

## 11th Circ. Says Deals Don't Kill Bad Faith Insurance Claims

By **Emily Enfinger**

Law360 (July 8, 2022, 1:45 PM EDT) -- The Eleventh Circuit revived a couple's suit against Progressive American Insurance Co. over the handling of an auto crash case, rejecting the trial court's conclusion that a settlement in the case did not constitute an "excess judgment" necessary for the couple's bad faith claim against the insurer.


The appellate court said in an unpublished opinion on Thursday that the trial court erred by dismissing a lawsuit by Daniel Lee and Jolene Potter against Progressive, which insured a driver whom the Potters sued over injuries they suffered in the 2016 crash.



The Eleventh Circuit ruled that a district court erred in its dismissal of an automobile crash case, saying that the plaintiffs' bad-faith claims can go forward. (Photo Illustration by Pavlo Gonchar/SOPA Images/LightRocket via Getty Images)

The Potters alleged that the insurer acted in bad faith in its handling of the crash case, which led its policyholder to accept a settlement that exceeded his policy limits. The trial court found that a final judgment enforcing a consensual settlement is not an "excess judgment," according to the opinion, and that such a judgment is required before a bad faith claim can move forward.

The appellate court referred to an April published Eleventh Circuit opinion in another case originating in the U.S. District Court for the Middle District of Florida, *Erika L. McNamara v. Government Employees*

Insurance Co. , which determined that "a final judgment that exceeds all available insurance coverage" constitutes an "'excess judgment' that can satisfy the causation element of an insurer-bad-faith claim under Florida law," no matter if it comes from a consensual settlement or a jury verdict.

The Potters' suit against Progressive stems from a vehicle crash in November 2016, according to Thursday's opinion. The couple sued Progressive's insured, who had a policy that provided bodily injury liability coverage for up to \$10,000 per person, and offered to settle in exchange for the insured to stipulate to a dismissal and agreeing to pay the couple \$125,000.

According to the opinion, the insured accepted the settlement on the recommendation of his attorney, who was hired by Progressive, and was told by the attorney that accepting the settlement would not "waive any claims against Progressive for negligence or bad faith." After they agreed to settle, the couple filed suit against Progressive and their lawsuit against the insurer was dismissed in March 2021. The couple appealed in April 2021.

Counsel for the Potters and Progressive did not immediately respond to a request for comment on Friday.

U.S. Circuit Judges Charles R. Wilson, Robin S. Rosenbaum, and Elizabeth L. Branch sat on the panel for the Eleventh Circuit.

The Potters are represented by Kerry C. McGuinn Jr. and Michael S. Rywant of Rywant Alvarez Jones Russo & Guyton PA.

Progressive American Insurance Company is represented by Jordan Thompson and Megan Alexander of Young Bill Boles Palmer Duke & Thompson PA.

The case is Daniel Lee Potter and Jolene Potter v. Progressive American Insurance Company, case number 21-11134, in the U.S. Court of Appeals for the Eleventh Circuit.

--Editing by Amy Rowe.