

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

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Submitted - June 12, 2012

DANIEL D. ANGIOLILLO, J.P.  
THOMAS A. DICKERSON  
JOHN M. LEVENTHAL  
CHERYL E. CHAMBERS, JJ.

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2011-07323

DECISION & ORDER

Alicia Walker, appellant, v Tiffany A. George, et al.,  
defendants, Progressive Corporation, respondent.

(Index No. 23252/08)

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Alicia Walker, Brooklyn, N.Y., appellant pro se.

Morris Duffy Alonso & Faley, New York, N.Y. (Anna J. Ervolina of counsel), for  
respondent.

In an action, inter alia, to recover damages for personal injuries and breach of the covenant of good faith and fair dealing implied in an insurance contract, the plaintiff appeals from an order of the Supreme Court, Kings County (Solomon, J.), dated July 13, 2011, which granted the motion of the defendant Progressive Corporation pursuant to CPLR 3211(a)(7) to dismiss the complaint insofar as asserted against it for failure to state a cause of action.

ORDERED that the order is affirmed, with costs.

The Supreme Court properly granted the motion of the defendant Progressive Corporation (hereinafter Progressive) pursuant to CPLR 3211(a)(7) to dismiss the complaint insofar as asserted against it for failure to state a cause of action. The complaint fails to state a cause of action to recover damages based on Progressive's alleged violation of the covenant of good faith and fair dealing implied in the insurance contract issued to the defendant Charles Robertson (*see generally Pavia v State Farm Mut. Auto. Ins. Co.*, 82 NY2d 445, 452-454; *CBLPath, Inc. v Lexington Ins. Co.*, 73 AD3d 829, 830-831). With regard to the plaintiff's allegations that Progressive engaged in fraudulent conduct, the complaint fails to allege any injury or damages sustained as a proximate result of Progressive's alleged fraudulent conduct (*see generally Eurycleia*

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*Partners, LP v Seward & Kissel, LLP*, 12 NY3d 553, 559; *New York Univ. v Continental Ins. Co.*, 87 NY2d 308, 318; *Introna v Huntington Learning Ctrs., Inc.*, 78 AD3d 896, 898; *Daly v Kochanowicz*, 67 AD3d 78, 89).

The plaintiff's new theory of liability, which was not raised before the Supreme Court, is improperly raised for the first time on appeal and will not be addressed (*see Pierre v Lieber*, 37 AD3d 572, 573; *Wheeler v Town of Hempstead*, 238 AD2d 580, 581; *Gordon v Hong*, 126 AD2d 514, 514).

The parties' remaining contentions either are without merit or need not be reached in light of our determination.

ANGIOLILLO, J.P., DICKERSON, LEVENTHAL and CHAMBERS, JJ., concur.

ENTER:



Aprilanne Agostino  
Clerk of the Court