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DISTRICT IV

March 26, 2013

To:

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You are hereby notified that the Court has entered the following opinion and order:

2012AP1268

Kenneth L. Gowin v. Progressive Universal Insurance Company
(L.C. # 2011CV362)

Before Lundsten, P.J., Blanchard and Kloppenburg, JJ.

Kenneth and Patricia Gowin appeal a circuit court order that granted Progressive Universal Insurance Corporation's motion to enforce litigation settlement agreements it had made with them. After reviewing the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21(1) (2011-12).¹ We affirm.

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

The Gowins were injured in a motorcycle/automobile collision with an underinsured motorist. They filed a claim with their insurer, Progressive, for the full amount of their UIM policy limits, which Progressive refused to pay. They then filed suit against Progressive raising claims of breach of contract, a statutory right to interest for failure to timely pay an insurance claim, and bad faith.² The circuit court granted a motion from Progressive to bifurcate and stay the proceedings on the bad faith and statutory interest claims until the breach of contract claim was resolved.

After the bifurcation, each of the Gowins filed a statutory offer of settlement pursuant to WIS. STAT. § 807.01(3). Each offer stated that the plaintiff “offers to settle [his or her] claims against Defendant Progressive Universal Insurance Corporation in the above-captioned matter for \$100,000.00 with costs. This offer of settlement further includes [each plaintiff’s] agreement to satisfy any existing, related subrogation claims.” The insurance company promptly filed notices of acceptance for both offers.

After the notices of acceptance had been filed, counsel for the Gowins took the position that the offers related solely to the contract claim, and not to the bad faith or statutory interest claims. Progressive disagreed and filed a motion to enforce the agreements as settlements of all claims. The trial court granted the motion.

In this appeal, the Gowins advance two theories under which the circuit court should have found the settlement agreements unenforceable. First, they contend that even if the offers

² The Gowins subsequently amended their complaint to add a subrogation claim against Physicians Plus, but that claim is not before us on this appeal.

to settle were not intrinsically ambiguous, they were “extrinsically ambiguous” in light of the history of the case. From that premise, they offer an additional argument that Progressive owed its insureds, the Gowins, a fiduciary duty of good faith to clarify the ambiguity in the settlement offers before accepting them. We do not find either contention persuasive.

We begin by noting that the stay of further proceedings on the bad faith and statutory interest claims created no impediment to the inclusion of those claims in a settlement offer. Furthermore, the offered amounts in each settlement represented the full policy limit. Given that context, we see no reasonable reading of the plural term “claims ... in the above-captioned matter” in the statutory offers of settlement that could be understood to refer to a single, breach-of-contract claim rather than all three pending claims in the case. Consequently, assuming without deciding that the insurer would have such a fiduciary duty in this context, we conclude that the settlement offers were not ambiguous, either viewed in isolation or viewed in the larger context, and so the insurer had no duty to clarify them.

IT IS ORDERED that the circuit court order enforcing the parties’ settlement agreements is summarily affirmed under WIS. STAT. RULE 809.21(1).

Diane M. Fremgen
Clerk of Court of Appeals