SUPREME COURT OF MONTANA

# Mlekush v. Farmers Insurance Exchange

389 Mont. 99 (2017) · No. DA 16-0670 · Decided October 24, 2017

## SUMMARY

The Montana Supreme Court held that when a first-party insured is compelled to litigate an underinsured motorist claim and obtains a jury verdict exceeding the insurer's last settlement offer, the insured is entitled to recover reasonable attorney fees under Montana's insurance exception to the American Rule. The court reversed the order denying Tanya Mlekush's fee request and remanded for determination of reasonable fees, costs, and interest.

## CASE DETAILS

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| COURT | Supreme Court of Montana |
| WRITING FOR THE COURT | Justice Michael E. Wheat; Michael E. Wheat; Mike McGrath; Laurie McKinnon; James Jeremiah Shea; Dirk M. Sandefur; Beth Baker; Jim Rice |
| JURISDICTION | Montana |
| DECIDED | October 24, 2017 |
| DOCKET | DA 16-0670 |
| DISPOSITION | reversed_and_remanded |
| PROCEDURAL POSTURE | Mlekush appealed the District Court's denial of her motion for attorney fees after she obtained a jury verdict exceeding Farmers' final settlement offer on her UIM claim. |
| STANDARD OF REVIEW | Whether legal authority exists for an attorney-fee award is reviewed for correctness. Factual determinations are reviewed for clear error, while mixed questions of law and fact and the application of the legal standard are reviewed de novo. |
| PRECEDENTIAL VALUE | Published Montana Supreme Court opinion; precedential |
| PARTIES | Tanya L. Mlekush v. Farmers Insurance Exchange |

## TOPICS

uninsured motorist · insurance coverage · remedies · appellate procedure

## PRACTICE AREAS

insurance law | appellate litigation | attorney fees

## QUESTIONS PRESENTED

1. Whether a first-party insured who is compelled to litigate a UIM claim and obtains a jury verdict exceeding the insurer's last settlement offer is entitled to attorney fees under Montana's insurance exception to the American Rule.

## HOLDINGS

1. When a first-party insured is compelled to pursue litigation and a jury returns a verdict exceeding the insurer's last offer to settle an underinsured motorist claim, the insurer must pay the insured's reasonable attorney fees.
2. The district court must determine the reasonable amount of attorney fees, costs, and interest, and may account for conduct that unreasonably multiplies litigation or increases costs.

## KEY QUOTATIONS

> *"Accordingly, we hold that an insured is entitled to recover attorney fees, pursuant to the insurance exception to the American Rule, when the insurer forces the insured to assume the burden of legal action to obtain the full benefit of the insurance contract, regardless of whether the insurer's duty to defend is at issue."* (¶ 17)

> *"Therefore, we hold that, when a first-party insured is compelled to pursue litigation and a jury returns a verdict in excess of the insurer's last offer to settle an underinsured motorist claim, the insurer must pay the first-party insured's attorney fees in an amount subsequently determined by the district court to be reasonable."* (¶ 23)

## FACTUAL BACKGROUND

Mlekush was injured in a 2011 automobile collision and held a Farmers policy providing underinsured motorist coverage. After the other driver's insurer tendered its $50,000 liability limits, Farmers questioned causation, delayed making a claim determination, and made settlement offers culminating in a final offer of $77,500. Mlekush proceeded to trial, where the jury found damages of $450,000 and judgment was entered for the $200,000 UIM policy limit.

## PROCEDURAL HISTORY

After a jury returned a $450,000 verdict, judgment was entered for the $200,000 policy limit. The District Court denied Mlekush's motion for attorney fees under Montana's insurance exception to the American Rule, finding that she had initiated the action prematurely and had not been forced to assume the burden of legal action. In an earlier appeal, the Montana Supreme Court remanded for factual findings concerning the parties' conduct throughout the claims process. On remand, the District Court again denied fees, and Mlekush brought this appeal.

## DISPOSITION

reversed_and_remanded

### REMAND INSTRUCTIONS

The District Court must determine the reasonable amount of attorney fees, costs, and interest to which Mlekush is entitled.

### CASES CITED

- Mlekush v. Farmers Ins. Exch., 2015 MT 302, ¶ 8, 381 Mont. 292, 358 P.3d 913
- State v. Kaufman, 2002 MT 294, ¶ 12, 313 Mont. 1, 59 P.3d 1166
- Mt. W. Farm Bureau Mut. Ins. Co. v. Brewer, 2003 MT 98, ¶¶ 14, 33, 36, 315 Mont. 231, 69 P.3d 652
- Winter v. State Farm Mut. Auto. Ins. Co., 2014 MT 168, ¶ 31, 375 Mont. 351, 328 P.3d 665
- Goodover v. Lindey's Inc., 255 Mont. 430, 448, 843 P.2d 765, 776 (1992)
- Truck Ins. Exchange v. Woldstad, 212 Mont. 418, 423, 687 P.2d 1022, 1025 (1984)
- Lindsay Drilling v. U.S. Fidelity & Guar., 208 Mont. 91, 97, 676 P.2d 203, 206 (1984)
- Home Ins. Co. v. Pinski Brothers, Inc., 160 Mont. 219, 500 P.2d 945 (1972)
- Riordan v. State Farm Mut. Auto. Ins. Co., 2008 U.S. Dist. LEXIS 47734, *17, 2008 WL 2512023 (D. Mont. June 20, 2008)
- Modroo v. Nationwide Mut. Fire Ins. Co., 2008 MT 275, ¶ 61, 345 Mont. 262, 191 P.3d 389
- Kluver v. PPL Mont., LLC, 2012 MT 321, ¶¶ 52-60, 368 Mont. 101, 293 P.3d 817
- Chase v. Bearpaw Ranch Ass'n, 2006 MT 67, ¶ 38, 331 Mont. 421, 133 P.3d 190