

CIVIL COURT OF THE CITY OF NEW YORK

DIRECTIVES AND PROCEDURES

Subject: Entry of Attorney Fees and
Interest in No-fault Judgments

Class: DRP -169
Category: GP-20
Eff. Date: December 7, 2004

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BACKGROUND

No fault cases have increased tremendously in the last few years. One of the more troubling aspects of these cases for us is the multiple causes of action: One medical provider may bring one case against one insurer in which there are 10 or more separate causes of action representing treatment for separate individuals. Article 51 of the Insurance Law and 11 NYCRR 65 govern how a provider may recover from an insurer as well as the rate of interest that it might charge and attorney fees allowed for the collection effort. We do not have a problem with the interest when the complaint specifies that the interest is to run from the filing of the summons: the clerk adds all amounts due on all the claims and calculates the interest at 2% per month. Attorney fees are another matter. Each cause of action, or claim, as they are usually referred to, can earn attorney fees to a maximum of \$850. If each attorney fee due on each claim is specified separately and at the end they are added together, the total due in the whole action may exceed \$850. Unfortunately, this is generally not the case. Rather, the judgment will show one amount, which is the total of the attorney fees due on each claim, and label the total "Attorney Fees." This amount usually exceeds \$850.00. Since we have no itemization, our usual procedure is to reject the application with a direction to the attorney to lower the attorney fees to comply with the maximum allowed under the rules. This is usually not satisfactory to the attorneys.

In order to clarify the procedure, comply with the rules, and allow reasonable entry procedures for the clerks, I am instituting the following rules.

DIRECTIVE

More than one claim may be filed in a Civil action.

When more than one claim is filed, the application for a judgment must itemize each claim separately.

Each claim must include the amount of the damages, the date from which interest is to be calculated, the subtotal due, the amount of the attorney fee for that claim, and the total due on the claim.

Example:

(a/a/o) Claim amount (Interest date) + Interest = Sub-total + Attorney Fee = Total

(a/a/o) Claim amount (Interest date) + Interest = Sub-total + Attorney Fee = Total

...

Grand Total:

Amount for all claims + Interest + Attorney Fees + Disbursements = Total

If the claims are not itemized in the judgment application or in an attachment thereto, the case is to be treated as if it were one claim for the purpose of attorney fees, and the amount awarded by the clerk is to be limited to \$850.00 following 11 NYCRR 65.

Date _____

Fern A. Fisher
Administrative Judge