12-1254

IN THE CIRCUIT COURT OF OHIO COUNTY, WEST VIRGINIA

JOHANNA DORSEY,

Plaintiff,

CIVIL ACTION NO. 11-C-95

v.

PROGRESSIVE CLASSIC INSURANCE COMPANY a/k/a PROGRESSIVE CLASSIC, INC. CO.

Defendants.

MEMORANDUM ORDER

The issue addressed in this Memorandum Order is whether a guest passenger can maintain a statutory and common law bad faith claim against the insurance company that insured the car in which she was injured.

The case is before the court on Progressive Classic Insurance Company's motion for reconsideration of an order entered by the court on September 12, 2011, in which it denied Defendant's Motion to Dismiss or in the alternative Motion for Summary Judgment. For the reasons hereinafter stated, the court has reconsidered its September 12, 2011, Order and now concludes that the September 12, 2011, decision was wrong. Defendant's Motion to Dismiss is now granted.

The facts are uncomplicated:

1. Dorsey was riding as a passenger in a vehicle driven by Tomonch and insured by Progressive.

2. Renforth was driving a vehicle that rear-ended the Tomonch car.

3. Renforth's vehicle was insured by Liberty Mutual Insurance Company.

The conclusion of the Court is that Dorsey is a third-party claimant and therefore cannot bring an action for conduct involving an insurance policy claim on theories of common law bad faith, breach of the insurance contract, breach of the implied duty of good faith and fair dealing, and violations of the West Virginia Unfair Trade Practices Act.

The fact that Dorsey received the $5,000 maximum for medical payments from Progressive because she was a guest passenger in a vehicle that was insured by Progressive did not make Dorsey a first party insured. A first-party bad faith action is one wherein the insured sues her own insurer for failing to use good faith in settling a claim filed by the insured.

Unlike Thomas D. Loudin, the plaintiff in Loudin v. National Liability & Fire Ins. Co., 228 W.Va. 34, 716 S.E.2d 606(2011), Dorsey does not fall within the definition of first-party claimant. She is not the named insured on the policy in question. She did not buy the policy. She is not a premium-paying insured. There is no argument, as there was in Loudin, that the court needs to protect her because she bought this insurance contract for peace of mind and security. There is no argument that she should get the benefit of a contractual bargain. There are no

unique facts in this case to cause the court to conclude that Dorsey's bad faith cause of action has characteristics of both first-party and third-party bad faith claims.

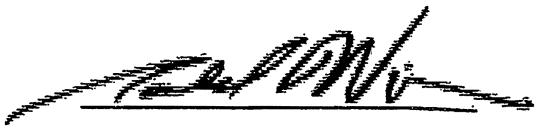
The Plaintiff's argument that Dorsey, as a guest passenger, is a first-party insured and covered under the Progressive policy as a first party insured is rejected by the court.

It is therefore accordingly ORDERED that the Defendant's Motion for Reconsideration is GRANTED. The Order entered September 12, 2011 is hereby VACATED. For the reasons stated above, the Defendant's Motion to Dismiss is GRANTED.

The exception of the Plaintiff to the Order is saved.

Copies of this Order have been transmitted by the Court to Counsel: E. Kay Fuller, Esq., Martin and Seibert, 1453 Winchester Avenue, PO Box 1286, Martinsburg, WV 25402; David A. Jividen, Esq., 729 N. Main Street, Wheeling, WV 26003.

ENTER this 29 day of AUGUST, 2012



Ronald E. Wilson, Judge