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**INSURERS MUST RECEIVE ACTUAL NOTICE OF LOSS BEFORE INTEREST ACCRUES**

In American Family Insurance Group v. Kiess, A043-1764 (June 16, 2005), the Minnesota Supreme Court affirmed the Court of Appeals decision that the statutory interest penalty for overdue No-Fault benefits under Minn. Stat. § 65B.54 Subd. 1 does not begin to accrue until 30 days after the insurer receives actual notice of the loss.

In Kiess, the claimant, Mark Kiess, was injured in a car accident in February 1996. American Family discontinued No-Fault benefits after a July 1996 independent medical examination. Kiess had cervical fusion surgery in June 1997. In November 2001, Kiess filed for No-Fault Arbitration. Several issues were addressed by the trial court and Court of Appeals, but the only issue on appeal before the Supreme Court was the method of calculating statutory interest. Specifically, when are the payments overdue - thirty days after treatment or thirty days after the insurer is made aware of the treatment.

The Supreme Court affirmed the Court of Appeals, concluding Section 65B.54 Subd. 1, when interpreted according to its most natural and obvious usage, requires the insured to provide the insurer with actual notice of additional losses. Payment of the benefits are overdue, and interest begins to accrue, therefore, thirty days after the insurer received actual notice of the additional loss or treatment. In the Kiess case, notice was not given until the No-Fault Arbitration Petition was filed in November 2001.

As a result of this decision, we foresee plaintiff attorneys continuing to submit records and bills to insurance companies, even though the carrier has discontinued benefits. Care should be taken to properly document when this additional information is received, in order to accurately calculate any interest owed.

If you have any questions regarding this case or other automobile-related issues, please contact any member of our Motor Vehicle Practice Group at (952) 831-6544. This letter, and other Minnesota Appellate Court opinion updates, are now available in .pdf form on the News and Resources page of our Firm's website: [www.johnson-condon.com](http://www.johnson-condon.com).

Sincerely,

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