

11th Circ. Upholds Progressive's Win In Bad Faith Suit

By **Hope Patti**

Law360 (July 25, 2022, 1:33 PM EDT) -- The Eleventh Circuit on Monday affirmed a Progressive unit's win in a coverage dispute over its handling of a personal injury claim brought against a policyholder, concluding no reasonable jury could have found the insurer acted in bad faith when attempting to settle the claim.

A Florida federal court correctly granted summary judgment to Progressive American Insurance Co., a three-judge panel said, finding the insurer took reasonable steps to settle Darlene Deary's claim against its insured, Dwight Norman, after a car accident in March 2017.

"The undisputed facts reveal that Progressive acted with reasonable diligence and ordinary care," the panel said in Monday's **unpublished opinion**.

The dispute dates to 2017 when Deary and her mother, Elizabeth Diente, were involved in a car accident with Norman, whom the insurer determined to be at fault, according to court filings.

Diente informed the insurer that she and Deary were in pain after the accident, court documents stated, noting that Progressive settled Diente's bodily injury claim for \$500. Deary later notified the insurer that she also sustained injuries from the accident and demanded that Progressive settle for the full amount of Norman's policy limits in July 2017.

Nearly two weeks after the accident, Deary was diagnosed with acute pain because of trauma and degenerative injuries, according to court filings. Based on medical documentation, the insurer determined that Deary's out-of-pocket expenses were approximately \$1,600.

Progressive offered to settle for \$8,500 in August 2017, which included damages for Deary's pain and suffering. Deary rejected the settlement and said she would not accept anything less than the full policy limits, leading her to sue Norman in November 2017.

The insurer attempted to settle for Norman's policy limits after learning that Deary underwent surgery in November 2017 and that her medical bills exceeded \$25,000. Deary rejected the offer and subsequently won a jury verdict against Norman for \$332,500, according to court filings.

Following the verdict, Norman assigned his rights and interests under the policy with Progressive to Deary, court records show.

Deary sued Progressive in February 2020, alleging the insurer acted in bad faith by attempting to settle her claim against Norman for an amount below the policy's full \$25,000 limits. She argued that the insurer could have avoided an excess judgment had it "acted fairly and honestly" toward Norman and kept him informed of the underlying proceedings. The district court granted summary judgment in favor of Progressive in April 2021.

The panel held that Progressive took reasonable steps to keep Norman informed of Deary's claim and his potential legal exposure. The fact that several certified letters to Norman were returned to the insurer does not show otherwise, the panel said, considering that Progressive attempted to reach Norman using multiple methods of communication.

Progressive's settlement offers to Deary were also not evidence of bad faith just because the insurer attempted to settle for less than Norman's policy limits, the panel said.

"Under Florida law, disagreement over the valuation of a claim resulting in an insurance company's refusal to pay the demanded amount does not equate to per se bad faith," the judges added. They concurred with the lower court's finding that the facts of the case reflect that the insurer simply disagreed about the value of Deary's claim, and that the original offer was based on the medical documentation provided by Deary.

Moreover, the insurer's delay in tendering the full policy limits until June 2018 is not evidence of bad faith, the panel said, noting that Deary expressly disclaimed any willingness to settle months before.

A representative for Deary did not immediately respond to a request for comment on Monday. A representative for Progressive declined to comment.

U.S. Circuit Judges Charles R. Wilson, Andrew L. Brasher and R. Lanier Anderson III sat on the appeals panel.

Deary is represented by Andrew A. Harris of Harris Appeals PA and Michal Meiler of Ver Ploeg & Marino PA.

Progressive is represented by B. Richard Young, Adam A. Duke and Christopher R. Machado of Young Bill Boles Palmer Duke & Thompson PA.

The case is Darlene Deary v. Progressive American Insurance, case number 21-11878, in the U.S. Court of Appeals for the Eleventh Circuit.

--Editing by Roy LeBlanc.