



LAW NOTES

from the Law Firm of
Kay & Andersen, S.C.

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What Every Insurer Should Know.....

ABOUT TIMELY PAYMENT OF CLAIMS AND POTENTIAL INTEREST LIABILITY

Wisconsin Statute § 628.46(1), entitled “Timely Payment of Claims,” states in part, “Unless otherwise provided by law, an insurer shall promptly pay every insurance claim. A claim shall be overdue if not paid within 30 days after the insurer is furnished written notice of the fact of a covered loss and of the amount of the loss...Any payment shall not be deemed overdue when the insurer has reasonable proof to establish that the insurer is not responsible for the payment...All overdue payments shall bear simple interest at the rate of 12% per year.” Claimants routinely threaten insurers with a claim for interest under this statute, which may present a substantial liability for larger claims. Insurers must therefore evaluate each individual claim to determine whether there is “reasonable proof” to establish that the insurer is not liable for the underlying claim. That very question was at issue in a recent Wisconsin Court of Appeals decision, *Froedtert Memorial Lutheran Hospital, Inc. v. National States Insurance Company*, Appeal No. 2007 AP 934 (March 18, 2008), found at <http://www.wisbar.org/res/capp/2008/2007ap000934.htm>. At issue in the case was whether an insurance company was responsible for paying actual charges billed by a hospital for in-patient care of an insured after the patient’s Medicare Part A benefits had been exhausted. After concluding the insurer was liable, the Court of Appeals considered the question of whether interest on the unpaid amount was owing under Wis. Stat. § 628.46(1). The Court of Appeals acknowledged that a “fairly debatable question of law has arisen as to what is considered ‘reasonable proof’” that a claim is not payable. The Court of Appeals noted that the insurer in this case relied on its legal interpretations of its policy and applicable federal and state law. However, that legal position was based on administrative regulations adopted years after the claim was made and after the policy was sold. The Court of Appeals found that the regulations that were in effect when the policy was sold required the insurer to pay the hospital’s actual charges once Medicare Part A was exhausted, and the Wisconsin Office of the Commissioner of Insurance had twice rejected the insurer’s interpretation of its policy and Wisconsin law. Under the circumstances, where the insurer “had a clear and obvious obligation under its policy and applicable law,” the insurer did not have reasonable proof and was liable for interest under Wis. Stat. § 628.46(1). This decision, which has been recommended for publication, demonstrates that an insurer relying on its interpretation of a policy and/or applicable law as a defense to a claim must have a reasonable basis for its position or it may be liable for paying 12% interest on the claim.

Kay & Andersen, S.C. has substantial experience in assisting insurance companies in securing favorable verdicts and settlements and has received an AV rating from Martindale-Hubbell. We are also proud to be listed in *Best’s Directories of Recommended Insurance Attorneys and Adjusters*. Feel free to contact us with any of your insurance defense needs.

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