

**[J-135-2005]**  
**IN THE SUPREME COURT OF PENNSYLVANIA**  
**MIDDLE DISTRICT**

EDWARD SCHAPPELL, D.C., ON  
BEHALF OF HIMSELF AND ALL  
OTHERS SIMILARLY SITUATED,

Appellant

v.

MOTORISTS MUTUAL INSURANCE  
COMPANY, STATE FARM MUTUAL  
AUTOMOBILE INSURANCE COMPANY  
AND GEICO CORPORATION,

Appellees

: No. 51 MAP 2005  
:  
:  
: Appeal from the Order of the Superior  
: Court entered December 15, 2004 at No.  
: 1877 MDA 2003 which reversed the Order  
: of the Court of Common Pleas of Dauphin  
: County, Civil Division, entered September  
: 11, 2003 at Nos. 1329-S-2001, 1331-S-  
: 2001 and 1333-S-2001.  
:  
: 868 A.2d 1 (Pa. Super. 2003)  
:  
:  
: ARGUED: December 6, 2005  
:

**CONCURRING OPINION**

**MR. JUSTICE EAKIN**

**DECIDED: November 20, 2007**

I join the Majority Opinion. I write separately as I believe there is an alternate avenue in which Appellant could bring his private cause of action. Section 1797(b)(4) of the Motor Vehicle Financial Responsibility Law provides:

Appeal to court.--A provider of medical treatment or rehabilitative services or merchandise or an insured may challenge before a court an insurer's refusal to pay for past or future medical treatment or rehabilitative services or merchandise, the reasonableness or necessity of which the insurer has not challenged before a PRO. Conduct considered to be wanton shall be subject to a payment of treble damages to the injured party.

75 Pa.C.S. § 1797(b)(4). It is well-settled in Pennsylvania interest accrued on an overdue bill becomes a part of the bill itself. See Roos v. Fairy Silk Mills, 19 A.2d 137, 138 (Pa. 1941). When a provider sends an insurer a bill for benefits and the insurer fails to pay it within 30 days as required by 75 Pa.C.S. § 1716, it becomes an overdue bill, and any accrued interest becomes a part of the bill itself. The insurer has refused to pay the full bill, and as § 1797(b)(4) authorizes an appeal before the courts to challenge an insurer's "refusal to pay," the remedy under § 1797(b)(4) is available. Therefore, I believe Appellant could bring his private cause of action under § 1797(b)(4).

Mr. Justice Castille joins this concurring opinion.