

BAD FAITH BLOG

# Michigan Supreme Court: UTPA Penalty Interest Proper for Untimely UIM Benefit Payments

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Insured injured in a car accident claimed underinsured motorist (UIM) benefits because the adverse driver was insufficiently insured. The insured asked the court to assess penalty interest under the Uniform Trade Practices Act (UTPA) for payments made far beyond the statutory deadline. The trial court and Court of Appeals refused finding that penalty interest did not apply because the claim essentially placed the insured in the shoes of a third-party claimant. Because the claim was “reasonably in dispute” for purposes of MCL 500.2006(4), no penalty interest was owed. The Supreme Court of Michigan held that an insured making a first party claim cannot be considered a “third party tort claimant” under the Act. The Court reversed and remanded for further proceedings.

*Nickola v. MIC General Insurance Company*

On April 13, 2004, George and Thelma Nickola were injured in a car accident. The driver of the other car had an insurance policy that was insufficient to cover the Nickolas’ injuries. The Nickolas sent a letter to their insurer, MIC General Insurance Company, claiming UIM benefits. Their UIM limits were \$300,000 per accident, but they sought a payment of \$160,000. An adjuster denied the claim contending the Nickolas were adequately compensated for their injuries.

In response, the Nickolas demanded arbitration which the trial court ordered after MIC refused to arbitrate the two arbitrators selected by the parties could not agree on a third. For the next six years the case remained stagnant absent a third arbitrator. During those six years, George and Thelma Nickola died of causes not related to the car accident. Their son Joseph was named personal representative of their estates.

In 2012, Joseph asked the court to appoint a third arbitrator. After the third arbitrator was named, the full arbitration panel awarded \$80,000 for George's injuries and \$33,000 for Thelma's. Joseph Nickola asked the court to assess 12% penalty interest under the UTPA. The court declined, finding that penalty interest did not apply because the UIM claim was "reasonably in dispute" under MCL 500.2006(4), a ruling the Court of Appeals affirmed. The Court of Appeals held that the "reasonably in dispute" language applied to plaintiff's claim because a UIM claim essentially places the insured in the shoes of a third-party claimant.

The Supreme Court of Michigan reversed, holding that the "reasonably in dispute" language of MCL 500.2006(4) applies only to third-party tort claimants and not to first party insureds. The Court examined the statutory language of the UTPA and MCL 500.2006, and found that subsection (1) of MCL 500.2006 requires insurance claims to be paid on a timely basis or *penalty interest will be imposed*. Subsection (4) of MCL 500.2006 provides that the penalty rate will be 12% if the claimant is the insured or an individual directly entitled to benefits under the insured's contract of insurance. It also provides that if the claimant is a third party tort claimant, the interest rate remains at 12% if the liability of the insurer for the claim is "not reasonably in dispute." Because the phrase "not reasonably in dispute" was omitted from the part of the statute discussing claims made by an insured, the omission was deemed intentional; that phrase applies only to third-party tort claimants.

The Supreme Court ruled that the Nickolas were first party insureds, not third-party tort claimants, therefore the "reasonably in dispute" language did not apply. The Supreme Court noted that the Court of Appeals erroneously focused on the nature of the UIM claim; the identity of the claimant is the correct focus when analyzing whether an individual is entitled to penalty interest. Further, nothing in MCL 500.2006(4) allows an insurer to avoid paying penalty interest when the insured's benefits are not paid within 60 days of submitting satisfactory proof of loss. The Court stated that if the claimant is the insured (or an individual or entity directly entitled to benefits) and benefits are paid late, the claimant is entitled to 12% interest. The Supreme Court reversed and remanded for further proceedings. The Supreme Court also overruled that part of *Auto-Owners Ins. Co. v. Ferwerda Enterprises, Inc.* contrary to its holding.

The Nickola case is important to Michigan insurers, claims professionals, and attorneys handling first party claims in which UTPA penalty interest might be applicable. In first party cases when the insurer fails to pay benefits within 60 days of submission of a proof of loss, most likely 12% penalty interest is due.