



Progressive Express Ins. Co. v. Star Painting & Waterproofing, Inc.

United States District Court for the Southern District of Florida

August 27, 2021, Decided; August 27, 2021, Filed

CASE NO.: 0:19-cv-62282-WPD

Reporter

2021 U.S. Dist. LEXIS 162978 *; 2021 WL 3855657

PROGRESSIVE EXPRESS INSURANCE COMPANY, an Ohio Corporation, Plaintiff, vs. STAR PAINTING & WATERPROOFING, INC., a Florida corporation, JOSE PEREZ, MOHAMED AFOUNI, KATHRYN BEICH, JUAN DIAZ, ANTONIA CARMEN DIAZ, and YOUNG MEN'S CHRISTIAN ASSOCIATION OF SOUTH FLORIDA, INC., a Florida corporation, Defendants.

Prior History: [*Progressive Express Ins. Co. v. Star Painting & Waterproofing*, 333 F.R.D. 600, 2019 U.S. Dist. LEXIS 208995, 2019 WL 6484951 \(S.D. Fla., Dec. 2, 2019\)](#)

Counsel: [*1] For Progressive Express Insurance Company, an Ohio corporation, Plaintiff: Stuart Jeffrey Freeman, Freeman, Goldis & Cash, P.A., St. Petersburg, FL

For Star Painting & Waterproofing, Inc, Defendant: Andrew Steven Douglas, LEAD ATTORNEY, Weston, FL.

Jose Perez, Defendant, Pro se, Miami, FL.

For MOHAMED AFOUNI, KATHRYN BEICH, Defendants: Lawrence Allen Levine, Lawrence A Levine PA, Plantation, FL.

JUAN DIAZ, Defendant, Pro se, Hollywood, FL.

Antonia Carmen Diaz, Defendant, Pro se, Hollywood, FL.

Judges: WILLIAM P. DIMITROULEAS, United States District Judge.

Opinion by: WILLIAM P. DIMITROULEAS

Opinion

FINDINGS OF FACT AND CONCLUSIONS OF LAW

THIS CAUSE is before the Court upon the conclusion of the bench trial in this matter, held on August 23, 2021. The Court received evidence and heard argument by counsel. The Court shall now make its findings of fact and conclusions of law. The findings of fact have either been stipulated to by the parties and/or are based on the preponderance of the evidence.

FINDINGS OF FACT

1. Progressive Express Insurance Company ("Progressive") issued a Commercial Auto Insurance Policy, under Policy No. 03656052-3, to Star Painting & Waterproofing, Inc. ("Star Painting"), for the policy period from April 13, 2018 to April 13, 2019.
2. At all times material [*2] Star Painting was the named insured under a Commercial Auto Policy of insurance issued by Progressive under policy number 03656052-3 ("the Commercial Auto Policy").
3. The Commercial Auto Policy was first issued on April 13, 2015.
4. At all times material, Superior Recycling & Waste Management, Inc. ("Superior Recycling") was an additional insured under the Commercial Auto

Policy.

5. At all times material, Aharon Rafaelov was the president of Star Painting.

6. At all times material, Nathaniel Rafaelov, the son of Aharon Rafaelov, was the president of Superior Recycling, and agent, manager, and a principal of Star Painting, with full authority to act on behalf of Star Painting with respect to Progressive and the Commercial Auto Policy.

7. Star Painting and Superior Recycling both operate out of 2412 Southwest 59th Terrace, West Park, Florida with Star Painting located on the first floor and Superior Recycling operating on the second floor.

8. At all times material hereto the Commercial Auto Policy insured one motor vehicle, a 2018 Mack Truck, VIN: 1M2AX13CXJM040619, owned by Star Painting (the "Mack Truck").

9. The Mack Truck was used exclusively by Superior Recycling in its business.

10. Nathaniel [*3] Rafaelov as President of Superior Recycling, and as an agent of Star Painting, was exclusively responsible for managing and handling the premium payments under the Commercial Auto Policy and had the authority to represent Star Painting with respect to the Progressive and the Policy.

11. Aharon Rafaelov authorized his son Nathaniel Rafaelov to make all premium payments on the Commercial Auto Policy and to contact Progressive with regard to any issues that arose concerning the Commercial Auto Policy.

12. Progressive mailed to Star Painting a Notice of Cancellation dated January 22, 2019, advising that the Commercial Auto Policy would be cancelled effective 12:01 A.M. on February 6, 2019, as a result of non-payment of premium.

13. Progressive mailed to Superior Recycling, a Cancellation Notice reflecting the cancellation of the policy effective on February 6, 2019.

14. Progressive filed the Notice of Cancellation with the Florida Department of Highway Safety and Motor Vehicles.

15. On or before January 25, 2019, the insurance agent for Star Painting, the Reimer Insurance Group, received electronically a copy of the Notice of Cancellation.

16. The Policy was cancelled effective 12:01 A.M. on [*4] February 6, 2019.

17. Thereafter, on February 8, 2019, Jose Perez, an employee of Superior Recycling, was operating the Mack Truck, at or around the intersection of N. 31st. Road and Taft Street in the City of Hollywood, County of Broward, State of Florida, when the Mack Truck was involved in an accident.

18. On Friday, February 8, 2019, at approximately 4:00 to 5:00 in the afternoon, Aharon Rafaelov received a telephone call from the secretary of Superior Recycling who advised him that the 2018 Mack Truck had been involved in an accident.

19. On February 11, 2019, Nathaniel Rafaelov returned to his office following a trip to Israel from January 26, 2019 to February 11, 2019 and saw the Notice of Cancellation.

20. Nathaniel Rafaelov then called Progressive on February 11, 2019.

21. Nathaniel Rafaelov represented to Progressive that he had authority to discuss issues related to the Commercial Auto Policy.

22. Nathaniel Rafaelov advised the Progressive representative that he was the manager of Star Painting, his father was the owner and that he "ran everything" and that he was a "business principal."

23. As of the time of that February 11, 2019 telephone call by Nathaniel Rafaelov to Progressive, [*5] Nathaniel Rafaelov had not been advised, and otherwise had no personal knowledge, of the February 8, 2019 motor vehicle accident

involving the Mack Truck.¹

24. Nathaniel Rafaelov was advised by the Progressive representative during that telephone call that in order to reinstate the policy, without a lapse in coverage, he would be required to pay the overdue premium and to make certain representations pursuant to Progressive's "Statement of No Loss."

25. The Statement of No Loss is a standardized statement used by Progressive to reinstate Policies after cancellation due to non-payment of premium. It provides as follows:

Offer Option of a new policy or to Reinstate

"I would be happy to reinstate your policy with no lapse in coverages with a payment over the phone and a Verbal Statement of No Loss. You also have the option to contact your agent (or our direct department if it is a direct customer) to write a new with a lapse in coverage. Would you like to reinstate or write a new policy"

Verbal Statement of No Loss

Explain to the insured/interpreter **verbatim**:

Prior to reinstating your policy, I am required to ask you a series of questions. Please remember that this call is being recorded. Please [*6] answer "yes" or "no" to the following questions:

To the best of your knowledge, have there been any accidents, claims or losses between 12:01 am on (cancel effective date xx/xx/xxxx) and the time of this call on (today's date xx/xx/xxxx)?

Has anyone operating a vehicle listed on your policy been involved in an accident

during this time period?

Has there been any damage or theft to any of the vehicles listed on your policy during this time period?

When the customer answers "yes" to **ANY** of these questions, **DO NOT REINSTATE**

If the customer answers "no" to **all** of these questions, ask the caller: If I reinstate your policy today, I'll be doing so based on the statements you just provided, as a result, Progressive will not cover any accidents or damages that occurred between 12:01 am on (cancel effective date xx/xx/xxxx) and the time of this call on (today's date xx/xx/xxxx). Would you like me to continue reinstating your policy?

26. The Court finds that the "To the best of your knowledge" only qualifies the first of the three questions in the Statement of No Loss. "To the best of your knowledge" does not qualify the second and third questions in the Statement of No Loss.

27. Nathaniel Rafaelov [*7] provided the following responses to each of the questions contained in the Statement of No Loss:

Q. Do you want me to go through the reinstatement process to get the policy?

A. Yeah, let's reinstate it first. Yeah, let's reinstate it.

Q. Okay. And then we can — we can, you know, figure out the other stuff. So prior to reinstating your policy, I'm required to ask you a serious of questions. Please remember this call is being recorded. Please answer yes or no to the following questions: To the best of your knowledge have there been any accidents claims, or loss (indiscernible) between February 6, 2019, and the time of this call on February 11, 2019?

A. Not that I know of, no.

Q. All right.

A. I've been out of town, so not that I know of.

Q. Okay. Has anyone operating a vehicle listed on your policy been involved in an accident during this time period?

A. Anybody what? Sorry, I couldn't hear you.

¹Because the parties have stipulated to this fact, the Court need not consider other stipulated facts regarding the Superior Recycling secretary driving to the accident scene, Nathaniel Rafelov's trip to Israel, and absence of communication between Aharon Rafaelov and Nathaniel Rafaelov between the February 8, 2019 accident and the February 11, 2019 telephone call by Nathaniel Rafaelov to Progressive.

There's people talking in the background, sorry.

Q. Has anyone operating a vehicle listed on your policy been involved in an accident -

A. No.

Q. Okay.

A. Not that I know of, no.

Q. Okay. And has there been any damage or theft to any of the vehicles listed on your policy during this time period?

A. No.

Q. All [*8] right. If I reinstate your policy today, I'm doing based on the statements you provided. As a result, Progressive will not cover any accidents or damages that occurred between (indiscernible) a.m. on February 6, 2019, and the time of this call on February 11, 2019. Would you like me to continue reinstating your policy?

A. Yes

28. At all times material, it was the policy of Progressive that if the policyholder responded to any of the question in the Statement of No Loss, other than "no" the policy would not have been reinstated.

29. Based on the payment of overdue premium and the representations made by Nathaniel Rafaelov to Progressive in the Statement of No Loss on February 11, 2019, the Policy was reinstated with no lapse in coverage.

30. Progressive would not have reinstated the policy, as of February 6, 2019, without Star Painting's Statement of No Loss answering all three of the questions in the negative. To reinstate the policy as of February 6, 2019, Progressive did rely on the telephonic representation of Nathaniel Rafaelov to the Progressive customer service representative on February 11, 2019, that: (1) to the best of his knowledge, there had been no accident between February [*9] 6, 2019 and the time of the telephone conversation; (2) no one operating a vehicle listed on the policy had been involved in an accident during this time period; and (3) there had not been any damage or theft to any of the vehicles listed on the policy during this time period.

31. Progressive learned of the accident that is the subject of this coverage dispute on or prior to April 1, 2019.

32. Progressive issued its only reservation of rights letter to Star on July 30, 2019.

33. Progressive has not refunded any premium to Star Painting.

CONCLUSIONS OF LAW

1. Progressive properly, and in compliance with the terms of the policy of insurance and [section 627.7281, Florida Statutes](#), mailed to Star Painting a Cancellation Notice dated January 22, 2019, advising that the Commercial Auto Policy would be cancelled effective 12:01 A.M. on February 6, 2019, as a result of non-payment of premium.

2. Progressive also, pursuant to the terms of the Certificate of Insurance issued to Superior Recycling, provided notice to Superior Recycling.

3. Progressive complied with all the requirements of cancellation and the Commercial Auto Policy was properly cancelled pursuant to the applicable statute, [Fla. Stat. § 627.7281](#).

4. The Commercial Auto Policy states in pertinent [*10] part² as follows:

GENERAL PROVISIONS

* * *

11. Fraud or Misrepresentation

²Section 11 of the Policy goes on to state: "We may deny coverage for an accident or loss if you or any other insured knowingly concealed or misrepresented any material fact or circumstance or engaged in fraudulent conduct *in connection with the presentation or settlement of a claim.*" (emphasis added). This sentence, by its plain language, is not applicable in the instant declaratory action, as there is no allegation in this case of a misrepresentation "in connection with the presentation or settlement of a claim." Therefore, Defendant's reliance on this sentence of the Policy to the analysis of the representations made by Nathaniel Rafaelov to the Progressive customer service representative on February 11, 2019 is entirely misplaced.

This policy was issued in reliance upon the information provided on your insurance application. We may void this policy at any time, including after the occurrence of an accident or loss, if you:

1. made incorrect statements or representations to us with regard to any material fact or circumstance;
2. concealed or misrepresented any material fact or circumstance; or
3. engaged in fraudulent conduct; at the time of application. This means that we will not be liable for any claims or damages that would otherwise be covered.

5. Section 627.409, Florida Statutes, provides in pertinent part:

(1) Any statement or description made by or on behalf of an insured or annuitant in an application for an insurance policy or annuity contract, or in negotiations for a policy or contract, is a representation and not a warranty. Except as provided in subsection (3), a misrepresentation, omission, concealment of fact, or incorrect statement may prevent recovery under the contract or policy only if any of the following apply:

- (a) The misrepresentation, omission, concealment, or statement is fraudulent or is material to the acceptance **[*11]** of the risk or to the hazard assumed by the insurer.
- (b) If the true facts had been known to the insurer pursuant to a policy requirement or other requirement, the insurer in good faith would not have issued the policy or contract, would not have issued it at the same premium rate, would not have issued a policy or contract in as large an amount, or would not have provided coverage with respect to the hazard resulting in the loss.

6. After a policy of insurance has been cancelled, an application for reinstatement of that policy, here, the Statement of No Loss, is an application for insurance. The term "application" is not ambiguous

and the Court concludes that an application for reinstatement of a cancelled policy without a lapse in coverage meets the definition of an "application" as described in the Commercial Auto Policy and Section 627.409, Florida Statutes. See, e.g., Pericles v. MGA Ins. Co., 567 F. App'x 804, 806 (11th Cir. 2014) (applying Fla. Stat. § 627.409 to misrepresentations or omissions in answers provided by the insured about whether an accident occurred between the expiration of the policy and the insured's reinstatement request on a "request for reinstatement" form required by insurer after auto insurance policy expired for failure to pay premium); MetLife Ins. Co. USA v. Larose, No. 16-61051-CIV, 2017 U.S. Dist. LEXIS 72084, 2017 WL 2901696, at *1 (S.D. Fla. May 10, 2017) (applying Fla. Stat. § 627.409 to misrepresentations **[*12]** or omissions in answers to question required to reinstate life insurance policy following lapse for failure to pay premium). Moreover, the statutory language of Fla. Stat. § 627.409(1) is broad enough to include not only an "application" but also "negotiations for a policy or contract," which alternatively or additionally is applicable here. See § 627.409(1) ("Any statement or description made by or on behalf of an insured or annuitant in an application for an insurance policy or annuity contract, or in negotiations for a policy or contract.").

8. When Nathaniel Rafaelov called Progressive on February 11, 2019, the Commercial Auto Policy was cancelled, was not in effect, and there was no coverage under the Policy as of February 6, 2019. Star Painting was requesting that Progressive reinstate the policy. There is practically no difference between a person, or business, applying for coverage in the first instance and a person or business seeking to reinstate a cancelled policy when, in each instance, a significant fact is misstated, omitted or misrepresented.

9. "To the best of your knowledge" only qualifies the first of the three questions in the Statement of No Loss. "To the best of your knowledge" does not qualify the **[*13]** second and third questions in the Statement of No Loss. Therefore, an incorrect statement as to the second or third question does

prevent recovery under the policy, regardless of Nathaniel's personal lack of knowledge.

10. Progressive would not have reinstated the policy, as of February 6, 2019, without Star Painting's Statement of No Loss answering all three of the questions in the negative. Progressive is entitled to rely on the representations of Nathaniel Rafaelov, regardless of whether they were knowingly made, and that it did in this case by reinstating the policy back to February 6, 2019, with no lapse in coverage.

11. Therefore, Star Painting's argument that Nathaniel Rafaelov did not know of the falsity of his answer(s) to Progressive's questions in the Statement of No Loss is unavailing in the applicability of [§ 627.409\(1\)](#) in this case:

Under Florida law, a misrepresentation, omission, concealment of fact, or incorrect statement in an application for an insurance policy can prevent recovery under the policy if "[t]he misrepresentation, omission, concealment, or statement is fraudulent or is material either to the acceptance of the risk or to the hazard assumed by the insurer." [Fla. Stat. § 627.409\(1\)\(a\)](#); see also [\[*14\] United Auto. Ins. Co. v. Salgado, 22 So. 3d 594, 601 \(Fla. 3d DCA 2009\)](#) ("[W]here a misstatement or omission materially affects the insurer's risk, or would have changed the insurer's decision whether to issue the policy and its terms, the statute may preclude recovery.").

[Pericles, 567 F. App'x at 806](#). See also [Wilmington Sav. Fund Soc'y, FSB as Tr. for NRP Mortg. Tr. I v. Integon Nat'l Ins. Co., No. 4:20-CV-10085-JLK, 2021 U.S. Dist. LEXIS 80817, 2021 WL 1676641, at *3 \(S.D. Fla. Apr. 28, 2021\)](#) ("[P]ursuant to [\[S\]ection 627.409](#), the legislature has mandated that "any misrepresentation, innocent or intentional, will void an insurance contract if the misrepresentation 'is material either to the acceptance of the risk or to the hazard assumed by the insurer' or '[i]f the true facts had been known to the insurer ..., the insurer in good faith would not have issued the policy....'" (citations

omitted); [Cont'l Assurance Co. v. Carroll, 485 So. 2d 406, 408 \(Fla. 1986\)](#) ("The plain meaning of the statute indicates that, where either an insurer would have altered the policy's terms had it known the true facts or the misstatement materially affects risk, a nonintentional misstatement in an application will prevent recovery under an insurance policy.").

12. In addition or in the alternative, Nathaniel Rafaelov's answer as to the first question in the Statement of Loss was not "to the best of your knowledge" because Nathaniel Rafaelov was acting as the [\[*15\]](#) agent³ of Star Painting, the named insured under the Commercial Auto Policy. In an action for misrepresentation, an agent of a corporation acting within the scope of the agent's actual authority binds the corporation. [Taco Bell of California v. Zappone, 324 So. 2d 121, 123 \(Fla. 2nd DCA 1975\)](#). "A principal may not accept the benefits of a transaction negotiated by the agent and disavow the obligations of that same transaction." [Mercury Ins. Co. of Fla. v. Sherwin, 982 So. 2d 1266, 1270 \(Fla. 4th DCA 2008\)](#). When Nathaniel Rafaelov, acting as the agent of Star Painting, advised Progressive that he had no knowledge of any accident between February 6, 2019 and February 11, 2109, Star Painting had actual knowledge of the accident of February 8, 2019.⁴ See [GRG Transp., Inc. v. Certain Underwriters at Lloyd's, London, 896 So. 2d 922, 925 \(Fla. 3rd DCA 2005\)](#) (holding that even applying the less stringent "knowledge and belief" standard used in the insurance application's language rather the strict standard set forth in [section 627.409\(1\)](#), the insurer was entitled to summary judgment voiding a policy based

³ Star Painting, a corporation, can only act and speak through its agents. See [Rogan v. Oliver, 110 So. 3d 980, 983 \(Fla. 2nd DCA 2013\)](#). At all times material, including on the February 11, 2019 telephone call with Progressive, Nathaniel Rafaelov was an agent, manager, and a principal of Star Painting, with full authority to act on behalf of Star Painting with respect to Progressive and the Commercial Auto Policy.

⁴ Star Painting had actual knowledge of the accident of February 8, 2019 through its president, Aharon Rafaelov's actual knowledge, Aharon having received a telephone call on Friday, February 8, 2019 at approximately 4:00 to 5:00 in the afternoon from the secretary of Superior Recycling, who advised him that the 2018 Mack Truck had been involved in an accident.

on the insured misrepresenting material facts when answering a question on the insurance application, where there was no dispute that insured had actual knowledge of the material fact).

13. Retention of premium by Progressive does not prevent Progressive from disclaiming coverage for the February 8, 2019 accident. See *Pericles v. MGA Ins. Co.*, 567 F. App'x 804, 806 (11th Cir. 2014) (rejecting the argument that insurer's [*16] acceptance of premiums after the accident prohibited insurer from denying coverage under *Fla. Stat. §627.409(1)(a)* for accident that occurred during the period the policy was expired, where insurer had asked the insured whether any accidents had occurred during the period the policy was expired and insurer represented that no accident occurred during that period). Star Painting's reliance on *Mixson v. Allstate Ins. Co.*, 388 So. 2d 608, 609 (Fla. 3rd DCA 1980) and the like, which only involved an insurer accepting and retaining a premium payment after the policy was cancelled or expired for nonpayment, is misplaced for several reasons, most significantly that those cases did not involve an alleged misrepresentation where the insurer required an insured to answer questions in order to reinstate a policy. The instant action, on the other hand, is more like *Pericles*:

Further, because of the misrepresentation, [the insurer] could deny coverage for the October 4 accident without cancelling the policy and refunding [the insured]'s premium payment or any portion thereof. See *Martinez v. Gen. Ins. Co.*, 483 So.2d 892, 894 (Fla. 3d DCA 1986). Under Florida law, when a misrepresentation in a policy application does not go to the entirety of coverage, an insurer may choose to deny a claim due to the misrepresentation without cancelling the policy and [*17] refunding a premium payment. *Id.* This is because, as is the case here, [the insurer] never assumed the risk of an undisclosed accident which occurred prior to October 5, whereas [the insured] received benefits under the policy. *Id.* ("[T]o require the insurer ... to return the premium to the insured where the materially false statement or omission

results ... in a denial of coverage only for a risk never assumed by the insurer or paid for by the insured is to give the insured an undeserved windfall-coverage for nothing."); cf. *Gonzalez v. Eagle Ins. Co.*, 948 So.2d 1, 3-4 (Fla. 3d DCA 2006) (explaining if a claim is totally unrelated to the omission causing the denial of the claim, the insured is entitled to a refund of the premiums paid).

Pericles, 567 F. App'x at 810. Here, the insured made materially false statements in its application for reinstatement of its policy. The misrepresentation here did not go to the entirety of coverage but only to the accident of February 8, 2019. To require that the premium be refunded under this circumstance would give Star Painting an undeserved windfall-coverage for nothing. See also *Priority Med. Rehab. Inc. v. United Auto. Ins. Co.*, 227 So. 3d 672, 674 (Fla. 3rd DCA 2017) (following *Martinez v. Gen. Ins. Co.*, 483 So.2d 892, 894 (Fla. 3d DCA 1986) and holding that insurer was not required to return the premium, could allow coverage to continue but could deny coverage for the loss claimed, [*18] as the loss was a result of a risk insurer did not assume under the contract because of a material omission in the application).

14. *Fla. Stat. ' 627.426*, known as the Claims Administration Statute ("CAS") does not apply. There is a relevant distinction between a Coverage Defense (as used in *Fla. Stat. '627.426*), where there is a defense to an otherwise covered claim, and a Defense of No Coverage, where the claim was not a covered claim at any time. See *Geico Gen. Ins. Co. v. Rodriguez*, 155 So. 3d 1163, 1168 (Fla. 3rd DCA 2014) ("[W]e hold that the term "coverage defense," as used in *section 627.426(2)*, means a defense to coverage that otherwise exists. We do not construe the term to include a disclaimer of liability based on a complete lack of coverage for the loss sustained.") (quoting *AIU Ins. Co. v. Block Marina Inv., Inc.*, 544 So. 2d 998, 1000 (Fla. 1989). "The Claims Administration Statute was not intended to create coverage under a liability insurance policy that never provided coverage." *GRG Transp., Inc. v. Certain Underwriters at Lloyd's, London*,

[896 So. 2d 922, 925 \(Fla. 3rd DCA 2005\)](#) (citation omitted); *see also* [Rodriguez, 155 So. 3d at 1168](#) ("[A] violation of the CAS cannot create insurance coverage for a claim that otherwise is not a covered claim."). Because the February 8, 2019 accident was not otherwise covered, Progressive did not need to comply with the notice requirements of the CAS, ' [627.426](#), to reserve its defense.

CONCLUSION

Based on the foregoing Findings of Fact and Conclusions of Law, Plaintiff [*19] Progressive Express Insurance Company is entitled to a declaratory judgment in its favor declaring that:

- a. The Commercial Auto Policy under Policy No. 03656052-3, issued to Defendant Star Painting & Waterproofing, Inc., for the policy period from April 13, 2018 to April 13, 2019, was reinstated with no lapse in coverage through misrepresentation and that, therefore, the Commercial Auto Policy does not provide coverage to Star Painting & Waterproofing, Inc. or Jose Perez for the damages being claimed by Mohamed Afyouni and Kathryn Beich in the underlying litigation over the February 8, 2019 accident involving the Mack truck;
- b. That Progressive Express Insurance Company has no duty to indemnify Star Painting & Waterproofing, Inc. or Jose Perez for any damages awarded to either Mohamed Afyouni and/or Kathryn Beich in the underlying litigation;
- c. That Progressive Express Insurance Company has no duty to defend Star Painting & Waterproofing, Inc. or Jose Perez in the underlying litigation.

Pursuant to [Federal Rule of Civil Procedure 58\(a\)](#), the Court shall enter a separate final judgment.

DONE AND ORDERED in Chambers, in Fort Lauderdale, Broward County, Florida, this 27th day of August, 2021.

/s/ William P. Dimitrouleas

WILLIAM [*20] P. DIMITROULEAS

United States District Judge

FINAL JUDGMENT

THIS CAUSE is before the Court upon the Court's entry of Findings of Fact and Conclusions of Law. Pursuant to [Federal Rule of Civil Procedure 58\(a\)](#), the Court enters this separate final judgment.

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1. Final judgment is hereby entered in favor of Plaintiff Progressive Express Insurance Company and against Defendants, declaring that:
 - a. The Commercial Auto Policy under Policy No. 03656052-3, issued to Defendant Star Painting & Waterproofing, Inc., for the policy period from April 13, 2018 to April 13, 2019, was reinstated with no lapse in coverage through misrepresentation and that, therefore, the Commercial Auto Policy does not provide coverage to Star Painting & Waterproofing, Inc. or Jose Perez for the damages being claimed by Mohamed Afyouni and Kathryn Beich in the underlying litigation over the February 8, 2019 accident involving the Mack truck;
 - b. That Progressive Express Insurance Company has no duty to indemnify Star Painting & Waterproofing, Inc. or Jose Perez for any damages awarded to either Mohamed Afyouni and/or Kathryn Beich in the underlying litigation;
 - c. That Progressive Express Insurance Company has no [*21] duty to defend Star Painting & Waterproofing, Inc. or Jose Perez in the underlying litigation.

2. The Clerk is directed to **CLOSE** this case and **DENY** any pending motions as moot.

DONE AND ORDERED in Chambers, in Fort Lauderdale, Broward County, Florida, this 27th day of August, 2021.

/s/ William P. Dimitrouleas

WILLIAM P. DIMITROULEAS

United States District Judge

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