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Discovery

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Progressive must produce docs in dispute over boat fire coverage Progressive Garden State Insurance Co. v. Metius

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Progressive Garden State Insurance Co. must give a policyholder whose boat caught fire its internal documents concerning how the insurer defined and interpreted "primary residence," a New Jersey federal judge has ruled.

Progressive Garden State Insurance Co. v. Metius, No. 18-cv-2893, 2019 WL 1468155 (D.N.J. Apr. 3, 2019).

U.S. District Judge Mary Falk for the District of New Jersey found that policyholder Erwin Metius plausibly argued that his lawsuit to cover the boat fire turns on the meaning of the term.

Judge Falk found that Metius deserves the chance to conduct discovery on internal documents from Progressive that dealt with the insurer's understanding of "primary residence," because the insurer is arguing he lived on the boat.

Additionally, the judge refused Progressive's bid to split the coverage dispute from the issue of whether the insurer breached the covenant of good faith and fair dealing, finding that at this stage of the litigation, severance of the claim would be "unfair and grossly inefficient."

Boat fire in Jersey City

According to Judge Falk's opinion, Metius' boat was destroyed in a fire at a Jersey City, New Jersey, marina Dec. 28, 2017.

Metius sought coverage for the damage under his "boat and personal watercraft" policy with Progressive, the opinion said.

Progressive refused and filed a declaratory action against Metius, arguing that he had used the boat as a "primary residence" in violation of his policy and had made misrepresentations on his policy application that voided coverage, the opinion said.

Metius filed counterclaims against the insurer for breach of contract and breach of the implied covenant of good faith and fair dealing, saying that he did not consider the boat his "primary residence" and that the term, which the policy left undefined, was ambiguous.

To support his argument on the ambiguity of the term, Metius sought to compel discovery of several documents from Progressive that used the term, the opinion said.

According to the opinion, Metius sought histories on drafting policies, manuals for underwriting and handling claims, and other types of policies that defined "primary residence."

Meanwhile, Progressive sought to sever and stay Metius' claims of breach of good faith and fair dealing, arguing that bad-faith claims are routinely stayed in coverage cases.

Relevant documents

Judge Falk found that Progressive had to comply with the discovery demands, noting that federal courts allowed "broad and liberal" discovery when claimants like Metius sought relevant material.

Metius had plausibly argued that the drafting histories were relevant inasmuch as they might show how Progressive had considered, implemented and changed the definition of "primary residence" over time.

"Such changes could provide a window into the question of whether terms in the application were ambiguous, and if so, how Progressive itself interpreted them," the judge said.

Manuals for underwriting and handling claims were also relevant in that they could shed light on how Progressive weighed the risk of Metius' policy given the fact the he had sleeping quarters aboard his ship, the judge said.

Progressive argued that Metius sought highly sensitive information, but the judge rejected the argument, finding that confidentiality was not a legitimate objection to discovery.

Progressive asked the court to deny Metius' request for other types of policies, such as homeowners policies, that used the term "primary residence," arguing that these documents were irrelevant to a boat coverage dispute.

The judge disagreed, finding that the documents were potentially relevant to the disputed term and that Progressive could later argue the admissibility and persuasiveness of the information.

Additionally, Progressive had failed to show how the document requests were burdensome, the judge said.

Refusal to sever

Judge Falk also refused Progressive's bid to sever and stay the case, finding that Metius had explicitly not included a bad faith claim in his lawsuit.

Alleged breach of the covenant of good faith is not the same as a bad-faith claim, he said.

Even if Metius had alleged bad faith, Progressive had failed to show how the evidence in support of such a claim and the issues it would raise would be clearly severable from the coverage issues, the judge said.

The judge found that the issues between breach of contract and bad faith were often "intertwined," citing [*Linger6 LLC v. Antonio*, No. 13-cv-4694, 2016 WL 4257762 \(D.N.J. Aug. 10, 2016\)](#).

Additionally, severing the case could pointlessly burden Metius by forcing him to argue his coverage case without full access to the evidence, the judge said.

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Company: Progressive Garden State Insurance Co.

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