STATE OF MAINE   SUPERIOR COURT
                                    CIVIL ACTION
PENOBSCOT, ss.   FILED & ENTEREDOCKET NO. CV-06-140
                        SUPERIOR COURT |KMC-PEN-1/28/2008

                           JAN 28 2008

LISA MICHAUD,
     Plaintiff   PENOBSCOT COUNTY

     v.   DECISION ON MOTION FOR
                                 CLARIFICATION OF THE JUDGMENT

HANOVER INSURANCE CO.,
     Defendant

     Counsel for Plaintiff has filed a Motion for
Clarification on the Judgment. The issue to be resolved is
from what date prejudgment interest runs.

                         Background

     In June of 2006, a complaint was filed against Hanover
seeking recovery under Hanover's underinsured coverage
running in favor of the Plaintiff. There was a separate
claim involving a separate accident, which is not relevant
to the issue presented here. On September 20, 2007, a jury
verdict was returned against Defendant Hanover. A judgment
was entered in favor of Plaintiff and against Defendant
Hanover, in the amount of $107,853, plus prejudgment
interest and costs.

     The parties stipulate that tortfeasor Camacho received
a notice of claim on September 18, 2002. They also
stipulate that Hanover was not served with a notice of
claim before Plaintiff filed this lawsuit naming Hanover as
a defendant on June 28, 2006. Further, the parties agree
that Hanover has paid the principal of the judgment, the
post-judgment interest, and the prejudgment interest from
June 28, 2006 to September 25, 2007. Plaintiff claims that
she is entitled to prejudgment interest from September 18,
2002 to June 27, 2006. Defendant Hanover contests the start
date of September 18, 2002 and asks the court to resolve
this dispute.

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Hanover argues that because it was not notified of the claim for any prejudgment interest under 14 M.R.S.A. § 1602-B Camacho's notice in 2002 does not bind Hanover. Plaintiff takes the position that because Hanover, through its underinsured coverage, stands in the shoes of Camacho, the notice of claim served on Camacho binds Hanover to prejudgment interest back to 2002.

Discussion

There is no question but that prejudgment interest is calculated to run from the time the notice of claim is served "upon the defendant." 14 M.R.S.A. § 1602-B(5) (2007). The question here is who is the "defendant," Camacho or Hanover? In the context of the prejudgment interest obligation, do their interest merge in terms of when the prejudgment interest obligation begins?

The case is not that simple and requires a deeper analysis.

Although Hanover is not the tortfeasor, it is the named defendant; Hanover's obligation arises from contract with the Plaintiff, not breach of a tort duty. Additionally, during the course of this litigation over which this Justice presided, Hanover did not agree that it 'stood in the shoes' of Camacho. Finally, both parties agree that prejudgment interest is part of compensatory damages, which the underinsured carrier has agreed by contract to pay. Indeed, it paid prejudgment interest back to when the suit was filed.

This recitation only serves to further focus the question which is to determine whether Hanover's status as underinsured carrier creates an obligation on Hanover to pay prejudgment interest from the date the tortfeasor would be obligated to pay it (i.e. from when the notice of claim was filed) as opposed to when the suit was filed?

To resolve this matter, the Court looks to the purpose of underinsured coverage, 24-A M.R.S.A. § 2902(1). The Law Court has advised in interpreting the scope of underinsured coverage that "the Legislature intended to permit the injured party to recover the amount he would have received had the tortfeasor been insured to the same extent as the injured party." *Connolly v. Royal Globe Ins. Co.*, 455 A.2d 932, 936 (Me. 1983).

The Court must then balance the public policy considerations, as found in the *Connolly* case, which support the underinsured statute, against the purposes of the prejudgment interest statute. The former is found in *Simpson v. Hanover Ins. Co.*, 588 A.2d 1183, 1185 (Me. 1991), where the Law Court tells us that prejudgment interest is intended to "encourage[s] the defendant to conclude a pretrial settlement of clearly meritorious suits." Clearly this policy consideration has no application to pre-suit underinsured claims where neither the plaintiff nor the defendant know for some time whether the plaintiff's claim will exceed the amount of available coverage to even precipitate the involvement of the underinsured carrier. The prejudgment interest policy considerations simply do not present themselves until some unspecified time when it does become clear that plaintiff's claim is an underinsured claim.
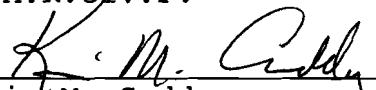
Although articulated well by counsel for Hanover, it is this Court's holding that the policy considerations supporting the application of prejudgment interest do not apply in isolation when evaluating when and how to apply prejudgment interest as articulated by 14 M.R.S.A. § 1602-B.

It is the holding of the Court that the policy considerations found in the underinsured coverage afforded to the Plaintiff and as articulated in *Connolly* control here. By its policy, Hanover has agreed to provide its insured with a recovery in an "amount [s]he would have received had the tortfeasor been insured to the same extent as the injured party." The Court finds and concludes that such a recovery includes payment of prejudgment interest back to the date the tortfeasor received his notice of claim under 14 M.R.S.A. § 1602-B.

The entry will be: It is ordered that Hanover pay Plaintiff Michaud prejudgment interest covering the period from September 18, 2002 up to and including June 27, 2006, at the previously ordered prejudgment interest of 7.36%

This Order is to be incorporated into the docket on this case pursuant to Rule 79(a) M.R.Civ.P.

Dated: January 25, 2008   Kevin M. Cuddy
Justice, Superior Court

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LISA MICHAUD VS HANOVER INSURANCE CO ET AL
UTN:AOCSsr -2006-0072392   CASE #:BANSC-CV-2006-00140

LISA MICHAUD   PL
ATTY PELLETIER, DAWN

HANOVER INSURANCE CO   DEF
ATTY FOURNIER, GERARD O.

KRISTINA M. KETCH   DEF
ATTY VERY, DAVID

M=More, Space = Exit:M

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