

FEATURE STORY

Delay in payment of your claim should pique your interest

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First-party insurance claimants in Michigan have a right to recover 12 percent penalty interest from their insurance companies whenever those insurers fail to make timely payment of claims as required under the Michigan Uniform Trade Practices Act (MCL 500.2001 et seq.).

A payment is timely if made within 60 days after “satisfactory proof of loss” was received by the insurer. The interest must be paid in addition to and at the same time as payment of the claim.

Interest is payable on the amount of loss or the policy limit, whichever is less.

In the past, insurance companies have refused to voluntarily pay penalty interest to first-party claimants in the event of an untimely claim payment.

The companies usually have asserted at least one of the following positions to justify their refusal:

- No penalty interest is owed at all if the claim was “reasonably in dispute”;
- A general objection, such as the insurer thought the claim was excessive or not properly documented; and
- The claim remained “under investigation” or liability had not yet been determined.

Those excuses for non-payment of penalty interest were soundly rejected in the cases of *Griswold Properties LLC v Lexington Ins Co*, 275 Mich App 543; 240 NW2d 659 (2007), vacated in part, (*Griswold I*); and *Griswold Properties LLC v Lexington Ins Co*, 276 Mich App 551; 741 NW2d 549 (2007), lv den (*Griswold II*).

The Court of Appeals in *Griswold II* unanimously held that, based upon the language of the UTPA and the holding of an earlier Michigan Supreme Court case, penalty interest was payable to a first-party claimant upon an untimely insurer payment regardless of whether, under the policy, there was a reasonable dispute over liability.

The court also held that rejections of a claim based on general objections or other excuses, without advising the claimant of the exact grounds for the objections and what specifically had to be provided to cure any alleged defect, would not suffice to avoid the imposition of penalty interest.

The *Griswold I* court, in that portion of the opinion not vacated, referred to subsection 3 of MCL 500.2006 in establishing the guidelines for whether a proof of loss was satisfactory.

Subsection 3 provides: “An insurer shall specify in writing the materials which constitute a satisfactory proof of loss not later than 30 days after receipt of a claim unless the claim is settled within the 30 days...”

The Court of Appeals defined “satisfactory proof of loss” in terms of insurance claims submissions, stating: “Satisfactory proof of loss does not require agreement of the parties as to the amount of damages, but is rather the process of the insured providing the documents and evidence required by the insurer to begin processing the claim...”

The court thus put the onus upon the insurer to define “satisfactory” in each particular claim, rather than force claimants to try to hit a moving target.

The process as defined by the Court of Appeals is initiated by the claimant’s submitting to the insurer proof of loss, such as estimates

of repair and inventories of the loss.

As required by MCL 500.2006(3), the insurer then has 30 days in which to provide the insured with detailed specifications, in writing, of what additional materials, if any, the insurer wants.

If the insurer, however, fails to respond at all to the claimant’s submission within 30 days, the claimant’s submission is to be treated as “satisfactory,” and the claim thereafter shall be treated as if the proof was accepted by the insurer.

A proof of loss deemed satisfactory by virtue of the insurer’s failure to timely or properly respond, and the resulting imposition of penalty interest on the claim, do not estop the insurer from contesting the amount of the claim itself.

If the insurer does timely respond to the claimant’s proof of loss submission, the insurer must detail what additional materials are required, not merely assert that the materials received are insufficient or unsatisfactory.

If the claimant then complies with the insurer’s request for specific types of documentation, then the proof is satisfactory, whether or not the insurer agrees with the amounts claimed.

Thus, the court made it clear that a claimant’s submission of a satisfactory proof of loss is a function of complying with a claim submission process, and not an obligation of the policyholder or claimant to submit a loss calculation with which the insurer agrees.

Assuming the claimant attempted to comply with the insurer’s written notification regarding submission of additional materials, and has thereby at least facially complied with the statutory requirement of submission

of a “satisfactory proof of loss,” the 60-day interest clock begins to tick.

Although the carrier has some discretion to thereafter reject a proof of loss as unsatisfactory, the court specifically held that the determination of whether a proof of loss was satisfactory is a question of fact, and must take into account the claimant’s efforts to obtain requested documents.

There is no question of fact, however, as to the satisfactory nature of a proof of loss if the insurer did not timely comply with the UTPA’s 30-day written notification requirement: Insufficient notification means the proof of loss is satisfactory.

The court also rejected the insurer’s contention that the language in policies as to when a loss would be payable controlled and negated the UTPA timely payment requirement.

The court strongly supported prior appellate decisions holding both that an insurer

could not enforce a contractual provision conflicting with Michigan statutes and that an insurer could not withhold benefits on the premise that its policy language did not require it to make any payment until the total amount of the claim was determined.

For the practitioner representing an insurance claimant not involving a no-fault loss, no-fault has its own rules, potential recovery of penalty interest puts a premium on accurately assessing the amount of loss and promptly transmitting that information to the insurance company.

Counsel or the claimant should arrange for the retention of the appropriate damage experts to assemble the claim, preferably in a form customarily used within the particular insurance arena, so as to forestall demands for additional materials.

Requests for additional documentation received within 30 days of claim submission should be addressed promptly. Bear in mind

that many insurers still have not gotten the message that Michigan courts will enforce the UTPA penalty interest, and counsel should be prepared to enforce compliance.

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