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Uniform Trade Practices Act's 12% penalty interest applies to UM/UIM claims, even when the claim was "reasonably in dispute"

By Drew W. Broaddus **May 16, 2017**

The Uniform Trade Practices Act (UTPA), at MCL 500.2006(4), provides for 12% penalty interest on certain claims not timely paid by an insurer. MCL 500.2006(4) "divides insurance claims 'not paid on a timely basis' into two categories." *Stryker Corp v XL Ins Am*, 735 F3d 349, 359-360 (6th Cir 2012). "For cases where 'the claimant is the insured or an individual or entity directly entitled to benefits under the insured's contract of insurance,' the interest rate is 12% per annum." *Id.* "However, for 'third party tort claimant[s],' the interest rate is 12% per annum 'if the liability of the insurer for the claim is not reasonably in dispute, the insurer has refused payment in bad faith and the bad faith was determined by a court of law.'" *Id.* "The purpose of the penalty interest statute is to penalize insurers for dilatory practices in settling meritorious claims, not to compensate a plaintiff for delay in recovering benefits to which the plaintiff is ultimately determined to be entitled." *Federal Ins Co v Hartford Steam Boiler Inspection & Ins Co*, 415 F3d 487, 499 (6th Cir 2005).

The application of MCL 500.2006(4) to uninsured motorist ("UM") and under-insured motorist ("UIM") claims has long been controversial because UM and UIM claims – although "governed by contract," *Nickola*, ___ Mich at ___; slip op at 6 – have much in common with third-party tort claims, see *Adam v Bell*, 311 Mich App 528, 535; 879 NW2d 879 (2015). In order to recover such

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In *Nickola v MIC Gen Ins Co*, ___ Mich ___; ___ NW2d ___ (2017) (Docket No. 152535); slip op at 16, the Michigan Supreme Court – reversing a published decision of the Court of Appeals – held that the "reasonably in dispute" language of MCL 500.2006(4) "applies only to third-party tort claimants and not to an insured making a claim for UIM benefits."

The Court of Appeals had applied the "reasonably in dispute" language – which sets a higher bar for recovering 12% penalty interest – because a UIM claim requires the insured to make what is essentially a third-party tort claim against their own insurer and such a claim is therefore "fundamentally different" from a typical first-party claim. *Nickola v MIC Gen Ins Co*, 312 Mich App 374, 387; 878 NW2d 480 (2015).

The Supreme Court rejected this reasoning, holding that a UIM claim is a first-party claim and under the statute's plain language, "if the claimant is the insured and benefits are not paid on a timely basis, the claimant is entitled to 12% penalty interest per annum irrespective of whether the claim is reasonably in dispute." *Nickola*, ___ Mich at ___; slip op at 15.

benefits, "an injured person must – as provided in the insurance agreement – be able to prove fault: he or she must be able to establish that the uninsured motorist caused his or her injuries and would be liable in tort for the resulting damages. … This in turn 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." *Id.* But on the other hand, any recovery is ultimately awarded under an insurance contract. *Nickola,* ___ Mich at ___; slip op at 6. This has led to disputes over whether UM and UIM claims should be treated as third-party claims – to which the 12% penalty interest clause applies *only* if the claim *was not* reasonably in dispute – or whether they are more analogous to first-party claims.

Such a dispute arose in *Nickola*, where the Plaintiffs brought a declaratory action against their no-fault insurer, MIC, relative to their claim for UIM benefits. The Plaintiffs had been injured in a car accident caused by Roy Smith, whose no-fault insurance policy provided the minimum liability coverage allowed by law: $20,000 per person, up to $40,000 per accident. Smith's insurer settled with the Plaintiffs and paid them the limits of Smith's policy. The Plaintiffs then looked to their own insurer, and after obtaining an arbitration award against MIC, the Plaintiffs sought 12% penalty interest under the UTPA. The trial court declined to award penalty interest, ruling that statute's penalty interest clause did not apply because the UIM claim was reasonably in dispute for purposes of MCL 500.2006(4). The Court of Appeals affirmed, holding that the "reasonably in dispute" language applied to Plaintiffs' UIM claim because a UIM claim essentially places the insured in the shoes of a third-party claimant. *Nickola*, 312 Mich App at 387. But the Supreme Court granted the Plaintiffs' leave application and later reversed.

The Court explained:

> In this case, the claimants … were parties to the insurance contract. The Nickolas chose to pay higher insurance premiums in order to obtain protection from underinsured motorists. The Nickolas were insureds, not third-party tort claimants. Therefore, the first sentence of MCL 500.2006(4) is applicable, and the "reasonably in dispute" language contained in the second sentence does not apply to plaintiff's claim for UIM benefits.
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> The Court of Appeals in this case erroneously focused on the nature of a UIM claim. The panel rationalized that while plaintiff is seeking UIM benefits provided under the Nickolas' insurance policy, he is doing more than making a "simple first-party claim." The panel explained that "[i]n order for plaintiff to succeed on his UIM claim, he essentially has to allege a third-party tort claim" because UIM insurance permits an injured motorist to obtain coverage from his or her own insurer to the extent that a third party claim would be permitted against the at-fault driver. Yet the plain language of MCL 500.2006(4) distinguishes only the identity of the claimant, not the nature of the claim. The proofs required for a UIM claim do not transform "the insured" into a "third party tort claimant" when seeking to enforce the insured's own insurance contract. The insured by definition is a party to the insurance contract, not a third party. Simply because the Nickolas' UIM coverage requires a particular set of proofs in order to recover UIM benefits does not transform plaintiff's claim for benefits under the insurance policy into a tort claim. In sum, the Nickolas were insureds who made a claim for benefits under their policy of insurance. Nothing in MCL 500.2006(4) permits an insurer to avoid payment of penalty interest when the insured has not been paid benefits within 60 days of submitting to the insurer satisfactory proof of loss. *Nickola,* ___ Mich at ___; slip op at 11-12 (citations omitted).

The Court further clarified: "if the claimant is the insured and benefits are not paid on a timely basis, the claimant is entitled to 12% penalty interest per annum irrespective of whether the claim is reasonably in dispute." *Id.*[1] "[A]n insured making a claim under his or her own insurance policy for UIM benefits cannot be considered a 'third party tort claimant' under MCL 500.2006(4)…. This holding is required by the plain language of" the statute. *Nickola,* ___ Mich at ___; slip op at 1-2.

[1] In third-party cases, whether a claim is "reasonably in dispute" is a question of law for the court to decide. *Federal Ins,* 415 F3d at 499. "[A] plainly invalid contract clause or a plainly erroneous interpretation of law may be sufficient basis for the court to determine" that a claim is not "reasonably in dispute." *Id.* at 500. "However, when there is no indication that the insurer acted unreasonably or with dilatory motive in denying the claim, the court should find" that the claim is "reasonably in dispute." *Id.* "A policy also might be 'reasonably in dispute' when the insurer-in good faith-disputes its obligation, contests legitimate issues, and makes no effort to delay recovery of benefits." *Id.*, applying MCL 500.2006(4) in diversity.

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