

UNDOCKETED**STATEWIDE****MOTOR VEHICLE**

Rear-ender — Multiple Vehicle — Underinsured Motorist — Insurance

Claimant alleged underinsured driver caused spinal injuries**SETTLEMENT** \$700,000**CASE** Bobbi Davis v. Progressive Casualty Insurance Company**COURT** Matter not filed**NEUTRAL(S)** Daniel F. Quinn**DATE** 10/30/2017**PLAINTIFF****ATTORNEY(S)** Werner R. Meissner, Law Offices of Werner R. Meissner, APLC, San Pedro, CA**DEFENSE****ATTORNEY(S)** Lauren E. Mistretta, Bates Winter & Mistretta LLP, Roseville, CA

FACTS & ALLEGATIONS On Feb. 27, 2014, claimant Bobbi Davis, 52, a pilot car driver, performed a job surveying the height of power lines above a roadway, to ensure that trucks hauling oversized loads were able to clear the power lines. While Davis was driving slowly, her sport utility vehicle was rear-ended by a heavy-duty pickup truck, causing major damage to both vehicles. After the collision, the driver of the pickup truck fled the scene on foot. Davis claimed the collision totaled her vehicle, and caused injuries to her neck, back and right knee. The pickup truck's insurer tendered its policy.

Davis sought further recovery via the supplementary-underinsured-motorist provision of her own insurance policy, which was administered by Progressive Casualty Insurance Co.

Davis claimed that although she had just completed a job, she still had her roof-mounted flasher bar fully activated and her emergency flashers on. She also claimed that she was still traveling slowly as far over as she could on the right shoulder at the time of the accident.

Progressive's counsel disputed liability, asserting that there was never any proof of the identity of the driver of the pickup truck that was involved in the accident. Counsel also asserted that Davis violated pilot car laws by not having on her light bar or all of her flashers. Counsel also asserted that Davis caused the crash by pulling out into traffic while driving too slowly.

INJURIES/DAMAGES *bulging disc, lumbar; chiropractic; discectomy; epidural injections; herniated disc at C4-5; knee; numbness; physical therapy; soft tissue*

Davis claimed that she sustained a herniated cervical disc at the C4-5 level and bulging lumbar discs at L4-5 and L5-S1 levels as a result of the crash. She also claimed she suffered an injury of soft tissue of her right knee.

Davis claimed that when the collision occurred, her head struck the inside of the driver's side window and her right knee struck the dashboard. She got a ride to a nearby motel, where she stayed the night. However, she claimed that she awoke early the next morning with pain in her neck and lower back. Two days later, she went to Lodi Memorial Hospital Urgent Care, in Lodi, and was prescribed pain medication. However, she claimed her pain did not subside.

On March 17, 2014, Davis began chiropractic treatment after complaining of pain from her cervical spine to her lumbar spine, along with ongoing right knee pain. She also claimed she later developed numbness in her hand. Despite undergoing chiropractic treatment, Davis claimed her neck pain continued unabated. As a result, she underwent an MRI of the cervical spine on Aug. 28, 2014, which revealed a herniated cervical disc at C4-5, measuring 3.5 millimeters, anterior to posterior, with effacement of the anterior thecal sac and mild bilateral neuroforaminal narrowing. An MRI of the lumbar spine, which was performed the same day, revealed bulging lumbar discs at L4-5 and L5-S1. Davis then began physical therapy, traction decompression treatments, and physical rehabilitation of the lumbar spine. She claimed that she had some improvement, but that once the treatments stopped, the lower back pain returned to its previous levels. As a result, Davis began treating with a board certified orthopedic surgery expert.

On Jan. 23, 2015, Davis received a lumbar epidural steroid injection at the L5-S1 level. She also received injections in the cervical paraspinal muscles to treat her alleged neck pain. However, she claimed the cervical injections did not benefit her, and she continued to have significant neck complaints into the spring of 2015.

On May 15, 2015, Davis underwent a cervical discography at C4-5 and C5-6. Based on the findings of the discography, it was determined that after a year of conservative treatment, Davis required an anterior cervical discectomy and a two-level disc replacement at C4-5 and C5-6, which was performed by her treating expert orthopedic surgeon on July 25, 2016.

Davis claimed that her neck pain improved after the surgery, but that she still had some pain. As a result, on Aug. 11, 2017, she underwent an ultrasound guided facet block injection at the C4-5 and C5-6 levels. However, she claimed it was without further benefit.

Davis returned to work, but she claimed she has difficulty driving long distances. She also claimed that her pain is permanent.

The claimant's treating neurosurgery expert opined that Davis will likely continue to experience neck pain for the remainder of her life.

Davis sought recovery of approximately \$237,000 in past medical expenses, approximately \$27,000 in past lost income, \$30,000 in future lost income as a result of the time she will need to take off from work while she recuperates from future surgery. She also sought recovery of damages for her past and future pain and suffering.

Progressive's counsel disputed the nature and extent of Davis' alleged injuries, and disputed the amount of Davis' alleged damages. Counsel asserted that any alleged pain was due to prior degenerative conditions and that Davis' neck surgery was unnecessary. Counsel also asserted that Davis will not need future surgery.

RESULT On Sept. 3, 2017, Progressive made a C.C.P. § 998 settlement offer of \$700,000, which was accepted by Davis and confirmed as the award by arbitrator Daniel Quinn, of Quinn & Kronlund, LLP, in Stockton, on Oct. 30, 2017.

The settlement was new money in addition to the settlement involving the underlying tortfeasor.

INSURER(S) Progressive Casualty Insurance Co.

PLAINTIFF

EXPERT(S) Ardavan M. Aslie, M.D., neurosurgery, Sacramento, CA (treating doctor; did not testify)
 Brian F. King, M.D., neuroradiology, Santa Monica, CA (did not testify)
 Victoria Morgan, coding & billing (medical), Sylmar, CA (did not testify)
 Robert W. Snook, accident reconstruction, Galt, CA (did not testify)
 Randy Sorenson, automotive, South Jordan, UT (pilot car expert; did not testify)
 Lisa M. Suhonos, M.S., vocational rehabilitation, Carmichael, CA (did not testify)

DEFENSE

EXPERT(S) B. Barry Chehrazi, M.D., neurosurgery, Roseville, CA (did not testify)
 Kenneth W. Heichman, accident reconstruction, Cameron Park, CA (did not testify)
 William K. Hoddick, M.D., radiology, Walnut Creek, CA (did not testify)

EDITOR'S NOTE This report is based on information that was provided by claimant's counsel. Defense counsel indicated that the report is inaccurate but would not provide further feedback.

-Priya Idiculla

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