INSURER'S LATE PAYMENT OF PIP BENEFITS TRIGGERS STATUTORY PENALTY PROVISION – NO LAWSUIT REQUIRED

Newsbrief
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The Texarkana Court of Appeals recently addressed whether an insured must file a lawsuit to be entitled to statutory penalties arising from an untimely payment of Personal Injury Protection (PIP) benefits and concluded that a lawsuit is not a prerequisite to recover the 12% penalty interest provision under the statute. In *State Farm Mutual Ins. Co. v. Rumbaugh,* 2022 WL 452280, (Tex. App. – Texarkana February 15, 2022), the parties submitted cross motions for summary judgment and stipulated that the insured was owed $2,500 in PIP benefits and that payment was "due not later than the 30th day after the insurer received satisfactory proof of claim" as required by Texas Insurance Code Section 1952.156. They also stipulated that the amounts were due on April 2, 2018, State Farm issued payment on April 5, 2018, but mailed the check to an incorrect address. On April 25, 2018, State Farm reissued the check and mailed it to the correct address and paid all benefits owed the insured before suit was filed but did not pay attorney fees and interest. State Farm argued that the 12% statutory penalty could only be awarded in a lawsuit and because all benefits were paid *before* suit was filed, no penalties were owed. The trial court disagreed, awarded the penalty interest and this appeal followed.

On appeal, the court examined the statutory provisions as a matter of law which stipulate in relevant part:

> Sec. 1952.157. ACTION FOR FAILURE TO PAY BENEFITS. (a) If the insurer fails to pay benefits under the coverage required by this subchapter when due, the person entitled to those benefits may bring an action in contract to recover the benefits.
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> (b) If the insurer is required to pay benefits described by Subsection (a), the person entitled to the benefits is entitled to recover reasonable attorney's fees, a penalty of 12 percent, and interest at the legal rate from the date those amounts became overdue.

Addressing State Farm's two part argument that 1) because all PIP benefits had been paid before suit was filed, they were not recovered in "an action in contract to recover the benefits" and 2) that a court order awarding those benefits was a "precondition to the imposition of the statutory penalty" the court summarized its analysis: "Simply put, an insurer's obligation to pay benefits is not triggered by a lawsuit, it is triggered by the statutory deadline." And when it comes to PIP benefits, that statutory deadline is "not later than the 30th day after the insurer received satisfactory proof of claim" as required by Texas Insurance Code Section 1952.156. The court concluded that the insured was "entitled to statutory penalties as soon as State Farm failed to pay PIP benefits when due." Accordingly, the trial court's judgment was affirmed.