

BINDING AUTHORITY

Insurance Coverage Decisions: Issued Today - Impact Tomorrow



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Editor's Note: *Binding Authority* has never addressed an auto claim nor done anything but analyze a judicial decision concerning insurance coverage. But the insurance situation addressed here warranted departures.

August 24, 2012

Leaking Like Progres-sieve?: What's Next For Insurers After The UIM Claim Heard 'Round The World

Will More Money Now, Err, Flo?

In my house, if my wife says something, and her mother agrees, then it is a fact. I could dig up Aristotle and even he couldn't convince that duo otherwise.

That is not unlike what happened to Progressive Insurance last week. If you are reading this then you likely took note of last week's firestorm that erupted after Matt Fisher's Tumblr post contained this, well, not so subtle, headline: "My Sister Paid Progressive Insurance to Defend Her Killer In Court."

That headline was false as a matter of insurance law. But once the post went viral – and boy did it ever – no amount of explanation of the truth, or lessons in insurance law, could change the message and all the negative consequences that came with it for Progressive. The company was powerless to stop the mayhem (oops, wrong insurer). The horse had left the barn. The toothpaste was out of the tube. Choose your cliché. All Progressive could do was pay Fisher and cut bait. And hope that people on Twitter would soon find something else to tweet about. This is a tale that all claims professionals should be aware of.

By way of very brief background, Matt Fisher's sister was killed in a car accident. A indisputable tragedy. The driver of the other vehicle was underinsured. Fisher's sister had underinsured motorist coverage with Progressive. Under Maryland law, to collect on an underinsured claim, the other driver must be at fault. So Fisher's family had to sue the other driver to prove fault in order to obtain payment under her underinsured policy. The other driver was insured by Nationwide and Nationwide undertook the defense. However, Progressive participated in the other driver's defense as it had evidence that the other driver was not at fault. Hence, Fisher's brother's headline on his Tumblr post: "My Sister Paid Progressive Insurance to Defend Her Killer In Court."

A Maryland jury decided in favor of Fisher and awarded \$760,000. Progressive's share was \$75,000. Progressive paid its share **plus**, according to Fisher's attorney "tens of thousands" more

to settle with the Fishers over the way the company handled the claim. How it handled the claim? As in – by following Maryland law.

Again, Fisher's headline was false because it was Nationwide, and not Progressive, that defended the other driver. And Progressive had the right to prove that the other driver was not at fault. Never mind. Fisher's story, fueled by that attention-grabbing headline, went viral – very viral. The niceties of Maryland insurance law were no match for the power of an internet story gone wild. Progressive took a beating in the court of public opinion – no matter what it did to explain its actions and its rights to take them. The story was featured on CNBC, "CBS This Morning" and Glenn Beck's radio show, as well as umpteen news sites. According to any analysis conducted at the request of Dow Jones Newswires, more than 1,000 people on Twitter claimed to have dropped Progressive as their insurer in a four-day period and 1,600 expressed a desire not to do business with them.

On one hand, the Fisher case is over. The settlement documents are probably being drafted as I type. But is it really over? That's the question that Erik Holm of Dow Jones Newswires and the *Wall Street Journal* posed in a WSJ story earlier this week. Calling the situation a "cautionary tale" for insurers, Mr. Holm asked:

Now, the question is whether Progressive's experience will prompt changes throughout the auto-insurance industry as more consumers use the Internet to tell their side of the story when they feel they've been slighted by their insurers.

Mr. Holm observed that "[e]ven when a company's actions are legal and done with the blessing of regulators, it can suffer reputational and financial harm when exposed to harsh cyber-invective." (emphasis mine).

To read more about this "cautionary tale" for insurers, and whether the Fisher claim will have any impact on the handling of claims in the future, check out Mr. Holm's *Wall Street Journal* piece. It contains the views of the Consumer Federation of America, a renowned policyholder lawyer, Progressive's Chief Claims Officer, Mr. Fisher himself and yours truly.

<http://blogs.wsj.com/deals/2012/08/21/progressives-fail-in-social-media-may-be-warning-to-insurers/?KEYWORDS=holm>

Insurers usually get vilified for allegedly not following the appropriate claims process. Here they did so and still got vilified. It's a tough business.

Please let me know if you have any questions.

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