**IN THE UNITED STATES COURT OF APPEALS**

**FOR THE FIFTH CIRCUIT**

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No. 92-7444

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JOHNNY D. MCPHAIL,

Plaintiff-Appellant,

VERSUS

STATE FARM FIRE & CASUALTY COMPANY,

Defendant-Appellee.

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Appeal from the United States District Court
for the Northern District of Mississippi
WC 91 44 D D

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April 30, 1993

Before JOHNSON, SMITH, and EMILIO M. GARZA, Circuit Judges.

JERRY E. SMITH, Circuit Judge:[*]

This suit arises from a complaint Johnny McPhail filed against State Farm Fire and Casualty Insurance Company ("State Farm"), asserting that State Farm wrongfully denied coverage to McPhail after a house he owned burned. The district court granted summary judgment to State Farm, finding that McPhail's failure to provide State Farm with certain financial documents violated the insurance

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[*] Local Rule 47.5.1 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that rule, the court has determined that this opinion should not be published.

policy that McPhail had with State Farm. We affirm.

I.

Just before midnight of July 2, 1990, fire destroyed a house owned by McPhail in Slate Springs, Mississippi. McPhail lived near Oxford, Mississippi, rented the Slate Springs house to John Paul Vance, and maintained a policy of rental dwelling insurance on it with State Farm.

McPhail and Vance had entered into a rental agreement under which Vance would rent the house for one year with an option to purchase. Sometime after May 15, 1990, Vance backed out of the sale, and moved out of the house between two days and a week before the fire.

McPhail received a telephone call at his Oxford home from a relative early on July 3 telling him about the fire in Slate Springs. Later that morning, McPhail informed a State Farm agent of the fire. State Farm promptly sent James Vickers, an independent cause and origin expert, to inspect the fire scene. Vickers concluded that the fire was incendiary. Three weeks later, McPhail hired his own expert, Reno Branham, to conduct an investigation. Branham concluded that the cause of the fire was electrical. State Farm sent Vickers to re-examine the scene, and he once again determined that the fire was incendiary. State Farm then sent John Owens, an electrical engineer, to evaluate the cause of the fire. He found no evidence to indicate that the cause of the fire was electrical.

The insurance policy between State Farm and McPhail contains the following clause:

> 2. Your Duties After Loss. In case of a loss to which this insurance may apply, you shall see that the following duties are performed:
>
> d. As often as we reasonably require:
>
> (1) exhibit the damaged property;
>
> (2) provide us with records and documents we request and permit us to make copies; and
>
> (3) submit to examination under oath and subscribe the same.

McPhail timely submitted to State Farm a proof-of-loss that described specific items of property destroyed in the fire. On August 7, he gave the first of two examinations under oath. During this examination, he answered many, but not all, of State Farm's questions pertaining to his financial status.

After the first examination, State Farm wrote to McPhail requesting specific documents: (1) all of McPhail's and his wife's credit card statements for the five months before the fire, (2) all financial documents regarding a trailer park that McPhail owned, (3) all records of loans applied for or owed by McPhail and his wife in the two years before the fire, (4) all documents relating to any safe deposit box to which the McPhails had access in the year before the fire, (5) records of any bank accounts to which the McPhails had access in the year before the fire, and (6) several other items, such as photographs of the insured property, utilities records, and any documentation of attempts to sell the property.

McPhail declined to provide credit card statements, financial data on the trailer park, safe deposit box information, and records of utilities expenses and other charge accounts. He stated that the information refused was irrelevant to the claim or a burdensome invasion into his privacy. He did furnish photographs, a 1990 bank statement, and information on attempts to sell the property.

McPhail then submitted to a second examination under oath. He continued to refuse to provide financial statements of his credit cards and trailer park and to answer questions about his mother's bank account on which he was authorized to draw funds. State Farm claims that it needed the primary financial documents to check McPhail's income against his income tax return and to confirm his actual indebtedness. State Farm also points out that McPhail initially denied leaving his home the day of the fire but later admitted that on that day he "probably" drove to pick up his mother in the same county where the burned house was located.[1] Based upon McPhail's refusal to provide requested documents and to answer questions under oath, State Farm denied McPhail's $53,235 claim on November 2, 1990.[2]

On April 18, 1991, McPhail filed suit against State Farm, seeking compensatory and punitive damages. The district court

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[1] State Farm also asserts that a car matching the description of McPhail's Cadillac was seen at the Slate Springs house on the day of the fire and that the main electrical breaker was turned off before the fire. Unfortunately, the only evidence in the record supporting State Farm's assertions is found in its motion for summary judgment, hardly adequate proof of these facts for our purposes.

[2] The loss of the house was valued at $50,700; damage to personal property inside the house was worth another $2,535.

granted State Farm's motion for summary judgment.

Relying upon Mississippi law that punitive damages are not available when an insurance carrier has an arguable defense for denying a claim, the court first rejected McPhail's punitive damages claim. The court then decided that State Farm reasonably had denied McPhail's claim and that State Farm's requests for extensive financial documentation from McPhail were "unquestionably material due to the insurer's need to examine a motive for arson." The court reasoned that because McPhail had a duty to answer all reasonable inquires, his failure to do so allowed State Farm to refuse to pay his claim.

II.

We review a grant of summary judgment de novo. Edmundson v. Amoco Prod. Co., 924 F.2d 79, 82 (5th Cir. 1991). We affirm a summary judgment when the record reflects that there exists "no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). See also Celotex Corp. v. Catrett, 477 U.S. 317, 322-24 (1986).

McPhail contends that the district court granted summary judgment to State Farm incorrectly because his refusal to provide the requested documents was reasonable and because he substantially complied with the provisions of the insurance policy. He urges that we allow a jury to decide the reasonableness of his refusal and the effect of his compliance. Acting as an Erie court in this diversity case, we apply Mississippi law as would the Mississippi

courts. Dunn v. State Farm Fire & Cas. Co., 927 F.2d 869, 872 (5th Cir. 1991).

"With regard to insurance investigations," the Mississippi Supreme Court "takes a broad view of materiality." Edmiston v. Schellenger, 343 So. 2d 465, 466 (Miss. 1977). The court went on to rule that as a matter of law, requests for answers to questions of an insured about his activities on the day his home burned were material. Id. at 467.

In Allison v. State Farm Fire & Cas. Co., 543 So. 2d 661, 662 (Miss. 1989), the court construed a clause identical to the one at issue here. The insurance company sought income tax returns, evidence of indebtedness, bank records, loans, ownership of property, salary information, mortgage payment status, and credit history. Id. When the insureds refused to produce any of this documentation, State Farm denied their claim. Id. The court rejected the insured's argument that the issue of whether the requested financial documents were material under the circumstances was one of fact and decided that under the clause at issue, the insureds were "required to respond to all reasonable inquiries and to give all reasonable assistance and that failure to do so may well deny them recovery." Id. at 664. The court previously had upheld the trial court's determination that questions concerning the financial status of an insured party whose house burns down were material. Id. at 663.

In Southern Guaranty Ins. Co. v. Dean, 172 So. 2d 553, 556 (Miss. 1965), the court also construed an insurance policy

provision similar to the one at issue here and pointed out that "all of those matters are material which have a bearing on the insurance and the loss." When the insured refused to allow her insurance company to examine available records and bank accounts that might be "pertinent" to the financial condition of the burned business, although she did give some information about its purchase price, the court held that her refusal to provide the requested financial information allowed the insurance company to deny her claim. Id. at 557.

In Standard Ins. Co. v. Anderson, 86 So. 2d 298, 300 (Miss. 1956), the insured refused to provide his insurance company with information on the amount he paid for property that subsequently burned, whether he had competitors in the area, and whether he had tried to sell the property before the fire. He did show a deed to the insurance company. Id. The court declared that a failure to comply with an insurance policy provision that required an insured to disclose all matters material to adjusting a claim bars recovery. Id. at 301. Quoting Claflin v. Commonwealth Ins. Co., 110 U.S. 81 (1884), the court reiterated the policy considerations behind this holding as

> to enable the company to possess itself of all knowledge, and all information as to other sources and means of knowledge . . . to enable them to decide upon their obligations, and to protect them against false claims. And every interrogatory that was relevant and pertinent in such an examination was material . . . .

Id.

Under Mississippi caselaw, an insured's failure to provide

requested financial information to an insurance company that is adjusting a claim may lead to a denial of the claim. Whether the requests are material is a question of law for the court, not a jury, to determine. Information that has a bearing on the insurance, or is "pertinent," is material. Information about the financial condition of an insured is pertinent to an insurance investigation probing the possibility of arson. In its effort to "possess itself of all knowledge" in order to protect against false claims, an insurer may seek more financial data than an insured originally provides so as to satisfy itself of the insured's financial position.

Federal courts have reached similar conclusions under Mississippi law. In United States Fidelity and Guar. Co. v. Conaway, 674 F. Supp. 1270, 1273 (N.D. Miss. 1987), aff'd mem., 849 F.2d 1469 (5th Cir. 1988), the district court interpreted Mississippi law to require that a refusal by an insured to produce for examination, under a clause similar to the one in the case at bar, all documents, including bank statements, income tax returns, a list of debts over $100, any papers pertaining to the insured's divorce, and any medical bills, precluded recovery under the policy. Inquiries into the "financial status of persons making claims under a fire insurance policy are permissible and therefore `reasonable.'" Id.

These authorities establish that State Farm's request for additional financial documentation from McPhail was material and reasonable. The information sought had a direct bearing on

McPhail's financial situation, linked to a possible motive for arson. State Farm wished to see primary documents from McPhail's trailer park to check his actual income against the income reported in his tax return, sought his and his wife's credit card statements to help ascertain his level of debt, and wanted his mother's bank account information to see whether he was using that account to alleviate any economic woes. Under the "broad view of materiality" in Mississippi, these documents undoubtedly were material. No reasonable jury could have found otherwise.

McPhail counters that he provided sufficient information about his economic situation to enable State Farm to reach all necessary conclusions. He points out that while, in the cases cited, the insureds provided virtually none of the financial information requested, McPhail complied with many of State Farm's requests. He asserts that his level of compliance was reasonable.

We reject McPhail's argument, as the cases we have discussed do not hinge on substantial compliance with requests for documentation. In Allison, the court held that the insured must comply with all reasonable inquiries or face no recovery. In Dean, the court noted that any matter that has a bearing on insurance is material and therefore reasonable. In Conaway, the court decided that requests for documents very similar to State Farm's requests of McPhail were all acceptable, because an insurance company may investigate an insured's financial status in adjusting a claim.

State Farm's requests were reasonable, as they all were related to determining whether McPhail's financial status might

have provided him with a motive for committing arson. Although McPhail provided State Farm with some financial documentation, it was reasonable for State Farm to seek to dig below the surface )) past his income tax returns and bank statements )) to areas that might reveal hidden debts. The additional documents State Farm requested are highly relevant to, and typical of, an insurance investigation and are substantially the same as those at issue in Dean.

McPhail tries to bolster his argument by citing several cases as standing for the proposition that materiality is a question of fact for the jury to determine. The cases he cites are inapposite. None deals with materiality in the request-for-documents context.

In Employers Mutual Cas. Co. v. Ainsworth, 164 So. 2d 412, 418 (Miss. 1964), for instance, the court did declare that "the question of lack of cooperation is one of fact to be determined by the jury." The court, however, made this statement in the context of automobile insurance, asking whether a motorist actually had fully cooperated with her insurer when she gave differing accounts of an accident. Id. The issue was whether the insured had complied with the provisions of the policy, a question of fact. The issue in our case is not whether McPhail complied with the policy )) also a question of fact )) but what the policy required him to provide )) a question of law.

Finally, McPhail cites Stewart v. American Home Fire Ins. Co., 52 So. 2d 30 (Miss. 1951), for the proposition that an insured under a fire policy need comply only substantially with the terms

of the policy. Stewart is not analogous to our case, for there the insureds )) owners of a dry cleaning business )) were required to keep records of clothing in their possession; failure to produce such records in the event of a fire would render the policy void. Id. at 31-32. After a fire destroyed the business, the insureds were not able to provide records of all clothes that had been left with them prior to the fire; instead they prepared a list after the fire. Id. at 32. The court held that the clause did not require the insureds to record the value of all clothing left with them. Id. at 33. Rather, the court noted that "substantial compliance with the terms of a policy requiring the keeping of a set of books is all that is necessary in order to warrant a recovery on the policy." Id. (citation omitted). This narrow holding does not apply to all clauses of an insurance policy. It is limited by its own words to the extent of records required to be kept; it says nothing about the extent to which they must be disclosed.

III.

It is well established in Mississippi that an insured's refusal to answer questions relating to his economic situation may defeat recovery on the policy. State Farm requested documents typical of those sought by insurers investigating fire insurance policy claims. Since we find that the requests were both material and reasonable as a matter of law, McPhail's refusal to answer several of the questions allowed State Farm to deny McPhail's

claim.[3] We therefore AFFIRM the summary judgment.

[3] Since we find that the district court correctly ruled that State Farm need not honor McPhail's claim, we do not reach the issue of punitive damages McPhail sought against State Farm.