

[J-39A-B-2012]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

RICHARD A. MARLETTE, SR. AND MARLEEN MARLETTE, HIS WIFE	: No. 41 WAP 2011 : : Appeal from the Order of the Superior : Court entered December 10, 2010 at No. : 623 WDA 2009 vacating the Order of the : Court of Common Pleas of Allegheny : County entered March 24, 2009 at No. : GD-06-015333 and remanding the case : :
v.	
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY AND HERMAN L. JORDAN	: ARGUED: APRIL 10, 2012 : :
APPEAL OF: STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY	: No. 42 WAP 2011 : :
RICHARD A. MARLETTE, SR. AND MARLEEN MARLETTE, HIS WIFE	: Appeal from the Order of the Superior : Court entered December 10, 2010 at No. : 703 WDA 2009 vacating the Order of the : Court of Common Pleas of Allegheny : County entered March 24, 2009 at No. : GD-06-015333 and remanding the case : :
v.	
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY AND HERMAN L. JORDAN	: ARGUED: April 10, 2012 : :
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DISSENTING OPINION

MR. JUSTICE McCAFFERY

DECIDED: DECEMBER 28, 2012

I respectfully dissent. I do so on the basis of my reading of the clear language of the rule and the explicit limitation of our prior holding. Unlike the Majority, I conclude that an insured's entitlement to the award of delay damages in an action for recovery of uninsured motorist coverage benefits is not limited to the amount legally recoverable in a molded verdict, pursuant to policy limits, but should be based on the full amount of the jury verdict.

Appellees Richard Marlette and his wife Marleen Marlette were involved in a serious automobile accident. Because the individual who was responsible for the accident did not have automobile insurance, Appellees sued Appellant State Farm Mutual Automobile Insurance Company, their insurance carrier, for uninsured motorist coverage benefits. After a trial, a jury awarded Appellees \$550,000 for their non-economic damages and lost past and future wages. Appellees then petitioned the trial court to award delay damages pursuant to Pa.R.C.P. 238 on the jury verdict. However, because Appellees' insurance policy with Appellant provided only \$250,000 in uninsured motorist coverage, the trial court awarded delay damages only on this lesser amount. Appellees sought review in the Superior Court; that court agreed with Appellees' position that delay damages should be based on the actual jury verdict. Thereafter, Appellant obtained review in this Court of the following question:

Did the Superior Court err (as identified in the dissenting opinion) in holding, in conflict with Allen v. Mellinger, [784 A.2d 762 (Pa. 2001),] that plaintiffs may recover delay damages based on the full amount of the jury verdict rather than on the legally recoverable molded verdict, which was reduced to reflect the insurance policy limits that plaintiffs were permitted to receive?

Marlette v. State Farm Mut. Auto. Ins. Co., 31 A.3d 656 (Pa. 2011).

Pennsylvania Rule of Civil Procedure 238(a)(1) provides that “damages for delay shall be added to the amount of compensatory damages awarded against each defendant or additional defendant found to be liable to the plaintiff in the verdict of a jury.” However, nothing in the text of Rule 238 identifies the basis for calculating delay damages. Other parts of the rule identify the period of time for which courts may award delay damages, and the rate of interest, but nothing in Rule 238, or any other rule, answers the question presented here: In an uninsured motorist coverage action, does a court calculate delay damages on the full jury verdict, or on the verdict as molded to policy limits?

Because Rule 238 does not specify the basis on which to calculate delay damages, the rule is ambiguous. We are therefore faced with what is fundamentally a policy choice, and in making that choice, I am guided by our precedents. In Laudenberger v. Port Authority of Allegheny County, 436 A.2d 147 (Pa. 1981), we entertained a claim that in promulgating Rule 238, we had exceeded our constitutional rulemaking power. Article V of the Pennsylvania Constitution provides us with exclusive power to enact procedural rules, so long as such rules neither “abridge, enlarge, nor modify the substantive rights of any litigant.” Pa. Const. art. V, § 10(c). We rejected the constitutional challenge in Laudenberger, concluding that although Rule 238 has a collateral effect on substantive rights, it was a proper exercise of our duty and authority to ensure the “prompt, expeditious trial and settlement of cases.” Laudenberger, *supra* at 152.

Later, in Woods v. Department of Transportation, 612 A.2d 970 (Pa. 1992), we considered the application of Rule 238 to suits against Commonwealth parties. In that case, the appellant had sued the Department of Transportation, claiming that a defectively designed roadway had caused him to sustain serious injuries. The case

went before a jury, which returned a verdict in favor of the appellant for \$1.5 million; however, the trial court molded the verdict to the \$250,000 per plaintiff cap on damages imposed by the Sovereign Immunity Act. The appellant then sought delay damages under Rule 238 based on the full \$1.5 million jury verdict, but the trial court awarded delay damages based on the \$250,000 statutory cap.¹ Before this Court, the appellant argued that he was entitled to delay damages based on the full jury verdict, rather than on the verdict as molded to the Sovereign Immunity Act cap. We agreed and explained that if delay damages were calculated on the statutory cap, Commonwealth parties would have no incentive to settle major suits, which in turn would cause protracted litigation and appeals.

However, in Allen, supra, we reconsidered our holding in Woods. We concluded that delay damages could only be calculated on “the amount the Commonwealth party could actually be responsible for paying to the plaintiff.” Allen, supra at 768. We reasoned that because damages against a Commonwealth party cannot exceed the statutory cap, the plaintiff in a suit against a Commonwealth party has suffered no cognizable “delay” in receiving any amount over the cap. We then explained that because there is no cognizable delay in such a case, “the stated justification for compensating the plaintiff with delay damages [i.e., encouraging settlements] is illusory.” Id.

No such concerns are at play in the instant case, which involves a contractual relationship between private parties. Allen’s actual holding, as well as its analysis, was carefully limited to and based on the involvement of Commonwealth parties, which are in no way implicated here. Commonwealth parties’ liabilities in suits subject to the Sovereign Immunity Act are limited to \$250,000 as a matter of constitutional and

¹ See 42 Pa.C.S. § 8528(b).

statutory law. The contractual limitation on damages here stands on different footing, however, and damages are not absolutely limited to those that the parties have agreed to in the insurance contract. Rule 238 in effect levies delay damages as a matter of law in order to achieve what this Court, in executing its right and duty to promulgate procedural rules, has determined to be an appropriate rule to manage the dockets of civil courts and to encourage settlements. See *Laudenberger*, supra at 152.

Respectfully, I believe the Majority improperly extends the holding of *Allen* beyond its rationale, which was to limit delay damages in order to afford Commonwealth parties the full protection the General Assembly intended in the Sovereign Immunity Act. In so doing, the Majority erodes the authority of this Court to promulgate procedural rules. Indeed, the Majority's holding calls into question the holding of *Laudenberger*, supra, that Rule 238 does not improperly expand any substantive right, but, rather, permissibly fosters the procedural goal of encouraging prompt settlements in appropriate cases. If, as we concluded in *Laudenberger*, Rule 238's imposition of delay damages is a proper exercise of our rulemaking authority in the pursuit of fostering settlements, then, consistent with *Allen*, I perceive no reason not to award delay damages based on the jury verdict when calculating delay damages against a private party. It seems to me that the Majority's position effectively concedes as much, since even the Majority Opinion awards delay damages on top of the policy limits. If that much is proper, it confounds me why we should not interpret Rule 238 consistent with its salutary purpose. The jury here awarded \$550,000, and I believe that delay damages, pursuant to Rule 238, should have been calculated on that amount. Therefore, I respectfully dissent.