

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2001-CA-000646-MR

MALCOLM J. JONES AND  
PATRICIA R. JONES

APPELLANTS

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE STEPHEN P. RYAN, JUDGE  
ACTION NO. 98-CI-000250

PROGRESSIVE NORTHERN  
INSURANCE COMPANY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: BUCKINGHAM, McANULTY, AND TACKETT, JUDGES.

TACKETT, JUDGE: Malcolm Jones and his wife, Patricia, appeal from an order of the Jefferson Circuit Court granting summary judgment in favor of Progressive Insurance Companies (Progressive). We affirm.

Malcolm was injured on April 10, 1997, while he was riding in a car driven by Matthew Cullum, a Progressive insured. Cullum lost control of the automobile in a construction zone and the car overturned. The collision was a single car accident and there was no indication of any negligence on the part of any other party. Malcolm was hospitalized with serious injuries,

spending the first week of his hospitalization in the intensive care unit at Louisville's University Hospital. His medical expenses totaled over \$90,000.

Malcolm and Patricia retained the services of attorney, Don Schmidt, to represent them while they sought to recover under Cullum's policy with Progressive. Julie Bollmann, a claims adjuster with Progressive, wrote to Schmidt on May 12, 1997, informing him that in order to evaluate Malcolm's claim, Progressive needed a copy of the medical records indicating the extent of his injuries. After an exchange of correspondence between Schmidt and Progressive, during which time Schmidt continued to refuse to provide copies of Malcolm's medical records, Malcolm and Patricia filed suit against Progressive and Cullum. The Joneses settled their negligence claim against Cullum and released him from further liability in exchange for his coverage limit of \$50,000. The trial court granted summary judgment against the Joneses on their bad faith claim against Progressive. This appeal followed.

The Joneses argue that Progressive violated the Unfair Claims Settlement Practices Act (UCSPA) because the insurer's refusal to disclose the liability limits of Cullum's policy amounted to a denial of the claim. Nevertheless, they concede that they are unaware of any Kentucky authority requiring Progressive to disclose the policy limits prior to the filing of a lawsuit. Furthermore, the Joneses admit that no one at Progressive ever communicated to them that their claim would be denied. In addition, their own expert witness, a retired claims

adjuster with thirty-four years' experience, testified that Progressive violated no Kentucky statutes or insurance regulations in its handling of the Joneses' claim.

The trial court's decision was based on Schmidt's refusal to provide Progressive with Malcolm's medical records, as well as the Joneses' admission that they would not have accepted Cullum's liability policy limit of \$50,000 to release him from further liability prior to filing suit. Schmidt's response to Progressive's first request for Malcolm's medical records was a letter written May 22, 1997, informing the claims adjuster that Progressive did not need medical records if the UCSPA applied to his clients' claim. It would appear that within six weeks of the automobile accident, the Joneses were already contemplating a bad faith allegation against Progressive. Subsequent requests for Malcolm's medical records were conveyed by Progressive on June 14, 1997, October 3, 1997, and December 2, 1997. The Joneses ignored each of these requests and filed suit in January 1998.

In order to sustain a claim for bad faith refusal to settle an insurance claim, "there must be sufficient evidence of intentional misconduct or reckless disregard of the rights of an insured or a claimant to warrant submitting the right to award punitive damages to the jury." Wittmer v. Jones, Ky., 864 S.W.2d 885, 890 (1993). As we have previously noted, the Joneses' own expert on claims adjusting practices was unable to state that Progressive had violated any Kentucky laws or insurance regulations. Malcolm stated in his deposition testimony that, at no time prior to filing suit, would he have accepted the full

amount of Cullum's liability coverage to settle the negligence claim.

Both Malcolm and Patricia admitted during their depositions that they relied on their attorney to communicate exclusively with Progressive; therefore, Progressive deposed Schmidt as a fact witness. Schmidt admitted that no one at Progressive had ever stated that they would not pay the Joneses' claim. Moreover, with regard to Progressive's two claims adjusters, Bollmann and John Sturgeon, Schmidt testified that he had no evidence that they acted with reckless indifference to his clients' rights. We do not believe the Joneses have met their burden in demonstrating that Progressive dealt with them in bad faith.

The Joneses also argue that the trial court erred in granting summary judgment to Progressive, under the standard set forth in Steelvest v. Scansteel Service Center, Inc., Ky., 807 S.W.2d 476 (1991), because there were genuine issues of material fact and Progressive was not entitled to judgment as a matter of law. The Joneses do not point us to any issues of material fact in the case at hand. Moreover, their own witnesses deny the presence of an element of statutory bad faith; i.e., that Progressive, or its adjusters, engaged in intentional misconduct or acted with reckless disregard for the Joneses' rights. It is clear from a careful review of the record that the trial court correctly determined Progressive was entitled to summary judgment as a matter of law.

For the foregoing reasons, the judgment of the  
Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANTS:

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BRIEF FOR APPELLEE:

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