

CASE: CIV-2018-767-HE, USDC Western District

Tallie McKinney, *Plaintiff*

v.

Progressive Direct Insurance Company and CSAA General Insurance Company *dba*
AAA Insurance, *Defendants*

JUDGE: Joe Heaton

ATTORNEYS: *For the Plaintiff:* Rex Travis
Travis Law Office
Oklahoma City, OK

For the Defendant, Progressive: Brad Roberson
Roberson, Kolker, Cooper & Goeres
Oklahoma City, OK

For the Defendant, CSAA: Gerard Pignato
Ryan Whaley Coldiron *et al*
Oklahoma City, OK

ISSUES: *Breach of Contract (Insurance)*

SUMMARY: This case arose from a single car accident on June 26, 2017, in Skiatook, OK. Plaintiff was a passenger in the vehicle being driven by her friend and alleged that her friend was negligent in causing the accident. As a result of the collision, Plaintiff suffered injuries, including a concussion; acute blood loss resulting in anemia; small mesenteric venous hemorrhage; tachycardia; right arm displaced fracture requiring surgery; hip fracture; and, multiple pelvis fractures requiring surgery. (*Plaintiff did not present any medical bill amounts into evidence.*) Plaintiff claimed that her friend, and, the vehicle her friend was driving, was covered under a Progressive policy. Progressive tendered its full \$100,000.00 limit of liability coverage which was accepted in return for a release. Plaintiff claimed that the Progressive policy also provided UIM coverage to her in the amount of \$100,000.00/\$300,000.00. Plaintiff also claimed that she was an insured under a CSAA policy with \$250,000.00 in UIM benefits. Plaintiff alleged that neither Defendant had paid any benefits under their UIM policies.

Defendant, Progressive, claimed that under their policy language, there was no coverage for UIM benefits, or, in the alternative, the limits should be reduced to \$25,000.00. (*The Court ruled before trial that the language relied upon by Defendant was void.*) Defendant, CSAA, claimed that the value of Plaintiff's claim was within the underlying liability limits. Both Defendants also claimed that if there was a verdict in Favor of Plaintiff on the UIM issues, they would be entitled to a credit/setoff in varying amounts depending on which policy was deemed to be primary.

The Court instructed the Jury that both Defendant's policies were available for UIM benefits to the Plaintiff. ***The Jury was not told of the UIM limits nor the liability limits nor the prior payment of the liability limits to Plaintiff.*** The Jury was only advised that they were to determine the extent of Plaintiff's injuries and any damages to which she may be entitled.

EXPERT WITNESSES: *For the Plaintiff:*
Dr. Jules Dumais
Tulsa, OK
Orthopedic Opinion

VERDICT: *Jury Trial (One Day)*

The Jury found in Favor of the Plaintiff and awarded Damages in the amount of \$325,000.00.