Appellate Court Clarifies That Standard for Third-Party Claims Applies Under Uniform Trade Practices Act in Determining Application of Penalty Interest for UM/UIM Cases

December 1, 2015

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Legal Trend Newsletter - Fall/Winter 2015

The Michigan Court of Appeals just clarified a muddled history of case law with respect to when any penalty interest may be imposed under the Uniform Trade Practices Act (UTPA) for failure to pay under an uninsured or underinsured motorist policy.

Under the UTPA pursuant to MCL 600.6013, penalty interest of 12 percent is due for first-party claims starting 60 days after "satisfactory proof of loss" has been received, regardless of whether the claim is "reasonably in dispute." For third-party claims, however, the Act only imposes the penalty interest when the claim is not reasonably in dispute, (i.e., undisputed liability and damages). In this respect, first-party insurance claims have been much easier to impose UTPA penalty interest while third-party claims demand a very high standard.

Notably, in *Nickola v MIC General Ins. Co*., 2015 WL 5611770 (Mich. App. Sept. 24, 2015), the appellate court held that Uninsured and Underinsured Motorist coverage (UM/UIM) cases are fundamentally different from other first-party insurance claims and thus will be considered third-party claims for the purposes of the UTPA.

In *Nickola*, the original plaintiffs sued MIC General Insurance Company (MIC) after exhausting the underlying tortfeasor's policy limits with the consent of the UIM carrier and later filed suit and demanded arbitration. After a long protracted course of events involving the death of the original plaintiffs, appointment of an estate, and disagreements over the neutral arbitrator, the case was finally arbitrated nearly six years later, resulting in UIM awards for both plaintiffs. The plaintiffs'estate moved the trial court to impose penalty interest under MCL 600.6013, arguing that MIC originally failed to honor the demand for arbitration. However, the trial court denied the motion finding that a UIM claim is akin to a third-party claim for which penalty interest can only be imposed if the claim is not reasonably in dispute.

The plaintiffs' estate appealed, arguing that UIM coverage is a first-party contract for insurance benefits and that penalty interest was due and owing. The estate was seeking that 12 percent interest be imposed over six years on a $113,000 combined UIM arbitration award for the decedents.

The appellate court disagreed with the estate, holding that UM and UIM coverages are, indeed, fundamentally aligned with third-party claims. Specifically, the court reasoned that a UIM claim permits an injured motorist to obtain coverage from his own insurance company only to the extent that a third-party claim would be permitted against the at-fault driver. Therefore, the claim is "different in nature from a typical claim for first-party benefits, as it will often require proof of the nature and extent of the injured person's injuries, the injured person's prognosis over time, and proof that the injuries have had an adverse effect on the injured person's ability to lead his or her normal life."

In addition, the appellate court pointed out that a UM/UIM claim is designed to compensate a claimant for past and future pain and suffering and other noneconomic losses rather than compensation for immediate expenses that are generally associated with a first-party claim. Accordingly, the court found the case distinguishable from the case law argued by the estate, *Griswold Props, LLC v Lexington Ins Co*, 276 Mich App 551 (2007), wherein the court previously found penalty interest due and owing for failure to pay on a first-party property insurance claim because a UM or UIM claim is "fundamentally" different from other first party insurance coverages.

Therefore, where UM/UIM coverage is denied, written correspondence noting the reason for denial (i. e., why the claim is reasonably in dispute) will aid in further protecting the carrier down the line from the imposition of any interest; a standard much more difficult to prove under the third-party analysis.

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