

BAD FAITH BLOG

Is It Bad Faith to Delay the Pay? Federal Court in Pennsylvania Says No

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Summary: Uninsured motorist filed a bad faith action against his automobile insurer for failure to pay underinsured motorist (UIM) benefits. Insurer moved for summary judgment and district court held that insurer's delay in paying UIM benefits did not constitute bad faith.

Rossi v. Progressive Insurance, 2011 WL 1565848 (M.D.Pa. 2011)

On January 5, 2007, the insured, Rossi was involved in an automobile collision with McGroarty. Rossi was insured by Progressive, and his policy provided UIM coverage with a limit of \$30,000. The insured turned his car left across on-coming traffic lanes and collided with McGroarty's vehicle. Both liability and the insured's damages were hotly contested, which resulted in extensive discovery. Approximately two years after being provided notice of insured's UIM claim, Progressive forwarded a \$30,000 settlement draft to the insured's attorney. Progressive paid the \$30,000 policy limits approximately one year after the insured had filed a bad faith action against it.

Under Pennsylvania law, an insurer has a duty to act in the "utmost good faith towards its insured." Pennsylvania courts have defined bad faith as "any frivolous or unfounded or refusal to pay proceeds of a policy; it is not necessary that such refusal be fraudulent. For purposes of an action against an insurer for failure to pay a claim, such conduct imports a dishonest purpose and means a breach of a known duty (i.e., good faith and fair dealing), through some motive of self interest or ill will; mere negligence or bad judgment is not bad faith." Under Pennsylvania law, a plaintiff must prove bad faith by clear and convincing evidence.

The federal district court found under Pennsylvania law no reasonable fact finder could find that the insured had proven Progressive's bad faith by clear and convincing evidence. The court found Progressive continued its investigation in an objectively reasonable manner, even if it did not move as quickly as the insured would have liked.

No evidence suggested dilatory conduct, dishonesty, or malice. The court found that because the insured failed to yield the right of way and turned left into on-coming traffic, it was reasonable for Progressive to investigate liability – notwithstanding the fact that McGroarty was driving while intoxicated and speeding.

In light of Progressive's knowledge that the insured had been unemployed for some time and was receiving payments after having been adjudicated disabled, it was also reasonable for Progressive to dispute its insured's damages. The insured's documented out-of-pocket medical expenses were well within the \$100,000, limit of McGroarty's policy. In the absence of a viable loss of earning claim, it appeared to Progressive that its insured could be made whole without resorting to a UIM claim.

The court was not persuaded by the insured's argument that Progressive's conduct in contesting liability on the basis that its insured made a left turn because making a left turn at that intersection was not in and of itself illegal. It was undisputed that McGroarty would have had the right of way and that the insured failed to yield. There was some evidence suggesting that McGroarty may have accelerated into the intersection at a high rate of speed, but it was still reasonable for Progressive to question whether its insured's negligence was a substantial contributing factor to the collision. Moreover, an arbitration between McGroarty's insurer and Progressive found Progressive's insured's contributory negligence to be 80 percent. In light of all these facts, the court found no reasonable inference of bad faith liability could be drawn from Progressive's investigation of liability.

The insured also argued the incident was not fully investigated as quickly and fully as it ought to have been. The court found, however, considering the lack of evidence that the insured's injuries would exceed the amount covered by McGroarty's policy, the pace and scope of Progressive's investigation did not suggest bad faith.

The insured also argued Progressive behaved in a dilatory manner that permitted an inference of bad faith because he was not clearly told until more than one year after first providing notice of the UIM claim that liability was at issue. The uncontroverted facts showed that Progressive had investigated liability before this time. The facts also showed that because the estimated value of the insured's claim did not appear to exceed \$100,000, Progressive lacked any clear evidence or documentation that the UIM coverage would be triggered.

I have not provided a detailed account of the underlying facts in this case; however, suffice it to say it appears Progressive conducted a thorough investigation and had a reasonable grounds for conducting the investigation in light of the facts of the case. It seemed the insured believed any liability on his part should be ignored because of the evidence McGroarty was possibly speeding and driving under the influence at the time of the collision. Although those facts did support liability on behalf of McGroarty, the insured was also liable and failed to provide timely evidence that his damages would not be covered under McGroarty's policy thereby triggering the UIM limits. The higher burden of proof of clear and convincing evidence to prove bad faith in Pennsylvania, also assisted Progressive in obtaining summary judgment in this case.