

SUPERIOR COURT
OF THE
STATE OF DELAWARE

FRED S. SILVERMAN
JUDGE

NEW CASTLE COUNTY COURTHOUSE
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August 17, 2009

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Submitted: May 4, 2009
Decided: August 17, 2009

RE: *Angela Schulze and Curtis Schulze v. State Farm
Mutual Auto. Ins. Co.*, C.A. No. 07C-02-289 FSS

Upon Plaintiff's Motion for Prejudgment Interest – *GRANTED*

Dear Counsel:

After a jury awarded Plaintiff \$41,158 for accident-related medical expenses, Plaintiff filed a motion for prejudgment interest. Plaintiff claimed Defendant breached its obligation under her automobile insurance policy by failing to pay PIP benefits after a collision in 2005. The court focuses on Plaintiff's failure to specify, before arbitration, the specific amount due, and on Defendant's decision not to pay anything until after it lost at arbitration and trial.

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On July 26, 2007, Plaintiff filed this breach of contract action. Although Plaintiff demanded her “incurred medical expenses,” she failed to specify an actual amount. On November 15, 2007, the parties participated in arbitration, at which time, the court believes, Defendant first learned the actual amount of medical expenses outstanding. The arbitrator awarded Plaintiff \$41,884.52. Defendant appealed and, as mentioned, the verdict was within a few hundred dollars of the arbitrator’s award.

Plaintiff argues that PIP benefits are contractual and, “as a matter of legal right,” she is entitled to interest from the date medical services were rendered. Defendant, having paid the judgment, plus costs, asserts that Plaintiff is not entitled to prejudgment interest because a “bona fide dispute” existed as to those expenses. Therefore, a breach never occurred. Both parties rely on *Lewis v. State Farm*.¹

“In Delaware, prejudgment interest is awarded as a matter of right”² and at the discretion of the court.³ Interest is generally awarded in matters where damages have been proved and improperly retained.⁴ Prejudgment interest is not punitive; rather, it represents full compensation.⁵ Although prejudgment interest may be awarded when the damages are unliquidated, such an award is generally limited

¹ *Lewis v. State Farm Mut. Auto. Ins. Co.*, 2007 WL 1651960 (Del. Super. May 29, 2007) (prejudgment interest denied where claim was for underinsured benefits and jury verdict was substantially less than arbitrator’s award).

² *Citadel Holding Corp. v. Roven*, 603 A.2d 818, 826 (Del. 1992), citing *Moskowitz v. Mayor & Council of Wilmington*, 391 A.2d 209 (Del. 1978).

³ *Maryland Cas. Co. v. Hanby*, 301 A.2d 286, 288 (Del. 1973) (the court is “vested with some discretion” in awarding prejudgment interest and may consider the parties’ actions in doing so); *but see, Summa Corp. v. Trans World Airlines, Inc.*, 540 A.2d 403, 209 (Del. 1988) (only courts of equity have discretion in determining the interest rate to award).

⁴ *Rollins Env'tl. Services, Inc. V. WSMW Indus., Inc.*, 426 A.2d 1363, 1366 (Del. 1980).

⁵ *See generally, Jarrell v. Declchester Oil Co.*, 1993 WL 189495 (Del. Super. May 20, 1993).

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to instances where damages may be proven by pecuniary testimony.⁶ In that case, prejudgment interest award is determined from the date payment is due under the circumstances.⁷

Under the PIP statute, Defendant is obligated to pay “reasonable and necessary” medical expenses that are causally related to an underlying insurable incident.⁸ That being said, an insurance company is not required to pay out blindly.⁹ Once a plaintiff makes a demand for damages, the insurance company has a right to test the claim’s validity.¹⁰ Upon a determination that valid damages are owed, the defendant must pay or risk continuing the litigation process and incurring more expenses.

Here, the complaint lacked the required “specific demand.”¹¹ Although Plaintiff was ultimately found to have had precise medical bills, Plaintiff did not present them until arbitration. Accordingly, Plaintiff acted in a way that, in effect, interfered with Defendant’s ability to pay sooner than arbitration. Moreover, before arbitration, Defendant had no chance to test Plaintiff’s claim, even if its total had been known. At arbitration, however, the demand was perfected and Defendant had the opportunity to challenge it. Defendant offers no justification for its *de novo* appeal, except that it disagreed with the arbitration’s result. After the arbitration, therefore, Defendant’s failure to pay was at its peril.

⁶ *Rollins*, 426 A.2d at 1366.

⁷ *Citadel*, 603 A.2d at 826.

⁸ *Murphy v. United Services Auto Assn*, 2005 WL 1249374, *2 (Del. Super. May 10, 2005) (plaintiff has the burden to prove damages are “reasonable and necessary”).

⁹ *Id.*

¹⁰ *Citadel*, 603 A.2d at 826.

¹¹ *Id.* at 826, n.10.

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Defendant relies on its good faith belief that a bona fide dispute existed as to Plaintiff's injuries and so, prejudgment interest should not be awarded. This case concerns a contract. Defendant's good faith only protects it until Plaintiff's demand is clear. After that, as the verdict established, Defendant was holding Plaintiff's money and the interest on that money was Plaintiff's, not Defendant's.

It is one thing to justify Defendant's not paying an unspecific, untested claim. It is something else to justify Defendant's litigating at Plaintiff's expense. The fact Defendant litigated in good faith may protect State Farm from other claims, but a bona fide dispute will not shield Defendant from prejudgment interest in a PIP case.¹²

Therefore, Plaintiff's motion for prejudgment interest is **GRANTED**. Plaintiff is awarded prejudgment interest on the verdict, from the date of the arbitrator's award. The interest awarded shall be calculated pursuant to 6 *Del. C.* § 2301.

IT IS SO ORDERED.

Very Truly Yours,

/s/ Fred S. Silverman

cc: Prothonotary (civil)

¹² See *Id.*; *Brown v. Fed. Kemper Ins. Co.*, 1992 WL 114027, *2 (Del. Super. May 20, 1992) (if the court held that "good faith resistance" was prophylactic against interest payments, such a ruling would create "an incentive for insurers to deprive insureds of prompt PIP payments").