

STATE OF MICHIGAN
MICHIGAN SUPREME COURT

GERARDO LORENZO TIENDA and
SILVIA LOPEZ GOMEZ,

Plaintiffs-Appellees,

v

INTEGON NATIONAL INSURANCE
COMPANY, a GMAC Insurance Company,

Defendant-Appellees,

and

TITAN INSURANCE COMPANY, as assignee of
the Michigan Assigned Claims Facility,

Intervening Defendant-Appellant.

Supreme Court Case No. 147483

COA Docket No. 306050

Lower Case No. 10-46088-NF

PLAINTIFFS-APPELLEES GERARDO LORENZO TIENDA AND SILVIA LOPEZ
GOMEZ'S SUPPLEMENTAL BRIEF

FILED
APR 2 2014
LARRY S. ROYSTER
CLERK
MICHIGAN SUPREME COURT

KONING & JILEK, P.C.
JAMES H. KONING (P31622)
JONATHAN N. JILEK (P65299)
Attorneys for Plaintiffs-Appellees
8080 Moorsbridge Road, Suite 103
Portage, Michigan 49024
(269) 343-1500

147483
PLAEE'S SUPP

TABLE OF CONTENTS

Index of Authorities ii

Introduction 1

Law & Argument 3

 1. **Plaintiffs-Appellees concur with and incorporate by reference Intervening Defendant-Appellant Titan Insurance Company’s Supplemental Brief** 3

 2. **Regardless which insurer is ordered to pay, Plaintiffs-Appellees are entitled to penalty interest and statutory interest pursuant to M.C.L. § 500.3142** 3

Relief Requested 4

INDEX OF AUTHORITIES

Cases

Borgess Medical Ctr. v Resto, 273 Mich App 558; 730 NW2d 738 (2007), *aff'd*, 482 Mich 946, 754 NW2d 321 (2008) 3

Statutes

M.C.L. § 500.3135 1

M.C.L. § 500.3142 3

M.C.L. § 500.3163 2

M.C.L. § 500.3171, et. seq. 1

M.C.L. § 500.3172 1

M.C.L. § 600.6013 3

INTRODUCTION

This appeal arises from a no-fault “first party” case. Plaintiffs-Appellees Gerardo Lorenzo Tienda and Silvia Lopez Gomez were injured in an automobile collision which occurred in Michigan on July 29, 2009. They were injured while passengers in a vehicle owned by Salvador Lorenzo. Because they were passengers in a motor vehicle when injured, they are entitled to no-fault benefits under M.C.L. § 500.3135. Plaintiffs-Appellees were innocent victims. Regardless of the residency of the owner of the vehicle, Plaintiffs-Appellees, in the original action, were entitled to first party benefits.

Salvador Lorenzo was a named insured under an automobile policy written by Defendant-Appellee Integon National Insurance Company (“Integon”). Integon initially paid, but then ceased payments. When Integon failed to make payments and denied further claims, Plaintiffs-Appellees filed suit against Integon and, at the same time, made claims with the Michigan Assigned Claims Facility, pursuant to M.C.L. § 500.3171, et. seq. Intervening Defendant-Appellant Titan Insurance Company (“Titan”) was assigned the claims by the Assigned Claims Facility. Pursuant to M.C.L. § 500.3172, Titan intervened in the lawsuit after being aware that Integon was involved. Titan, given the same information used by Integon, began to pay. The trial court held that Integon was responsible for the no-fault benefits.

Since there was no question that Plaintiffs-Appellees were entitled to benefits, the issue from Plaintiffs-Appellees’ perspective was a priority issue: which insurance company was required to pay no-fault benefits and which insurance company was required to pay attorney fees and/or penalty interest as a result of nonpayment pursuant to the No-Fault Act. Ultimately, the Allegan County

Circuit Court agreed that this was simply a priority dispute and that Plaintiffs-Appellees were entitled to be paid penalty attorney fees. See, Exhibit 1.

This Court has asked the parties to address whether Salvador Lorenzo was an “out-of-state resident,” as that term is used in M.C.L. § 500.3163. The Court of Appeals determined this was an issue of first impression and vacated the attorney fee award as to Integon. Regardless of whether attorney fees are owed and by whom, the payment of interest, which is owed regardless of reasonable intent, remains.

LAW & ARGUMENT

1. **Plaintiffs-Appellees concur with and incorporate by reference Intervening Defendant-Appellant Titan Insurance Company's Supplemental Brief.**
2. **Regardless which insurer is ordered to pay, Plaintiffs-Appellees are entitled to penalty interest and statutory interest pursuant to M.C.L. § 500.3142.**

Pursuant to M.C.L. § 500.3142, interest at 12% per annum is owed on all overdue benefits, regardless of whether the failure to pay benefits was reasonable or unreasonable. *Borgess Medical Ctr. v Resto*, 273 Mich App 558; 730 NW2d 738 (2007), *aff'd*, 482 Mich 946, 754 NW2d 321 (2008). In addition, statutory interest is recoverable pursuant to M.C.L. § 600.6013.

RELIEF REQUESTED

Plaintiffs-Appellees respectfully request that the Michigan Supreme Court (1) grant the relief requested by Intervening Defendant-Appellant Titan Insurance Company in its Application for Leave to Appeal, (2) reverse the decision of the Court of Appeals, (3) remand the matter back to the Allegan County Circuit Court with a reinstatement of that Court's Order granting summary disposition in favor of Intervening Defendant-Appellant Titan Insurance Company, (4) not disturb the Allegan County Circuit Court's order concerning attorney fees, and (5) instruct the trial court to determine interest owed.

Respectfully submitted,

KONING & JILEK, P.C.
Attorneys for Plaintiffs-Appellees

Dated: April 1, 2014

Jonathan N. Jilek (P65299)
Attorney for Plaintiffs-Appellees
8080 Moorsbridge Road, Suite 103
Portage, MI 49024
(269) 343-1500
jjilek@koningjilek.com

EXHIBIT 1

STATE OF MICHIGAN
IN THE 48TH CIRCUIT COURT FOR THE COUNTY OF ALLEGAN

GERARDO LORENZO TIENDA and
SILVIA LOPEZ GOMEZ,

Plaintiffs,

Case No. 10-46088-NF
Honorable Kevin Cronin

v

INTEGON NATIONAL INSURANCE COMPANY,
A GMAC Insurance Company,

Defendant,

and

TITAN INSURANCE COMPANY, as assignee of
the Michigan Assigned Claims Facility,

Intervening Defendant.

RECEIVED
48TH CIRCUIT COURT
2011 AUG 24 A 8:40
ALLEGAN, MICHIGAN

James H. Koning (P31622)
Jonathan N. Jilek
KONING & JILEK, P.C.
Attorneys for Plaintiffs
8080 Moorsbridge Road, Suite 103
Portage, MI 49024
(269) 343-1500

David A. Couch (P57010)
GARAN LUCOW MILLER, P.C.
Attorney for Defendant Integon
300 Ottawa Avenue NW, 8th Floor
Grand Rapids, MI 49503
(616) 742-5500

Ronald M. Sangster, Jr. (P39253)
Law Offices of Ronald M. Sangster, PLLC
Attorney for Defendant Titan
901 Wilshire Drive, Suite 230
Troy, Michigan 48084

ORDER

At a session of said Court held
in the County of Allegan,
State of Michigan,
on this 23rd day of Aug, 2011

After Hearing Plaintiffs' Request for Attorney Fees and Applicable Penalty Interest Pursuant to the Michigan No-Fault Act, this Court Orders as follows:

1. Plaintiffs' Request for Attorney Fees and Applicable Penalty Interest Pursuant to the Michigan No-Fault Act is GRANTED.
2. Defendant Integon National Insurance Company shall immediately pay to Plaintiffs' counsel (KONING & JILEK, P.C.) the amount of \$21,683.61, which is the full amount of costs and fees incurred as a result of Defendant's unreasonable refusal to pay the claim and unreasonable delay in making proper payment.
3. Defendant Titan Insurance Company is found to have paid Plaintiffs' insurance benefits within (30) days after it received reasonable proof of the fact and of the amount of loss sustained, and therefore, is not responsible for the payment of any attorney fees to Plaintiffs' counsel.
4. Attached to this Order is the invoice evidencing the applicable costs and fees of Plaintiffs' counsel, same having been determined as reasonable as to rate and hours.

IT IS SO ORDERED AND ADJUDGED.



Hon. Kevin Cronin
Circuit Court Judge

August 23, 2011

ATTEST A TRUE COPY

DEPUTY CLERK

DEPUTY CLERK
ATTEST A TRUE COPY