

**Closing Argument of James Harris  
Counsel for Plaintiff  
Stewart v. Meridian Mutual, 94 CI 0910  
Bad Faith - Automobile Policy  
Verdict: \$1,075,000 for plaintiff  
McCracken Circuit Court  
January 9, 1998**

**Case Summary**

*Plaintiff suffered a serious injury in a one-car crash when her husband drove off the road. Thereafter, she delayed making a claim, believing it was precluded by the now antiquated "family exclusion." The insurer knew it too, and stayed quiet, hoping it would not be discovered. Finally, plaintiff hired an attorney, and the policy limits were then immediately tendered in the sum of \$50,000; this action for bad faith followed. The jury unanimously found a bad faith violation and awarded damages of \$75,000 for same, plus \$1,000,000 for punitive damages. The verdict totaled \$1,075,000.*

**Mr. Harris' Closing Argument**

Ladies and gentlemen, ladies and gentlemen of the jury, I want to very much thank you for your service on this jury. I know that for you to come down today has taken time away from your families and your work, the people that you supervise or your supervisors, your coworkers, your friends, to do a public service. To breach this particular case and hopefully to give both parties and the legal system justice. Just a little fairness.

You know we have big insurance companies that we all have to deal with. These policies that we're talking about, we don't write them. Insurance companies write them. The comparative resources between an insurance company and an insured are enormous. They have all the influence, power, and resources, and really truly we have none. Mr. and Mrs. Stewart have none. In a recognition of that imbalance, that unfairness, fortunately our Supreme Court and our legislators have passed some laws and you heard about them. They were so simple. Thank goodness they are there. And they say insurance companies, you gotta be fair, and you gotta be honest. It is presented to you that in Supreme Court decisions that you heard about fiduciary duties, the Consumer Protection Act, which you heard about, by the way these are all exhibits now, the Unfair Claims Settlement Practice Act. You got to do it. It is a given in this case. Ms. Story has come down as the courtroom representative. I'm gonna

comment on that for a moment. Ms. Story, who was sitting down as the courtroom representative, acknowledged when I asked her about acting in good faith. Does it mean among other things, keeping the insureds and claimants informed about the status of their claims? And explaining to them what has happened with regards to resolution of these claims? And she did what she had to do when she acknowledged, "Yes that is our responsibility and our duty." And does it also include paying each claim when payment is due? And she also acknowledged that.

Let me tell you what this case is about and

**Keypoint: Bad Faith Argument**

*Harris sharply criticizes Meridian for failing to pay the claim, when it was clearly owed, also mocking the notion payment was not owed because plaintiff only made a claim, not a demand.*

what it is not about. I have heard the explanation as to why, not one, not two, but three different adjusters did not pay this claim when they knew it was owed. You heard that too. Is there a doubt in your mind that you heard that? They knew that the claim was owed and they knew that the claim was owed really from the day that it was reported to them. All the way back to within a few days after Christmas. But certainly all the days after that. They knew that it was owed and they didn't pay it. The first adjuster, the second adjuster and the third adjuster and you know all during that process Mr. Stewart is doing what he can. Bless his heart he is doing what he can to inform the insurance company about what is going on and to make inquiries about what can be done for my wife? And Meridian didn't come clean. Meridian sandbagged him folks and you know that is what happened. And this was not a case as Mr. Roberts said. This is a case were it just fell through the cracks. This was a bureaucratic glitch. This was a, I love this one, this wasn't paid because he had a duty to make a demand and he did not make a demand. He makes a claim. That's what I am talking about, he makes a claim but somehow he didn't make a demand. If it had been just one adjuster, maybe you could buy some of this argument but not three. And not with the company line institutional argument that you got from the litigation that they had from Mr. Shouse. Which was "Well, yeah we can know about the claims but we don't have to volunteer it." Folks that is not true. Didn't you hear Mr. Shouse say, not just once but several times, "We don't have to

volunteer to pay it even if we know that we owe it.” That is not even what Mr. Shorry says. That’s not what the law says. If the claim is presented and they know they owe the money they have a duty to pay it promptly. And not sandbag it. And there is more that’s going on here with Meridian, folks. How do you explain, how has Meridian attempted to explain to you the continued use of the family exclusion.

You know when I . . . , an part time commonwealth attorney, I may have some of you all in criminal juries later in this term. When I prosecute cases I see things that really strike me as so obvious about what is going on, but lots of time they are by folks who are not real sophisticated. I mean let’s face it, some of our common criminals are not real sophisticated folks. But we are talking about in this instance, an institution with office buildings full of employees and staffs of lawyers in many states, and as an institution they continue to use what they knew was a policy provision which was illegal. And there is no quarrel about this and I wanted to be sure that this decision was one of the exhibits that you had. The Supreme Court did say in 1981 that family exclusion is void against public policy. There is no debate about it. Think about it, that is almost insidious, it would be wrong for our insurance legal system to say that a family member, simply because you are a family member should be excluded from the protection that everyone else would get. Meridian, and you heard this, it wasn’t easy taking Mr. Shouse’s deposition, but we got it out of him. Mr. Shouse acknowledged that Meridian knew, starting in 1981 that this policy revision was not the law. As we stand and face each other right now, what explanation did you hear for why they continued to use it. I still have not heard one. An innocent explanation as to why they continued to use it.

There is an improper and a wrong reason why they continued to use it. And that was, every once in a while, maybe many, maybe a few, maybe someone like the Stewarts who ask an adjuster to read their policy or ask their agent to read their policy, and someone is going to be misled and we are going to be unable to stand by you. From beginning to end, this case and the way this claim was handled, was wrong. And the language in this instruction, no question they were obligated to pay, there was no question they lacked a basis for not paying. Meridian knew there was no basis for not paying it. You heard that. They knew that they should have paid the claim. Whether the conduct was outrageous because of an evil motive or a reckless indifference to Charlotte’s rights, and what was made for the purpose of deceiving her about the coverage, and whether it oppressive because it was intended to

deprive the plaintiff, to subject the plaintiff to cruel and unjust hardship and whether it was fraudulent because of an intentional misrepresentation.

It’s all there. Every bit of it is right there. So here’s what it comes down to. The Supreme Court has done what it could. It has announced proper, legal rules about how insurance companies should behave. The General Assembly has done what it should. It has passed laws saying how insurance companies should behave. Judge Hines, fortunately, has done what a good judge should do, and that is to properly instruct a jury on what the insurance company’s duty was. Now it comes down to whether a jury will follow what the Supreme Court has said, what the General Assembly

**Keypoint: Damages**

*Harris fails to quantify damages for the bad faith claim, instead quietly directing the panel to do “the right thing.”*

has said, and what Judge Hines’ instructions have said, and whether a jury, taking one day out of your lives doing a public service will do the right thing. Not so much for the Stewarts, but for the legal system and for the benefit of other persons who have to deal with insurance companies. And I know that you will do the right thing.