STATE OF MICHIGAN

COURT OF APPEALS

CARL HARDIES, Personal Representative of the Estate of VERLYN HARDIES, Deceased,

Plaintiff-Appellee/Cross-Appellant,

v

HORACE MANN INSURANCE COMPANY,

Defendant-Appellant/Cross-Appellee.

UNPUBLISHED
January 21, 1997

No. 185577
Lapeer Circuit Court
No. 93-019526-NF

Before: Griffin, P.J., and T.G. Kavanagh* and D.B. Leiber,** JJ.

PER CURIAM.

Defendant appeals the confirmation of an arbitration award in plaintiff's favor which included prejudgment interest. Plaintiff cross-appeals, arguing that the circuit court should have awarded interest for the period between the date of the arbitration award and the date it was paid, plaintiff's actual costs and attorney fees associated with the arbitration, and penalty interest pursuant to MCL 500.2006(4); MSA 24.12006(4). We affirm the circuit court's confirmation of the award of prejudgment interest and its denial of plaintiff's request for costs and attorney fees associated with the arbitration, but remand for further proceedings.

This case arose after plaintiff's decedent was killed in an automobile accident. The owner of the automobile that struck the automobile driven by decedent was underinsured and the driver was uninsured at the time of the accident. Plaintiff's underinsured motorist claim, brought pursuant to plaintiff's insurance contract with defendant, was arbitrated and plaintiff was awarded the full amount of its coverage, $300,000. The arbitration panel also included prejudgment interest on the arbitration award in the amount of $23,040.

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* Former Supreme Court Justice, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-10.
** Circuit judge, sitting on the Court of Appeals by assignment.

Defendant first argues that the circuit court erred in confirming that portion of the arbitration award that awarded plaintiff prejudgment interest on the principal amount. We disagree.

As defendant correctly points out, this is an instance of common law, rather than statutory, arbitration. *EE Tripp Excavating Contractor Inc, v Jackson Co*, 60 Mich App 221, 237; 230 NW2d 556 (1975). However, contrary to defendant's argument, we do not believe that the arbitrators exceeded the scope of their authority as delineated in the insurance contract. Arbitration awards are presumed to be within the scope of the arbitrators' authority absent express language to the contrary. *Gordon Sel-Way v Spence Bros*, 438 Mich 488, 497; 475 NW2d 704 (1991). Thus, where there is no provision in the contract that specifically prohibits awarding prejudgment interest, we must presume that the arbitration panel was authorized to award it. Further, "Michigan has long recognized the common-law doctrine of awarding interest as an element of damages." *Id*., 499. Consequently, we are not persuaded by defendant's reliance on *Moultrie v DAIIE*, 123 Mich App 403; 333 NW2d 298 (1983), for defendant's argument that "damages," as delineated in the contract, do not include prejudgment interest.

Additionally, contrary to defendant's argument, an insurer can be held liable for prejudgment interest beyond the policy limits of the insurance contract pursuant to MCL 600.6013; MSA 24A.6013. *Denham v Bedford*, 407 Mich 517, 533-535; 287 NW2d 168(1980).

Further, we note that plaintiff instituted this action against defendant, subsequently filed several motions to compel arbitration and ultimately sought judicial confirmation of the award. Where arbitration is ordered by the court and the arbitration award is subsequently confirmed, prejudgment interest pursuant to § 6013 is warranted. See *Old Orchard v Hamilton Ins*, 434 Mich 244, 260-261; 454 NW2d 73 (1990) (finding § 6013 applicable because parties chose to arbitrate after the complaint had been filed), rev'd in part on other grounds 450 Mich 608, 616 (1996). Further, awarding prejudgment interest under these circumstances is consistent with the public policy of this state. Cognizant that prejudgment interest is possible, insurers will be less likely to refuse to settle meritorious claims in hopes of forcing insureds to settle for less than the claim's true value. See *Denham, supra,* 407 Mich at 536.

Defendant also argues that the circuit court erred in awarding interest pursuant to MCL 600.6013; MSA 27A.6013 rather than MCL 438.7; MSA 19.4. We disagree. If a complaint has been filed and results in a money judgment, § 6013 is triggered by its own terms. *Gordon Sel-Way, supra*, 438 Mich at 509. We are not persuaded by defendant's attempt to confine the ruling in *Gordon Sel-Way* to commercial litigation. Defendant has failed to cite authority supporting that such a distinction is determinative. We find no error.

Defendant next argues that the circuit court erred because the confirmed arbitration award computed the prejudgment interest from the date suit was initially filed. We disagree. Initially, we note that where there is an action currently pending and a subsequent claim accrues and is added to the original complaint, any prejudgment interest on the money judgment awarded on the subsequent claim

should be computed from the date that claim accrued rather than the date on which the original complaint was filed. *McKelvie v ACIA*, 203 Mich App 331, 339-340; 512 NW2d 74 (1994). However, defendant fails to demonstrate that plaintiff's claim for underinsured motorist benefits, the subject of the arbitration award at issue here, had not accrued at the time the complaint was filed. We are thus not persuaded that the circuit court erred in confirming the arbitration award that computed interest from the day the complaint was filed.

In his cross-appeal, plaintiff argues that the circuit court should have awarded additional interest to cover the period between the date the arbitration award was issued and the date defendant subsequently paid the $300,000 principal amount. Plaintiff also argues that he was entitled to penalty interest pursuant to MCL 500.2006(4); MSA 24.12006(4). Although these two issues were raised by plaintiff before the circuit court, the court did not specifically address them. Consequently, there is no adverse ruling for us to review and we remand this case to the circuit court for consideration of these issues.

Plaintiff next argues that the circuit court erred in refusing to grant him actual costs and attorney fees associated with the arbitration. We disagree, as the arbitration at issue here was contractual rather than statutory, and the contract specified that each party would bear the cost of arbitration. The circuit court did not abuse its discretion in refusing to award plaintiff arbitration costs and attorney fees. *Wojas v Rosati*, 182 Mich App 477, 480; 452 NW2d 864 (1990).

We affirm the circuit court's confirmation of the award for prejudgment interest in the amount of $23,040.00, and the circuit court's denial of costs and attorney fees associated with the arbitration, but remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Richard Allen Griffin
/s/ Thomas G. Kavanagh
/s/ Dennis B. Leiber