IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION—CIVIL

DR. RICHARD S. GLICK, D.O. *ET AL.*	:	March Term, 2002
INDIVIDUALLY AND ON BEHALF OF ALL	:	
OTHERS SIMILARLY SITUATED	:	
	:	
Plaintiff	:	
	:	
v.	:	Case No. 01179
	:	
PROGRESSIVE NORTHERN INSURANCE	:	Commerce Program
COMPANY and MOUNTAIN LAUREL INS. CO.	:	
D/B/A "PROGRESSIVE INSURANCE CO."	:	Control Nos. 11102101,
	:	11113047
Defendants	:	

ORDER

AND NOW, this 3rd day of April, 2012, upon consideration of Plaintiff's Motion for Partial Summary Judgment on the Legal Issue of the Applicable Measure of Damages, Defendant's Cross Motion on the same issue, the respective Responses in Opposition and memoranda of law, and Plaintiff's Reply in Further Support of its Motion, it is **ORDERED** that Plaintiff's motion is **DENIED** and Defendant's motion is **GRANTED**. Defendants owe interest on medical bills at the rate of 12% per year, calculated from the day any such bills become overdue. The interest due on any medical bills shall not accrue additional interest.

By The Court,

ARNOLD L. NEW, J.

Richard S Glick Do Vs N-ORDOP

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OPINION

Plaintiff's Motion for Partial Summary Judgment and Defendant's Cross Motion require this Court to determine whether face-value payment of overdue medical bills, pursuant to the Motor Vehicle Financial Responsibility Law, should be applied to extinguish interest ahead of the principal, or should be applied to extinguish the principal alone. Resolution of this issue will determine whether or not interest should continue to accrue upon overdue medical bills whose face-values have been paid, and whose interest remains outstanding. For the reasons below, face-value payment of overdue medical bills, pursuant to the Motor Vehicle Financial Responsibility Law, shall be applied to extinguish the principal.

BACKGROUND

Defendants, Progressive Northern Insurance Company, and Mountain Laurel Insurance Co. (collectively, "Progressive,") sell auto insurance policies pursuant to the Motor Vehicle Financial Responsibility Law, 75 Pa. C.S.A. § 1700 *et seq.* (the

"MVFRL.") Pursuant to the MVFRL, Plaintiff, Richard S. Glick, D.O. ("Glick,") offers treatment to persons injured in auto accidents. When Glick provides medical services to an injured person, it sends a medical bill to Progressive. The medical bill becomes overdue after thirty days, and simple interest at the rate of 12% begins to accrue therefrom.

On March 8, 2002, Glick, on behalf of itself and others similarly situated, commenced the instant action against Progressive. Glick's Amended Complaint asserts that Progressive receives medical bills from Glick and other class members, allows such bills to become overdue, pays only the face-value thereof, and withholds interest which accrues upon each bill as soon as it becomes overdue.[1]

On January 20, 2005, the parties stipulated that the case should be stayed pending appellate review of a decision addressing whether medical providers possessed a private cause of action for payment of benefits under the MVFRL. In 2007, the Pennsylvania Supreme Court held that medical providers did have such a private cause of action,[2] and the case was removed from deferred status.

On October 28, 2108, Glick filed against Progressive a Motion for Partial Summary Judgment. The motion asked this Court to rule, *inter alia*, that Progressive was required, pursuant to the MVFRL, to pay 12% interest on all overdue medical bills. Progressive timely filed its Response in Opposition, and this Court issued an Order-and-Opinion on April 14, 2009. The Order-and-Opinion granted in part Glick's motion, and declared that Progressive was required to pay interest at the rate of 12% per year, to be calculated commencing on the day the bills became overdue.[3]

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[1] First Amended Complaint at ¶ 3
[2] Schappel v. Motorists Mutual Insurance Company *et al.*, 934 A.2d 1184 (Pa. 2007).
[3] Order-and-Opinion dated 14 April 2009.

On October 20, 2011, Glick filed the instant "Motion for Partial Summary Judgment on the Legal Issue of the Applicable Measure of Damages." In the motion and accompanying memorandum, Glick argues that—

> if Progressive paid $100 on January 1, 2000 for a $100 medical bill which was one year overdue, then as of December 31, 2011, Progressive still owes $12 of principal ... plus 12% per annum simple interest for 11 years on the unpaid principal ... for a total of $27.84.[4]

In short, Glick asks the Court to rule that whenever Progressive pays the face value of an overdue medical bill, but withholds payment of interest, such payment must be applied to extinguish the interest before any remaining balance may be used to reduce the principal. As a result, the remaining portion of principal would begin to accrue interest-on-interest at the rate of 12%, until satisfaction of the entire obligation.

On November 21, 2011, Progressive filed a "Cross-Motion for Partial Summary Judgment on the Legal Issue of the Applicable Measure of Damages." In the Cross-Motion and accompanying memorandum of law, Progressive states that Glick's argument "is an impermissible request for interest on interest (also known as compound interest)."[5] According to Progressive, payment of the face value on an overdue medical bill must be applied to extinguish the principal. As a result, once the principal is extinguished through payment of face value, the only remaining balance would consist of accrued simple interest which, by itself, may generate no further interest whatsoever.

DISCUSSION

[4] Glick's memorandum of law in support of its Motion for Partial Summary Judgment on the Legal Issue of the Applicable Measure of Damages, p. 2.
[5] Progressive's memorandum of law in support of its Cross-Motion for Partial Summary Judgment on the Legal Issue of Applicable Measure of Damages, p. 2.

The Pennsylvania Rules of Civil Procedure instruct in relevant part that

> Summary judgment is properly granted when ... an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action . . . which in a jury trial would require the issues to be submitted to a jury.
>
> The explanatory comment to Rule 1035 clarifies this language, stating, the essence of ... Rule 1035.2 is that the motion for summary judgment encompasses two concepts: (1) the absence of a dispute as to any material fact and (2) the absence of evidence sufficient to permit a jury to find a fact essential to the cause of action or defense.
>
> In summary judgment cases, review of the record must be conducted in the light most favorable to the non-moving party, and all doubts regarding the existence of a genuine issue of material fact must be resolved against the moving party. Failure of a non-moving party to adduce sufficient evidence on an issue essential to its case and on which it bears the burden of proof such that a jury could return a verdict in its favor establishes the entitlement of the moving party to judgment as a matter of law.[6]

I. **Payment by Progressive of the face value of medical bills shall be applied to extinguish the principal**.

According to Progressive's Cross-Motion, Glick impermissibly seeks to collect compound interest by arguing that partial payment of overdue medical bills should be applied to extinguish interest before the balance may be applied toward the principal. Progressive asserts that Glick's attempt is impermissible because under Pennsylvania law, collection of compound interest is permitted only when the parties agree to include such a provision in a contract, or when collection of compound interest is expressly authorized pursuant to a statute. The law in Pennsylvania is clear:

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[6] Young v. DOT, 560 Pa. 373, 375-376; 744 A.2d 1276, 1277 (Pa. 2000).

> this Commonwealth frowns upon compound interest and as such will only permit compound interest on a debt when the parties have provided for it by agreement or a statute expressly authorizes it.

Powell v. Allegheny County Retirement Board, 431 Pa. 396, 406; 246 A.2d 110, 115 (Pa. 1968).

In Powell, Plaintiff had been an employee of the Allegheny County Planning Commission (the "County,") for more than thirty years. In 1955, Plaintiff was arrested, tried, and convicted to serve a three-year prison term for the murder of his wife. Throughout incarceration, Plaintiff sought to preserve his retirement benefits rights by offering to pay contributions to the retirement fund until the age of sixty. The County failed to acknowledge Plaintiff's requests, and no contributions were paid to preserve Plaintiff's benefits. In 1960, after reaching retirement age, Plaintiff demanded his retirement benefits and the County refused. Plaintiff filed a law suit. The trial court awarded Plaintiff with retirement benefits, and allowed Plaintiff to recover compound interest on the sums owed by the County. The County appealed. On appeal, the Pennsylvania Supreme Court vacated only the portion of the trial court's decision which had awarded compound interest. The Court held:

> We are of the opinion that the court below erred in allowing recovery of compound interest. It is fairly well established that the law in this Commonwealth frowns upon compound interest and as such will only permit compound interest on a debt when the parties have provided for it by agreement or a statute expressly authorizes it.... Since no agreement or statute exists authorizing the allowance of compound interest on the debt owed ... by the retirement system, the court below on remand ... is directed to use simple and not compound interest.[7]

[7] Powell v. Allegheny County Retirement Board, 431 Pa. at 405-406; 246 A.2d at 115 (Pa. 1968).

Opposing Progressive's Cross Motion, Glick asserts that any partial payment of medical bills must be first applied to extinguish interest, and any remaining balance must be applied to reduce the principal.[8] This way, anytime Progressive pays the face value of Glick's medical bill, a portion of the principal would remain overdue, and interest on the overdue portion would accrue additional interest, over and above the simple rate of 12% per year. Glick supports this argument by relying on Ralph Myers Contracting Corporation v. Commonwealth of Pennsylvania, Department of Transportation, 496 Pa. 197; 436 A.2d 612 (Pa. 1981). However, Myers is distinguishable from the facts in this case, and Glick's reliance thereon is inappropriate.

In Myers, the Board of Arbitration Claims, on June 3, 1977, awarded Plaintiff the sum of $491,807.55 "with interest at the rate of 6% per annum from December 30, 1972."[9] Defendant did not pay the award on the day the Arbitrator issued judgment; instead, Defendant allowed 82 days to elapse and paid only the principal on August 24, 1977. Subsequently, Defendant paid interest calculated from December 30, 1972, as determined by the Arbitrator, to August 24, 1977, the date in which Plaintiff received payment of the principal. Plaintiff filed with the Commonwealth Court of Pennsylvania a petition for review in the nature of *mandamus*. In the petition, Plaintiff asserted that it was entitled to compound interest accrued upon the amount of the prior unsatisfied judgment. The Court denied the petition and Plaintiff appealed. On appeal, Plaintiff asserted that its petition for a review in the nature of *mandamus* was an action to enforce the prior judgment from the Board of Arbitration

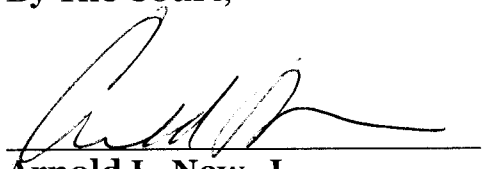
[8] Glick's Reply in Further Support of its Motion for Summary Judgment serves also as a Response in Opposition to the Cross Motion of Progressive, footnote 1.
[9] Myers v. Commonwealth of Pennsylvania, DOT, 496 Pa. 197, 199; 436 A.2d 612, 613 (Pa. 1981).

Claims. Plaintiff argued that Pennsylvania law does allow compound interest to accrue in cases where a creditor brings suit to enforce an existing judgment. The Pennsylvania Supreme Court agreed with Plaintiff and held:

> It is generally true ... the law of this Commonwealth frowns on an award of compound interest on a debt, except where the parties agree to it or a statute expressly authorizes it. However, lawful interest from the time of obtaining the judgment is expressly allowed by statute to the judgment creditor in an action to enforce judgment. Lawful interest shall be allowed to the creditor for the sum or the value he obtained judgment for, from the time the said judgment was obtained till the time ... satisfaction is made.[10]

In this case, there was no prior judgment obtained by Glick, and there is no compound interest to be recovered. In addition, Glick has shown no contractual or statutory provision contemplating or authorizing recovery of compound interest. Since recovery of compound interest was neither agreed upon by the parties, nor is it permitted under the MVFRL or by satisfaction of an existing judgment, the Motion for Partial Summary Judgment on the Legal Issue of the Applicable Measure of Damages of Plaintiff Glick is denied. The Cross-Motion of Defendant Progressive is granted. An Order consistent with this Opinion will be issued contemporaneously.

By The Court,



Arnold L. New, J.

[10] Myers v. Commonwealth of Pennsylvania, DOT, 496 Pa. 197, 201; 436 A.2d 612, 61614 (Pa. 1981) (citing 12 P.S. § 782 (repealed 1978 and replaced by 42 Pa. C.S.A. § 8101)).