

11th Circ. Orders USAA's \$5M Bad-Faith Fight To Trial

By Hope Patti

Law360 (March 15, 2023, 12:23 AM EDT) -- A USAA unit must face claims that its alleged bad-faith conduct caused its policyholder to suffer a \$5 million excess judgment in a trial over a serious car accident, the Eleventh Circuit said Tuesday, reversing and remanding the insurer's early win against the injured driver.



An Eleventh Circuit panel said a USAA unit must face a bad-faith claim by a motorist who won a \$5 million excess judgment against the insurer's policyholder after being seriously injured in an auto accident. (Photo Illustration by Igor Golovniiov/SOPA Images/LightRocket via Getty Images)

A Florida federal court erroneously granted summary judgment to USAA General Indemnity Co., a three-judge panel said in a published opinion, holding that a reasonable jury could conclude that the insurer handled injured driver Daniel Ilias' claim in bad faith and that USAA caused or contributed to the excess judgment against its policyholder.

"Material issues of fact as to bad faith and causation remain in dispute and Ilias is entitled to have a jury resolve them," U.S. Circuit Judge Stanley Marcus said in **the court's opinion**.

The dispute stems from a July 2017 car crash in which Ilias suffered serious injuries, including a torn aorta and several broken bones.

According to court filings, Scott Dunbar lost control of his van while driving on a highway in Pasco County, Florida, and struck an SUV. The crash caused Dunbar's van to jump the center median and land directly

on top of Ilias' vehicle.

USAA — which learned of the crash on the day it occurred and was informed of Ilias' injuries shortly after, according to court filings — insured Dunbar under a policy that provided coverage limits of up to \$10,000 per person for bodily injuries and up to \$20,000 per accident.

The insurer accepted liability for Ilias' claim that August after reviewing a police report that stated Dunbar was solely at fault for the crash because he had been driving in a careless manner and was going 70 mph in a 45-mph zone, the opinion stated.

Over a month later, after a new USAA adjuster took over the case, the insurer offered Ilias its \$10,000 bodily injury policy limit. Ilias filed a personal injury suit against Dunbar in Florida state court in October 2017 and subsequently obtained a \$5 million judgment against Dunbar.

In the current action, initially filed in state court, Ilias alleged a single claim for bad faith against USAA under Florida common law, according to court filings. The district court granted summary judgment in favor of the insurer, saying USAA may have been negligent in handling Ilias' claim but did not act in bad faith. The court also held that no reasonable jury could find that USAA's conduct caused Ilias to obtain the excess judgment against Dunbar because Ilias' attorney, Maryanne Furman, never intended to settle the case.

The panel held Tuesday that USAA was unduly delayed in initiating settlement negotiations with Ilias despite having the information it needed to tender the policy limits.

"Despite learning that Ilias had suffered grievous injuries, so that his damages would almost surely exceed Dunbar's \$10,000 policy limit, and despite determining that Dunbar was solely at fault for the accident, USAA delayed initiating settlement negotiations for over a month," Judge Marcus said.

The panel also rejected the notion that USAA's delay in tendering the policy limit was merely the result of a mistake or negligence and that a reasonable jury could find sufficient evidence of the insurer's failure to act with the same care and diligence as if it were in Dunbar's shoes.

Moreover, the insurer failed to provide Furman with information that she needed and requested to settle the case, the panel said. According to court filings, Ilias' attorney informed USAA that she could not accept the policy limit nor release Dunbar from liability until she could confirm whether Dunbar had additional insurance coverage to satisfy an excess judgment.

"Yet USAA did nothing in its capacity as the 'go-between' to facilitate the exchange of that information or to seriously apprise its insured of the risk posed by an excess judgment," Judge Marcus said.

As such, the panel held that there is also a genuine issue of material fact as to whether USAA caused the entry of an excess judgment against Dunbar.

"Had USAA complied with its 'duty to initiate settlement negotiations' sooner, or provided Furman with a coverage affidavit before Ilias filed suit, the case may have settled before rising costs changed the calculus," Judge Marcus said.

Representatives of the parties did not immediately respond to requests for comment Tuesday.

Chief U.S. Circuit Judge William H. Pryor Jr. and U.S. Circuit Judges Robin S. Rosenbaum and Stanley Marcus sat on the appeals panel for the Eleventh Circuit.

Ilias is represented by Richard M. Benrubi of Benrubi Law PA and Philip M. Burlington and Adam Richardson of Burlington & Rockenbach PA.

USAA is represented by Frank Zacherl, Daniel Nordby and Eric M. Yesner of Shutts & Bowen LLP and Daniel R. Lazaro of Buchanan Ingersoll & Rooney PC.

The case is Ilias v. USAA General Indemnity Co., case number 21-12486, in the U.S. Court of Appeals for the Eleventh Circuit.

--Editing by Emma Brauer.

