High Court Puts Brakes on Delay Damages for UM Claims

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In *Marlette v. State Farm Mutual Automobile Insurance*, 57 A.3d 1224, 2012 Pa. LEXIS 3009 (Pa. Dec. 28, 2012), the Pennsylvania Supreme Court squarely addressed the issue of whether a plaintiff-insured in an uninsured motorist (UM) claim is entitled to delay damages for the full amount of the jury's verdict or the legally recoverable molded verdict as reflected by the applicable UM insurance policy limits. Pursuant to Rule 238 of the Pennsylvania Rules of Civil Procedure governing delay damages, the Supreme Court held that the insured's recovery of delay damages is limited to the amount of the legally recoverable molded verdict.

This UM dispute arose from a 2002 motor vehicle accident wherein an uninsured driver crossed the center line of the roadway in Pittsburgh and sideswiped the vehicle operated by Richard Marlette. As a result of the accident, Marlette sustained serious injuries and sought the recovery of damages. Marlette and his wife, Marleen Marlette, had an insurance policy through State Farm that provided stacked UM coverage limits totaling $250,000.

In 2006, the Marlettes filed a civil action in the Allegheny County Court of Common Pleas against the uninsured driver and, pursuant to the insurance policy, against State Farm for the recovery of UM benefits. The civil complaint sought the recovery of noneconomic damages for the personal injuries sustained; economic damages in the form of lost wages and loss of earning capacity; and a loss of consortium claim by Marleen Marlette.

Liability was admitted, and the case proceeded to a jury trial solely on the issue of causation and damages. After a two-day trial, the jury entered an award of $550,000 in favor of Richard Marlette for his damages and $150,000 in favor of Marleen Marlette on her derivative claim for loss of consortium.

Rule 238 provides the recovery of delay damages for the plaintiff in civil actions for bodily injury, death or property damage. The delay damages are added to the amount of compensatory damages awarded against each defendant found to be liable to the plaintiff and the delay damages become part of the verdict.

Upon a post-trial motion, the Marlettes requested the recovery of delay damages calculated on the full jury verdict award of $550,000. As delay damages are not available for awards based on loss of consortium, there was no need to calculate a delay damages figure for the $150,000 jury verdict in favor of Marleen Marlette. The trial court made a post-trial ruling that the Marlettes' total award of $700,000 would be molded down to the available stacked UM policy limits of $250,000. Additionally, the trial court credited an earlier payment by State Farm of $16,693 (under the applicable policy), resulting in a final molded verdict of $233,306 in favor of the Marlettes. Both parties filed cross-appeals to the Pennsylvania Superior Court.

In a divided opinion, the Superior Court vacated the trial court's judgment on delay damages and determined that the delay damages should have been calculated on the jury's verdict amount of $550,000. The court found it persuasive that the plain language of Rule 238 requires delay damages to be calculated upon the jury's award of damages and opined that limiting the delay damages to the amount of the molded verdict would eliminate the "unknown" that motivates an insurer to make a reasonable settlement offer.

On further appeal, the Supreme Court reviewed and analyzed the law surrounding delay damages pursuant to Rule 238. The court found guidance from the prior decision of *Allen v. Mellinger*, 784 A.2d 762 (Pa. 2001), where it held that the delay damages against a commonwealth defendant were limited to the statutory cap of $250,000 rather than the jury verdict of $2.9 million. It is noted that the Marlettes paid insurance premiums to State Farm for underinsurance motorist coverage with a $250,000 coverage limit. The court relied upon the *Allen* decision and held that the Marlettes' self-imposed limitation on compensatory damages on the UM claim was sufficiently analogous to the statutory cap in the *Allen* decision.

The court in *Allen* highlighted that in every insurance coverage dispute, the insurer's liability, absent a bad-faith claim, is limited by the applicable insurance policy limits. The *Allen* court rationalized that it defies reason to suggest that the basis for calculating such compensation could be anything other than the amount a defendant could actually be responsible for paying to the plaintiff. Because the plaintiff's compensatory damages can never exceed the statutory cap, there can be no delay in receiving amounts in excess of that cap. Thus, if there is no delay, the justification to compensate the plaintiff with delay damages becomes illusory.

Applying that rationale to *Marlette*, the court affirmatively established that a plaintiff may recover delay damages calculated on the amount of legally recoverable damages to which the plaintiffs are entitled. The applicable law limits a plaintiff's recovery in UM claims to the amount of UM policy limits, which prohibits a plaintiff from receiving amounts in excess of the UM limits. The court determined the legally recoverable amount of damages as the molded amount of the available UM limits under the applicable insurance policy.

If there is no valid claim for a delay in receiving those excess amounts above the UM policy limits, then there is no basis to include those excess amounts in the calculation of delay damages. The court vacated the Superior Court decision and remanded the matter back down to the trial court for reinstatement of the original award of delay damages consistent with its decision.

As courts typically handle uninsured and underinsured motorist claims similarly, it is expected that delay damages in future UIM claims will be calculated based upon the legally recoverable molded verdict per the available UIM policy limits. The interesting issue may arise in post-*Koken* cases where the third-party tortfeasor is sued with the UIM carrier. Does this decision justify the implementation of two separate amounts of delay damages? Seemingly, there appears to be an issue where one delay damages assessment would be applied to the full verdict against the third-party tortfeasor and another would be applied against the UIM carrier on the legally recoverable molded verdict as reflected by the insurance policy limits. Further updates on this issue may be expected. •

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