymous Physician 1*, 106 N.E.3d 1079, 1089 (Ind. Ct. App. 2018), *trans. denied*. We are not constrained by the arguments made to the trial court and we may affirm a

grant of summary judgment on any basis supported by the designated evidence. *Id.*

II. Bad Faith

[14] Under Indiana law, there is an implied duty in all insurance contracts that an insurer will act in good faith with its insured. *Erie Ins. Co. v. Hickman*, 622 N.E.2d 515, 518 (Ind. 1993). And there is a cause of action for the tortious breach of that duty. *Id.* at 519. To prevail on a bad faith claim, the plaintiff must prove the insurer: (1) made an unfounded refusal to pay policy proceeds; (2) caused an unfounded delay in making payment; (3) deceived the insured; or (4) exercised an unfair advantage over the insured to pressure the insured into settling its claim. *Id.* Poor judgment and negligence do not amount to bad faith; there must also be the additional element of conscious wrongdoing. *Colley v. Ind. Farmers Mut. Ins. Grp.,* 691 N.E.2d 1259, 1261 (Ind. Ct. App. 1998) ("A finding of bad faith requires evidence of a state of mind reflecting dishonest purpose, moral obliquity, furtive design, or ill will."), *trans. denied.*

A. Disclosure of Claims

[15] Brandell argues that "[Secura] breached its duty of good faith and fair dealing to Brandell by failing to disclose all coverages immediately."[6] Appellant's Brief at 11. However, we have previously held that "[i]nsurers cannot be said to have a

[6] On September 15, 2017, Brandell inquired as to whether UIM was available to him. That same day, a UIM claim was opened. We need only determine whether Secura breached its duty of good faith and fair dealing by failing to disclose that UIM was potentially available to Brandell prior to his inquiry.

duty of informing insureds of coverage that may not even exist." *Wedzeb Enters., Inc. v. Aetna Life & Cas. Co.*, 570 N.E.2d 60, 63 (Ind. App. Ct. 1991), *trans. denied*.

[16] In *Wedzeb*, Wedzeb Enterprises, Inc. ("Wedzeb") had an insurance policy issued by Aetna Life and Casualty Company ("Aetna"). Wedzeb claimed that Aetna breached its duty of good faith and fair dealing, in relevant part, by failing to inform Wedzeb of its potential coverage rights under a particular section of the insurance policy. We concluded that "[t]his is not a case where the insurer knew the insured had sustained a particular injury, knew the policy covered that particular injury, and yet failed to inform the insured of this fact[,]" and found that Wedzeb presented no facts upon which we could conclude Aetna acted in bad faith. *Id.* at 63-64.

[17] In contrast to the facts and conclusions in *Wedzeb*, Brandell argues that Secura "knew of the UIM coverage, knew Brandell's claim exceeded Caley's coverage early and referenced the UIM coverage throughout the claim while never disclosing it to Brandell or investigating it." Appellant's Br. at 16. In support of his argument, Brandell relies on *Earl v. State Farm Mut. Auto Ins. Co.*, 91 N.E.3d 1066 (Ind. Ct. App. 2018), *trans. denied.*

[18] In *Earl*, the insured sustained injuries from a hit-and-run accident with a semi driver. At the time of the loss, the insured had an insurance policy issued by State Farm with $250,000 in uninsured motorist ("UM") coverage and a separate Personal Liability Umbrella Policy ("PLUP") with two million dollars

in coverage. The insured filed a claim against State Farm for UM coverage benefits for damages incurred as part of the accident. At no point before or during litigation did State Farm inform the insured of his potential PLUP coverage. It was not until after litigation that State Farm disclosed the UM coverage. The insured then brought a claim alleging, in part, bad faith against State Farm. The insured argued that State Farm internally noted the possible applicability of PLUP to the insured's claim and that there were multiple instances in State Farm's claim notes indicating the insured had PLUP coverage. State Farm moved for summary judgment, which the trial court granted; however, on appeal, this court found that there was a chain of events and a "deceptive fact pattern" that created a question of material fact as to whether State Farm acted in bad faith. *Id.* at 1077. We find the case at hand distinguishable from *Earl.*[7]

[19] In *Earl*, it was undisputed that the insured had a PLUP through State Farm with available coverage for damage done by an uninsured motorist. Further, State Farm conceded that it should have disclosed the PLUP and stated that it only failed to because it "never evaluated the claim as having a value remotely approaching the limit of the underlying policy." *Id.* at 1070. Here, Brandell is

[7] We do not believe *Earl* controls given the facts in the instant case; however, we disagree with Secura's contention that *Earl* only "concerned an insurer's failure to disclose [UM] coverage in an umbrella policy when specifically asked to disclose that coverage under oath in interrogatories during litigation." Brief of Appellee at 35. The court in *Earl* detailed a "chain of events" that created a question of material fact as to whether State Farm acted in bad faith, many of which occurred years before the insured served State Farm with interrogatories. *See Earl*, 91 N.E.3d at 1077.

not an "insured" under Three Rivers' auto policy unless he is "occupying" a Three Rivers vehicle. Appellant's App., Vol. 3 at 53-56. The record shows that, prior to Brandell's November 7, 2017 letter, Secura had no indication that Brandell had an active relationship with the stake bed truck and therefore, no reason to believe that Brandell was covered under Three Rivers' auto policy.[8]

[20] The worker's compensation report stated that Brandell was struck by a vehicle while he was adjusting traffic control devices in a work zone.[9] *Id.*, Vol. 5 at 60. Further, the cause of injury code indicated that a person was struck by a vehicle. *Id.* The police crash report stated that Brandell was a pedestrian. *See id.*, Vol. 3 at 66-67. Even Brandell's initial letter advising Secura he was pursuing a UIM claim is devoid of any mention that Brandell was in some way occupying the stake bed truck. *See id.* at 206. Instead, Brandell's claim was premised on the fact that he "was placing barriers down on 469 when he was struck by Mr. Caley." *Id.*

[21] Brandell highlights two instances where Secura mentions UIM prior to his September 15, 2017 inquiry. *See* Appellant's Br. at 26. However, designated evidence shows that the mention of UIM in Prall's notes was about a potential

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[8] We need not determine whether Brandell was, in fact, occupying the vehicle as it does not impact the outcome of Brandell's bad faith claim.

[9] Brandell cites the definition section of the worker's compensation report to argue that the report indicates Brandell was "using" a vehicle at the time of the accident; however, the report clearly states that a vehicle was "involved" in the accident. *See* Appellant's Br. at 24. The report supports Secura's contention that they were not informed that Brandell was potentially occupying the stake bed truck.

UIM under Brandell's personal policy not the Three Rivers' auto policy. Further, the mention of UIM in an email from Rutzinski to other Secura employees was in regard to Brandell's worker's compensation claim as indicated by the subject line and content, and states that UIM is not applicable. Appellant's App., Vol. 5 at 67; *cf. Earl,* 91 N.E.3d at 1077 ("There are multiple instances in State Farm's Claim Notes indicating the [insured] *had* PLUP coverage[.]") (emphasis added). Here, there is not a "chain of events" or "deceptive fact pattern" that creates a question of material fact. *See Earl,* 91 N.E.3d at 1077. Instead, this case follows the facts in *Wedzeb.* Secura did not know that Brandell was covered under Three Rivers' auto policy because of the circumstances of the accident and thus had no reason to believe the UIM benefits were available to Brandell. *See Wedzeb*, 570 N.E.2d at 63-64 ("This is not a case where the insurer knew the insured had sustained a particular injury, knew the policy covered that particular injury, and yet failed to inform the insured of this fact."). Thus, as in *Wedzeb*, we conclude that Brandell failed to present any facts upon which we could conclude Secura acted in bad faith by failing to disclose the UIM coverage under Three Rivers' auto policy.

B. Denial of Claim

[22] Brandell also argues that the "denial of benefits to Brandell creates genuine questions of fact as to whether or not [Secura] breached its duty of good faith

and fair dealing to Brandell."[10] Appellant's Br. at 11. Specifically, Brandell contends that "Secura immediately denied [his] claims without diligent investigation." *Id.* at 12.

[23] The lack of diligent investigation alone is not sufficient to support an award based on bad faith. *Hickman,* 622 N.E.2d at 520 (citing *Continental Cas. Co. v. Novy*, 437 N.E.2d 1338, 1356 (Ind. Ct. App. 1982)). A cause of action will not arise every time an insurance claim is denied. *Id.* at 520. On the other hand, an insurer that denies liability knowing there is no rational basis for doing so has breached its duty. *Id.* To prove bad faith, the plaintiff must establish, with clear and convincing evidence, that the insurer had knowledge that there was no legitimate basis for denying liability. *Ind. Ins. Co. v. Plummer Power Mower & Tool Rental, Inc.,* 590 N.E.2d 1085, 1093 (Ind. Ct. App. 1992).

[24] On September 15, 2017, Brandell contacted Secura inquiring whether Three Rivers had UIM coverage. That same day, Secura opened a UIM claim for Brandell. Seefeldt stated in an affidavit that he conferred with Secura's in-house counsel and determined that "Brandell was not entitled to UIM coverage under the [p]olicy because he was not an 'insured' under the UIM endorsement, because the information provided indicated that he was not 'occupying' a covered auto." Appellant's App., Vol. 3 at 188. Secura initially denied

[10] Brandell's UIM claim has been settled; we are reviewing only Secura's initial denials.

Brandell's claim on September 25 and then again on October 13.[11] Secura determined that Brandell "was not using the vehicle at the time and would not be considered an insured under the liability policy." *Id.*, Vol. 5 at 184.

[25] To be covered under Three Rivers' auto policy, through Secura, Brandell must have been "occupying" a covered vehicle. *See id.*, Vol. 2 at 53-54. Here, a police crash report was filed stating that Brandell was a pedestrian. *See id.*, Vol. 3 at 66-67. Three Rivers filed a worker's compensation claim which stated that Brandell was adjusting traffic devices inside a work zone area at the time of the accident. Also, the worker's compensation cause of injury code was "77" which "applies when a person is struck by a motor vehicle[.]" *Id.*, Vol. 5 at 60; *see supra* n.3. Further, on September 18, 2017, Brandell stated that he was pursuing a UIM claim because he "was placing barriers down on 469 when he was struck by Mr. Caley." Appellant's App., Vol. 3 at 206. The record shows that at the time of Secura's initial UIM claim denials all evidence indicated that Brandell was not occupying a Three Rivers' vehicle.[12]

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[11] In its denial of Brandell's UIM claim, Secura cited *Orrell v. Green*, 834 N.E.2d 727, 730 (Ind. Ct. App. 2005) (stating when someone is "not getting in, on, out, or off of any automobile at the time of the accident," they are not occupying a vehicle) and *Lake States Ins. Co. v. Tech Tools, Inc.*, 743 N.E.2d 314, 321 (Ind. Ct. App. 2001) (holding the term "occupying" is not ambiguous and does not extend sixty feet away from a vehicle). Appellant's App., Vol. 3 at 198, 234. It invited Brandell to submit any additional information relevant to its determination and Brandell did cite caselaw he believed supported a different conclusion, but he did not provide any additional *facts* in support of his claim. *See id.* at 226.

[12] There is nothing in the record to suggest Secura was aware of an active relationship between Brandell and the Three Rivers' stake bed truck until Brandell disputed the denial of his claim again on November 7, 2017. *See* Appellant's App., Vol. 3 at 232.

[26] There was a rational basis for Secura's initial denials of Brandell's UIM claim, and Secura supported its position with good faith legal arguments. Brandell has failed to establish by clear and convincing evidence that Secura breached its duty to act in good faith when it initially denied Brandell's UIM claim.

C. Handling of Claim

[27] Finally, Brandell argues that Secura's "handling of this claim was not in good faith to Brandell." Appellant's Br. at 12. Although "an insurer's duty to deal in good faith with its insured encompasses more than a bad faith coverage claim[,]" our supreme court has not expressly recognized a claim for bad faith claim-handling.[13] *Monroe Guar. Ins. Co. v. Magwerks Corp.,* 829 N.E.2d 968, 976 (Ind. 2005). In *Magwerks,* the insured's bad faith claim was based on the insurer's "manner of handling the claim." *Id.* (internal quotation omitted). But, because neither party provided guidance on the issue, our supreme court declined to expand the extent of an insurer's duty beyond that expressed in *Hickman. Id*. Therefore, we analyze Brandell's claim under the four obligations articulated in *Hickman*:

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[13] Another panel of this court observed:

> the [*Magwerks*] court noted that an insurer may breach the covenant of good faith and fair dealing in ways other than a wrongful denial of coverage; hence, an insurer may exhibit bad faith in, for example, its handling of the claim such that even if it engages in a good faith dispute over coverage it may still breach the covenant of good faith and fair dealing.

HemoCleanse, Inc. v. Philadelphia Indem. Ins. Co., 831 N.E.2d 259, 264 n.2 (Ind. Ct. App. 2005) (citing *Magwerks*, 829 N.E.2d at 977), *trans. denied*. However, as we address above, *Magwerks* does not establish indisputably a claim for bad faith in the handling of a claim.

> The obligation of good faith and fair dealing with respect to the discharge of the insurer's contractual obligation includes the obligation to refrain from (1) making an unfounded refusal to pay policy proceeds; (2) causing an unfounded delay in making payment; (3) deceiving the insured; and (4) exercising any unfair advantage to pressure an insured into a settlement of his claim.

Hickman, 622 N.E.2d at 519.

[28] Brandell relies on *Magwerks* and contends that Secura's "conduct leading up to . . . its denial in September 2017 creates a genuine issue as to whether or not Secura [ ] caused an unfounded refusal to pay policy proceeds." Appellant's Br. at 23.

[29] In *Magwerks*, the roof of a building owned by Magwerks suffered significant damage from a weather event. Monroe Guaranty Insurance Company ("Monroe") had issued an insurance policy to Magwerks which provided that Monroe would pay for losses "involving collapse of a building or any part of a building[.]" *Magwerks*, 829 N.E.2d at 971 (emphasis omitted). However, when Magwerks submitted a claim to Monroe, Monroe denied coverage, citing to several policy exclusions but not mentioning the collapse coverage. In support of its contention that its loss was due to a collapse of the roof, Magwerks pointed out that

> (i) it submitted a loss of claim notice identifying the problem as a collapsed roof due to rain; (ii) Monroe[']s adjuster observed roof damage and collapsed interior ceiling panels; (iii) an independent engineering firm hired by [Monroe] noted that two sections of the roof were collapsed and that several sections of the roof deck had

> been temporarily braced to prevent further collapse; and (iv) in its letter denying coverage, [Monroe] made no reference to the collapse provision of the policy.

Id. at 976-77 (internal quotations and alterations omitted).

[30] Magwerks showed that the insurance company "essentially acknowledge[d] that the cause of Magwerks' loss was a collapse of a building or any part of a building caused by the weight of rain that collects on a roof[.]" *Id.* at 977 (internal quotations and alterations omitted). Therefore, the court concluded "a jury could reasonably have reached the conclusion that [Monroe's] conduct amounted to 'an unfounded refusal to pay policy proceeds.'" *Id.* at 977 (quoting *Hickman*, 622 N.E.2d at 519). This case is distinguishable from *Magwerks*.

[31] At no point prior to Brandell's inquiry into UIM did Secura "essentially acknowledge" that Brandell's accident was covered by Three Rivers' auto policy. *Id.* at 977. And as we have stated above, the record shows that prior to its denials of Brandell's UIM claim, Secura had no indication that Brandell was "occupying" a Three Rivers' vehicle at the time of the accident. *See supra* ¶ 20. Further, Secura's actions after Brandell inquired about UIM do not constitute bad faith.[14]

[14] Brandell seemingly only challenges Secura's conduct preceding the September 2017 denial of UIM. However, our holding also applies to the October 2017 denial.

[32] We conclude that there is no question of material fact that Secura's conduct did not amount to "an unfounded refusal to pay policy proceeds." *Hickman*, 622 N.E.2d at 519.

Conclusion

[33] Secura did not act in bad faith and no genuine issues of material fact exist. Accordingly, we affirm the trial court's grant of partial summary judgment to Secura on this claim.

[34] Affirmed.

Bailey, J., and May, J., concur.