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PREJUDGMENT INTEREST FOR UIM CLAIMS

By: John D. Balaguer and Stephen J. Milewski

Recently, the Supreme Court of Delaware held that prejudgment interest can be awarded on an underinsured motorist claim. The case *Rappaselli v. State Farm* involved a plaintiff whose vehicle was struck by a tortfeasor who had a \$15,000 liability policy. After the tortfeasor tendered his policy limits, the plaintiff sued her own carrier, State Farm, for UIM benefits. The State Farm policy had a \$100,000 UIM limit. During the course of the UIM litigation, the plaintiff made a written settlement demand of \$74,500 and kept the offer open for 30 days. Delaware's prejudgment interest statute, 6 Del. C. §2301, provides that if such a settlement demand is made *in a tort action*, and if the plaintiff receives an award at trial equal to or greater than the demand, the costs of the litigation and prejudgment interest calculated at the rate of 5 percent over the Federal Reserve Discount Rate, commencing from the date of injury may be awarded. The jury in *Rappaselli* returned a verdict in favor of the plaintiff in the amount of \$85,000 which was greater than the settlement demand. The plaintiff then moved for costs and prejudgment interest pursuant to 6 Del.C. §2301. State Farm opposed the motion, arguing that the UIM litigation between the plaintiff and State Farm arose from an insurance contract, not a tort, and so prejudgment interest was not available under 6 Del.C. §2301, which applies only to tort claims. The trial court agreed with State Farm and refused to award interest, but on appeal the Delaware Supreme Court reversed the lower court. The Supreme Court found that although it was based on an insurance contract, *Rappaselli*'s UIM action actually derived from a tort because the sole issue in the case was the measure of plaintiff's damages arising from the underlying automobile accident caused by the tortfeasor. Thus, in this context the Court held that prejudgment interest pursuant to 6 Del. C. §2301 was an appropriate remedy.

The Supreme Court specifically distinguished a UIM claim involving only the measure of damages from an insurance coverage dispute, where the basis of the litigation is actually the

insurance contract between the parties. In *Rappaselli*, State Farm did not contest coverage, nor was there any dispute over the policy language. In fact, State Farm conceded that the underinsured tortfeasor was negligent. Under these narrow circumstances, the Supreme Court held that prejudgment interest on the UIM recovery is appropriate.

In the wake of the *Rappaselli* decision, auto insurers in Delaware should pay heightened attention to written settlement demands in UIM matters, particularly when the sole dispute is damages as opposed to coverage. Depending on the time interval from injury to judgment, the carrier's exposure in such cases can now be significantly increased.

If you have any questions about this decision or about other auto insurance issues in Delaware please do not hesitate to contact us.

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