

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

DARYL PORN et al.)	
)	
Plaintiffs)	
)	
v.)	Civil No. 93-308-P-DMC
)	
NATIONAL GRANGE MUTUAL)	
INSURANCE COMPANY,)	
)	
Defendant)	

MEMORANDUM DECISION AND ORDER

By agreement of the parties, this underinsured motorist claim was presented to the jury as one for breach of a contract to provide uninsured motorist insurance coverage. Following trial, the jury returned a verdict in favor of plaintiff Daryl Porn (hereinafter "Porn"), awarding him damages of \$400,000.¹ The parties have agreed that the limit of the defendant's liability, pursuant to the insurance policy, is \$300,000. Stipulations (Docket No. 25) at Other Stipulations & 4. The parties have further agreed that workers' compensation benefits in the amount of \$44,085.60 have been paid to and/or on behalf of Porn as a result of injuries he sustained in the July 17, 1990 accident.² Applying rulings I previously made concerning setoffs, *see* Report of Conference of Counsel and Order (Docket No. 28), Porn is entitled to judgment in the amount of \$255,314.40. The only

¹ The jury awarded no damages to plaintiff Donna Porn.

² The parties originally stipulated that these benefits total \$43,276.14. *See* Stipulations at Other Stipulations & 2. In a telephone conference of the court and counsel held September 9, 1994, the stipulated total was revised to \$44,085.60.

remaining issue, which the parties have now briefed, is whether Porn is entitled to recover an additional sum from the defendant to reflect prejudgment interest. I conclude that he is not.

This is a diversity of citizenship case in which the substantive law of Connecticut applies. The defendant contends, however, that the question of whether Porn is entitled to prejudgment interest is a procedural one to which the law of Maine as the forum state must apply. Relying on *Simpson v. Hanover Ins. Co.*, 588 A.2d 1183 (Me. 1991), the defendant further contends that Maine law precludes Porn's recovery of prejudgment interest. Porn contends that the question is a substantive one and, therefore, that this court must apply Connecticut law and permit the recovery of prejudgment interest. In the alternative, Porn argues that if Maine law applies, he should recover prejudgment interest because this case presents an exception to the rule articulated by the Law Court in *Simpson*.

Sitting in diversity jurisdiction, this court is bound to look to the choice-of-law rules of the forum state to answer the threshold question of whether prejudgment interest presents a question of substantive or procedural law. *Quaker State Oil Refining Corp. v. Garrity Oil Co.*, 884 F.2d 1510, 1514 (1st Cir. 1989). In Maine, matters of substantive law are governed by the law of the place where the cause of action arises, but matters of procedure are governed by the law of the forum. *Sohn v. Bernstein*, 279 A.2d 529, 533 (Me. 1971). Subject to certain exceptions that do not apply here, Maine has provided by statute for prejudgment interest, to accrue from the time a notice of claim is served on the defendant or, if no such notice is given, from the time of the filing of the complaint. 14 M.R.S.A. ' 1602. Section 1602 is a rule of procedure, not a "substantive remedy." *Casco Bank & Trust Co. v. Bank of New York*, 584 F. Supp. 763, 767 (D.Me. 1984). *Accord Batchelder v. Tweedie*, 294 A.2d 443 (Me. 1972) (noting that because section 1601, as amended,

does not set forth a substantive right, it applies only to actions commenced after its effective date, rather than to causes of action accruing after its effective date).

While conceding that the question of *how* to calculate prejudgment interest is a procedural one that should be guided by Maine law, Porn contends that the determination of *whether* to require the defendant to pay prejudgment interest, in excess of the policy limit, presents a question of substantive law. I disagree. The choice-of-law rule articulated by the Law Court in *Batchelder* makes clear that in Maine the statute mandating prejudgment interest is a procedural mechanism designed "to control the conduct of the litigation" by encouraging prompt disposition of claims. *Batchelder*, 294 A.2d at 444; *see also* 14 M.R.S.A. ' 1602 (noting, e.g., that the accrual of prejudgment interest is suspended when the prevailing party obtains a continuance in excess of 30 days).

Having thus determined that Maine law applies, I must now consider whether Maine law permits a plaintiff to recover prejudgment interest in the circumstances of this case. The general rule in Maine is that the insurance company of the defendant in a tort action may not be liable to a plaintiff for prejudgment interest when the interest award would increase the insurer's total liability beyond the limits of coverage provided in the insurance policy, absent a showing of "bad faith" on the part of the insurance company. *Simpson*, 588 A.2d at 1186 (citing *Nunez v. Nationwide Mutual Ins. Co.*, 472 A.2d 1383 (Me. 1984)). In *Nunez*, the Law Court undertook to answer the question of "whether [the insurer] is obligated in any and all circumstances to pay prejudgment interest even when the payment exceeds the policy limits." *Id.* at 1384. It answered that question in the negative, holding that the policy's limitation on liability "serves a legitimate purpose and, except for express policy exceptions or statutory requirements not present in this case, the limitation ought to apply to

all sums which the insurer is obligated to pay." *Id.* at 1385. The court explicitly left open the possibility of a different result in the appropriate circumstances. *Id.* at n.6. *Simpson* provided the Law Court an opportunity to test the *Nunez* holding in a case involving uninsured motorist coverage, where the claim is against the insurance company itself for breach of contract rather than against a tortfeasor covered by a liability policy issued by an insurer. Although the Law Court agreed that, in such a case, the insurance company exercises "total control" over the litigation and its settlement prospects, the court nevertheless found this to be "no reason" in itself to depart from the *Nunez* rule. *Simpson*, 588 A.2d at 1187. The court also noted that language in the insurance policy, that the insurer would "pay damages which a covered person is legally entitled to recover from the owner or operator of an uninsured motor vehicle," *id.* at 1186 n.5 (italics in original), did not obligate the insurance company to pay until a judgment was rendered against the tortfeasor. *Id.* at 1186. Likewise, the insurance policy at issue here specifies that the defendant will pay damages that the insured is "legally entitled" to recover from the owner or operator of an underinsured motor vehicle in connection with an accident caused by the vehicle. *See* Exh. 1 to Exh. A (Affidavit of Daryl E. Porn) to Plaintiff's Objection to Defendant's Motion to Dismiss (Docket No. 9) at 5.

Simpson left open the possibility that Maine law would allow for the assessment of prejudgment interest in a case involving uninsured motorist coverage if the insurance company acted in bad faith and "needlessly prolonged the litigation process." *Id.* at 1187. There is no evidence of such behavior in the record of this case, and therefore I find no reason to depart from the rule articulated in *Nunez* and *Simpson*.

Accordingly, I direct that judgment be entered for plaintiff Daryl Porn against defendant

National Grange Mutual Insurance Company in the amount of \$255,314.40, without prejudgment interest, and for National Grange on the claim of Donna Porn.

Dated at Portland, Maine this 19th day of September, 1994.

David M. Cohen
United States Magistrate Judge