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Mid-Century Ins. Co. v. Daniel

No Attorney's Fees or Late Payment Penalty Available for UM Claims

***Mid-Century Ins. Co. v. Daniel*, 2007 WL 414330 (Tex. App.—Amarillo, February 07, 2007, n.p.h.)**

Carole Daniel was injured in an automobile accident with another car driven by Melvin Bray. Daniel and her husband sued both Bray and their own UIM insurer, Mid-Century. The claims against Mid-Century were severed and abated pending the liability trial, but included claims under articles 21.21 and 21.55 of the Insurance Code. At conclusion of the liability trial, the Daniels were awarded approximately \$75,000 in damages; after deducting the \$25,000 paid by Bray's insurer, Mid-Century immediately tendered the remainder of the judgment under the UIM policy. Mid-Century then moved for summary judgment on the extra-contractual claims. The trial court granted Mid-Century's summary judgment as to article 21.21 but eventually awarded damages and attorney's fees to the Daniels under article 21.55.

Relying on the supreme court's holding in *Brainard v. Trinity*, the Amarillo Court of Appeals held that a UM/UIM claimant is not entitled to recover attorney's fees pursuant to former Insurance Code article 21.55 unless the UM/UIM insurer fails to promptly pay a UM/UIM judgment. The court noted that "unlike many first-party insurance contracts, the UIM contract is unique" because it conditions benefits upon the insured's legal entitlement to receive damages from a third party. Although *Brainard* addressed only an award of attorney's fees pursuant to section 38.002 of the Texas Civil Practice and Remedies Code, the *Daniel* court held that the reasoning was the same: Mid-Century had no obligation to pay until Bray's liability and the Daniels' damages were determined by judgment. Because Mid-Century paid within the deadline established by the statute, the Daniels were not entitled to either the 18 percent penalty or attorney's fees under article 21.55.