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Damages - Automobile Collisions - Penalties for Failure to Settle Small Claims Promptly

Ralph E. Boches
University of Michigan Law School

RECENT LEGISLATION

DAMAGES—AUTOMOBILE COLLISIONS—PENALTIES FOR FAILURE TO SETTLE SMALL CLAIMS PROMPTLY—Recent Arkansas legislation provides for double damages, reasonable attorney's fees of not less than fifty dollars, and court costs for failure to pay property damage claims arising from automobile collisions within sixty days after the submission of estimates of damage. Application of the statute is limited to claims under two hundred dollars. Furthermore, if the defendant presents a "meritorious defense," liability under the statute does not attach. *Acts of Arkansas (1957), Act 283, Senate Bill 166.*

The ever-increasing number of automobiles on the road, with the attendant increase in the number of minor collisions, has given rise to an enormous number of small claims. If payment is refused, the time, trouble, and cost involved in bringing suit on these claims tend to prohibit such actions. Hence, many small claims are never satisfactorily settled.[1] The Arkansas legislature is the first to attempt to provide a remedy for the motorist in the form of a penalty statute.[2] Several constitutional problems[3] are raised by such a penalty statute, all of which have been resolved by the United States Supreme Court. Such a statute does not violate due process when the total financial penalty which the defendant risks incurring is so limited that defense is not made impossible.[4] A small penalty is considered to be an inducement to settle, rather than a club in the hands of the claimant. Furthermore, limiting the application of the statute to claims arising from automobile collisions does not violate the equal protection clause of the Fourteenth Amendment.[5] The chief constitutional limitation on the application of the statute is the requirement that the penalty may be invoked only when the amount of the jury's verdict is equal to or exceeds the amount of the settlement demanded by claimant from the defendant before the action was brought.[6] Although

1 Small insurance companies, common carriers who act as self-insurers, and the uninsured motorist are the most guilty in this regard.

2 This may well be the most effective type of remedy for this situation. Small claims courts could not handle such cases, since the defendant would generally be represented by counsel. Financial responsibility and compulsory insurance laws offer some protection against insolvency, but offer no protection against a refusal to pay.

3 U.S. CONST., Amend. XIV: ". . . nor shall any State deprive any person of . . . property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

4 Compare Seaboard Air Line Ry. v. Seegers, 207 U.S. 73 (1907) and Yazoo and Mississippi Valley R. Co. v. Jackson Vinegar Co., 226 U.S. 217 (1912) with Chicago, Milwaukee, & St. Paul Ry. Co. v. Polt, 232 U.S. 165 (1914), which held unconstitutional a double damages statute where there was no maximum limit to claims to which it was applicable. The Court pointed out that the penalty sought was not a moderate one.

5 Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61 (1911).

6 St. Louis, Iron Mountain & Southern Ry. Co. v. Wynne, 224 U.S. 354 (1912); Chicago, Milwaukee & St. Paul Ry. Co. v. Polt, note 4 supra. This due process limitation is

allowance of the penalty when the out-of-court demand exceeded the verdict would violate the due process clause, only that particular application of the statute and not the statute as a whole would be struck down.[7] The second basic problem is the effectiveness of the statute in view of the provision that liability will not attach if the defendant presents a meritorious defense.[8] This provision undoubtedly will be interpreted to provide that the penalty does not attach to a defendant who has refused to pay the claim believing, in good faith, that he has a meritorious defense, even though the defense proves unsuccessful.[9] Although the author of the bill apparently intended that only a subjective good faith belief by the defendant that the defense was meritorious be required,[10] the statute itself does not indicate this and the Arkansas courts will probably require that his belief also be reasonable. Of even greater importance is the problem of who shall bear the burden of proving whether or not there was a sufficient belief in the meritorious defense. Since the statute, which fails to provide any clear indication itself concerning this problem, is in derogation of the common law, it may well be held that the burden of proof will rest on the benefited party. Such an interpretation would seem to defeat the very purpose of the statute, that purpose being to make it practicable for claimants to press their just demands. To make suit practicable the claimant must be assured recovery of the penalty if he is successful. The burden of disproving that defendant had a reasonable good faith belief in his meritorious defense would probably result in few suits being brought. While the claimant's position would be somewhat improved if the court were to place the burden of proof upon the defendant, claimant would still be forced to bear the ultimate risk that the defendant could prove he was defending in good faith.[11] It is suggested that in order to

designed to prevent the plaintiff from using the statute to extort excessive settlements, i.e., on damages amounting to one hundred dollars, claimant could compel payment of, say, one hundred fifty dollars by threatening defendant with a two hundred dollar plus recovery—the double damage penalty plus attorney's fees. The claimant can probably protect his rights under the statute by securing several estimates of the cost of repair and then submitting a demand for the lowest amount estimated.

[7] Kansas City Southern Ry. Co. v. Anderson, 233 U.S. 325 (1913); Chicago and Northwestern Ry. Co. v. Nye Schneider Fowler Co., 260 U.S. 35 (1922), noted in 21 MICH. L. REV. 686 (1923), 23 COL. L. REV. 185 (1923), 71 UNIV. PA. L. REV. 276 (1923), 32 YALE L. J. 401 (1923).

[8] "[If] the defendant . . . shall, without meritorious defense, fail to pay the [claim] . . . such defendant shall be liable. . . ." Principal statute, §1. The Arkansas courts have defined a meritorious defense as one going to the merits, substance, or essentials of the case. Cooper v. Freeman Lumber Co., 61 Ark. 36, 31 S.W. 981 (1895).

[9] If "meritorious defense" were interpreted to mean a successful defense, its inclusion in the statute was superfluous, for the defendant would not be subject to the statutory penalty on a claim against which he had successfully defended, in any case.

[10] Private communication from the Hon. Ellis Fagan, State Senator, who was the sponsor of the bill, dated Dec. 10, 1957.

[11] This risk of losing the penalty would be sufficient to keep plaintiff from bringing suit on the very small claim, thus denying relief to the man who needs it most.

carry out the purpose of this statute the meritorious defense provision be entirely eliminated and the statutory penalty attach in all cases where the plaintiff proves to be successful.[12] By placing all the risk of defending on the defendant, the claimant would be placed in the favorable bargaining position which this statute envisaged, thus greatly increasing his chances for out-of-court recovery.[13] While in some cases unfairness to the defendant may result, this is outweighed by the need for more adequate protection for the injured party in this area. It is to be hoped that this recent Arkansas enactment will elicit the interest of other states in passing similar, but stronger, legislation.

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[12] Such a provision would not violate the due process clause of the Fourteenth Amendment. That the penalty may be applied is merely the risk the defendant must take if he would rather be sued and have the right to contest the claim than settle out of court. It is analogous to taxing the costs of the proceedings—which may be considerable if they include the costs of an appeal—to the losing party. "The [defendant] is not penalized for taking the controversy into court. . . . Repeated judgments of this court bear witness to the truth that such a tax upon default is not put beyond the pale by calling it a penalty." Life and Cas. Ins. Co. of Tennessee v. McCray, 291 U.S. 566 at 573 (1934), rehearing den. 292 U.S. 600 (1934), noted in 19 MINN. L. REV. 119 (1934), 82 UNIV. PA. L. REV. 761 (1934).

[13] Since the defendant can fully protect himself by obtaining insurance, placing the risk on him does not seem inequitable.