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**Gallagher Sharp Case of Note: Michigan Supreme Court Requires Assessment of Penalty Interest on Insured Parties' UIM Claims**

Last Month, on May 12, 2017, the Michigan Supreme Court held that an insured claiming uninsured motorist benefits is entitled to the assessment of penalty interest for the late payment of benefits, regardless of whether the underlying claim was “reasonably in dispute.” *Nickola v MIC General Ins. Co.*, Mich. (2017). The impact of the Court’s decision overturns existing case law that limited an insurer’s liability with respect to the payment of penalty interest on certain claims of the insured.

The facts of this dispute relate back to 2004, when Plaintiffs, the insured, sustained injuries in a motor vehicle accident. The other driver’s no-fault insurance policy provided the minimum liability coverage allowed by law and was insufficient to cover the Plaintiffs’ injuries. Plaintiffs contracted for UIM benefits but their insurer denied the claim, citing that Plaintiffs could not establish a threshold injury for noneconomic tort recovery. In 2012, the parties finally resolved the claim in arbitration but Plaintiffs then filed a motion to ask the trial court to assess 12% penalty interest under Michigan’s Uniform Trade Practices Act (UTPA). The relevant provision of the UTPA, MCL 500.2006(4), requires an insurer to pay a 12% penalty interest in the event it fails to pay out benefits to an insured party within 60 days of satisfactory proof of loss. The statute then provides that failure with respect to third party tort claimant’s loss would result in a 12% penalty interest unless the claim is reasonably in dispute. The trial court declined to assess the penalty interest.

The Supreme Court’s decision overruled the Court of Appeals, which refused to assess penalty interest to the insured Plaintiff’s UIM claim. The Court of Appeals reasoned that the UIM claim was specifically tied to the nature of a third-party tort claim because of the proofs required and cited its own decision in *Auto-Owners Ins Co v Ferwerda Enterprises*, 287 Mich App 248 (2010), that was premised on the same logic. The Supreme Court rejected this distinction, overruled *Ferwerda* to the extent it was inconsistent with its holding, and relied on statutory interpretation of the UTPA’s plain language in reaching its decision.

The Court concluded that the UTPA creates two classes of claimants, distinguishing only the identity of the claimant, rather than the nature of the claim. Therefore, because the legislature created an exemption for claims “reasonably in dispute” in one category (third parties), and omitted the language in the insured claimant category, the Court held that insured plaintiffs are entitled penalty interest for late payments irrespective of whether their claim is “reasonably in dispute.”

The opinion can be found at: [Nickola v MIC General Ins. Co., Mich. \(2017\)](#).

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