

APPELLATE / INSURANCE**MICHIGAN SUPREME COURT HOLDS THAT AN INSURER'S UNTIMELY PAYMENT OF UNDERINSURED MOTORIST BENEFITS IS SUBJECT TO PENALTY INTEREST EVEN IF REASONABLY IN DISPUTE**

by Phillip J. DeRosier and Kimberly J. Ruppel

The Michigan Uniform Trade Practices Act (UTPA) provides for 12% penalty interest on certain no-fault insurance claims that are not timely paid by the insurer. For "third party tort claimants," penalty interest only applies to claims that are not "reasonably in dispute." MCL 500.2006(4). In the recent case of *Nickola v MIC General Insurance Company*, the Michigan Supreme Court held that this exception does not apply to claims for underinsured motorist benefits (UIM) that are made by an insured under his or her own policy. Although such claims may resemble third-party tort claims because they require proof that another driver was at fault for the accident, they are direct claims subject to penalty interest if not timely paid, regardless whether the claim is reasonably in dispute.

The Facts

George and Thelma Nickola were injured in a car accident. It was determined that the driver of the other car caused the accident. When it became apparent that the other driver's insurance coverage was not sufficient to cover the Nickolas' injuries, they sought underinsured motorist coverage (UIM) benefits from their own insurer. The insurer denied the claim on the ground that the injuries were not severe enough to trigger UIM coverage. The case eventually proceeded to arbitration, where the Nickolas received a \$113,000 award.

In the meantime, the Nickolas both passed away. Their son, Joseph, filed suit for entry of judgment on the arbitration award. He also sought 12% penalty interest under the UTPA, but the trial court "declined to award penalty interest under the UTPA, finding that penalty interest 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 plaintiff's UIM claim because a UIM claim 'essentially' places the insured in the shoes of a third-party claimant."

The Supreme Court's Decision

The Supreme Court disagreed with the lower courts' interpretation of MCL 500.2006(4), which provides:

If benefits are not paid on a timely basis the benefits paid shall bear simple interest from a date 60 days after satisfactory proof of loss was received by the insurer at the rate of 12% per annum, if the claimant is the insured or an individual or entity directly entitled to benefits under the insured's contract of insurance. If the claimant is a third party tort claimant, then the benefits paid shall bear interest from a date 60 days after satisfactory proof of loss was received by the insurer at the rate of 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.

The Court observed that the statute has "two sentences" dividing insurance claimants "into two distinct classes. The first sentence creates a class of claimants who are insureds or an individual or entity directly entitled to benefits under an insured's insurance contract. The second sentence creates a class of third-party tort claimants." The Court held that because the Nickolas were entitled to benefits "directly" from their insurer, the "reasonably in dispute" language contained in the second sentence did not apply.

In reaching that conclusion, the Court rejected the Court of Appeals' view that the "reasonably in dispute" language applies to a UIM claim because it is analogous to a third-party tort claim. According to the Court of Appeals, 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," a UIM claim is more like a third-party tort claim than a "simple first-party claim." The Supreme Court disagreed, observing that "the plain language of MCL 500.2006(4) distinguishes only the identity of the claimant, not the nature of the claim." Thus, "[t]he 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." Instead, "the Nickolas were insureds who made a claim for benefits under their policy of insurance."

The Court concluded that because "[n]othing 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," the Nickolas were entitled to penalty interest on their UIM claim.

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FOR MORE INFORMATION CONTACT:



Phillip J. DeRosier is a Member in Dickinson Wright's Detroit office. He can be reached at 313.223.3866 or pderosier@dickinsonwright.com



Kimberly J. Ruppel is a Member in Dickinson Wright's Troy office. She can be reached at 248.433.7291 or kruppel@dickinsonwright.com