

## PIP Claims and Attorney Fees

— by Tim Heinson

As we all know, an insured making a UM or UIM claim may, under certain circumstances, be entitled to an award of attorney fees in addition to compensatory damages. ORS 742.061(1) provides:

“Except as otherwise provided in subsections (2) and (3) of this section, if settlement is not made within six months from the date proof of loss is filed with an insurer and an action is brought in any court of this state upon any policy of insurance of any kind or nature, and the plaintiff’s recovery exceeds the amount of any tender made by the defendant in such action, a reasonable amount to be fixed by the court as attorney fees shall be taxed as part of the costs of the action and any appeal thereon.”

Since this statute applies to “any policy of insurance” it also raises the possibility of an attorney fee award in the personal injury protection (PIP) context, when an insurer does not pay some or all of the medical expenses or wage loss submitted under a PIP claim. Such PIP claims are often resolved by arbitration or become moot when the insured settles with the liability insurer. However, an insured has the legal right to file a lawsuit seeking unpaid medical or wage expenses and, under the circumstances set forth in ORS 742.061, seek an award of attorney fees.

Specifically addressing PIP claims, ORS 742.061(2) provides that attorney fees will not be allowed in PIP claims,

“if, in writing, not later than six months from the date proof of loss is filed with the insurer:

(a) The insurer has accepted coverage and the only issue is the amount of benefits due the insured; and

(b) The insurer has consented to submit the case to binding arbitration.”

In order to prevent a potential claim for attorney fees, it is important that PIP insurers comply with ORS 742.061(2). The correspondence sent by PIP insurers to their insureds during the course of a PIP claim often takes a common sense approach to explaining the coverage available, the procedure for making claims and how the claim will be handled. Such correspondence may, or may not, be sufficient, depending upon whether the above requirements are met. Any doubt can be resolved by including the specific statutory language in correspondence to the insured within six months of the PIP proof of loss.

Of course, attorney fees will be allowed only if the insured’s “recovery exceeds the amount of any tender” of PIP benefits. Hopefully, with sufficient evidence and a good jury, you can prevail on the merits and attorney fees will not be an issue. If not, provided that ORS 742.061(2) has been complied with, there will at least be no additional award for attorney fees. Clear compliance with the statute will have the added benefit of discouraging lawsuits over PIP benefits by removing the incentive of attorney fees.

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