

BAD FAITH BLOG

Montana Supreme Court Extends Insurance Exception and Allows Attorney's Fees to UIM Claimant

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Montana recognizes several equitable exceptions to the American Rule regarding attorney fees in the area of insurance. The Montana Supreme Court has previously recognized a first-party insured can recover attorney's fees based on the insurer's breach of the duty to defend. This limited exception was then expanded to include cases where the insurer disputed coverage and the first-party insured incurred attorney's fees litigating the coverage dispute and was successful in so doing. Now, in this UIM case involving Tonya Mlekush, the court has further extended the allowance of attorney's fees to UIM claimants who recover more at trial than the last offer made by the insurer.

Mlekush v. Farmers Insurance Exchange

This extension of the insurance exception to the American Rule that each party bears its own attorney's fees is likely to increase the final offers made by insurers, so as to increase the likelihood that the verdict is less than the offer, and decrease the number of UIM cases that are tried to verdict.