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Illinois Coverage Basics

How to Stop Interest from Growing on Illinois Judgments: Good Faith Efforts to Comply with the Judgment Interest Statute Mean Nothing without a Perfect Tender of Judgment

In cases filed in the Illinois state courts, judgment interest accrues at the punitive rate of 9% per annum. Judgment interest begins to run when a final judgment is entered and it continues to accumulate until (a) the judgment is reversed on appeal, or (b) the accrual of judgment interest is stopped by a proper tender of judgment pursuant to 735 ILCS 5/2-1303. The rules governing judgment interest are the same for both coverage cases and tort cases in the Illinois state courts.

Most insurance coverage cases are resolved by summary judgment in Illinois, and most summary judgments are appealed because the Appellate Court applies a *de novo* standard of review. However, the potential for judgment interest is a significant factor affecting appeals in coverage cases. Judgment interest does not stop accruing when an appeal is filed and it continues to run even after a stay of execution of the judgment is entered by the court. Appeals in the Illinois state courts normally take 12 – 24 months to be resolved, so the interest risk associated with appeals is substantial, usually in the range of 9% - 18% of the principal judgment amount.

Fortunately, an Illinois statute provides a procedure to stop the accrual of judgment interest. Section 2-1303 of the Illinois Code of Civil Procedure. Section 2-1303 states:

> "The judgment debtor may by tender of judgment, costs and interest accrued to the date of tender, stop the further accrual of interest on such judgment notwithstanding the prosecution of an appeal, or other steps to reverse, vacate or modify the judgment."

This procedure seems simple and easy, but it is not. In order to make a proper tender to stop the accrual of judgment interest under Section 2-1303, an insurer must first know how much to pay. While the amount of the judgment is a matter of public record, the amount of accrued interest changes every day, and the amount of the costs can only be obtained from the plaintiff.

A recent opinion of the Illinois First District Appellate Court illustrates both the practical difficulty of satisfying the requirements of Section 2-1303 and the necessity of perfect compliance with the statute. In Poliszczuk v. Winkler, 2011 IL App (1st) 101847, a judgment was entered in favor of the plaintiffs on September 12, 2006. On January 22, 2007, defense counsel told plaintiffs' attorney in a telephone conversation that the defendant was interested in cutting drafts to the plaintiffs for the amount of the judgment. On February 5, 2007, defense counsel followed up with a letter to plaintiffs' attorney reciting that during their recent telephone call plaintiffs' attorney had told defense counsel to hold off on preparing the drafts until the time

for filing an appeal passed, and, further, that plaintiffs would not seek any interest or fees for delaying the payment. In that letter, defense counsel specifically asked plaintiffs' attorney to advise him if any of his representations in the letter were mistaken or misunderstood. Plaintiffs' attorney did not respond to defense counsel's February 5, 2007 letter.

In a letter dated February 6, 2007, defense counsel again told plaintiffs' attorney that the defendant was prepared to pay the judgment plus court costs, requested direction concerning two liens and asked for the plaintiffs' tax identification number. Plaintiffs' attorney gave no response to defense counsel's February 6, 2007 letter. However, on February 20, 2007, the plaintiffs filed an appeal challenging the amount of the judgment that they obtained in the trial court.

The appeal lasted two years. After the plaintiffs lost the appeal, defense counsel wrote a letter to plaintiffs' attorney on February 6, 2009, again expressing defendant's willingness to immediately pay the amount of the judgment and costs. Plaintiffs' attorney did not respond to defense counsel's February 6, 2009 letter.

On February 24, 2009, defense counsel again sent a letter to plaintiffs' attorney offering to immediately forward drafts for the amount of the judgment and costs. The letter recited that plaintiffs' attorney had previously indicated that the plaintiffs would not be seeking interest in the case. Plaintiffs' attorney did not respond to defense counsel's February 24, 2009 letter.

In September 2009, the defendants sent a check covering the amount of the judgment and the court filing fee. In response, the plaintiffs filed a motion seeking an award of judgment interest accruing from the date of the original September 12, 2006 judgment. The trial court granted the plaintiffs interest only from the date of defense counsel's tender of judgment on February 6, 2007, and the plaintiffs appealed. The Appellate Court reversed, requiring the defendant to pay for all judgment interest that accrued from the date of the original September 12, 2006 judgment.

The Appellate Court in Poliszczuk held that defense counsel's numerous expressions of willingness to pay the judgment and costs was insufficient to toll the accrual of judgment interest under Section 2-1303, because he never specifically offered to pay the accrued judgment interest:

> "Before a letter can be considered as an offer for a sufficient tender, the letter must clearly offer to pay, within a set time period, all that the judgment creditor is entitled to, which includes the amount of the judgment, interest to date of payment, and all applicable costs."

Based on this rationale, the Appellate Court in Poliszczuk found that the trial court had abused its discretion when it awarded the plaintiffs judgment interest only from the date of the judgment to the defense counsel's initial offer to pay what the defendant owed. Poliszczuk confirms that strict compliance with Section 2-1303 is required to stop the running of judgment interest. Good faith and diligence on the part of the judgment debtor count for absolutely nothing unless an unequivocal tender of the judgment, accrued interest and costs can be proven.

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If you have questions or would like to discuss the implications of this report further, please feel free to contact James K. Horstman at Cray Huber Horstman Heil & VanAusdal LLC, 303 West Madison, Suite 2200, Chicago IL 60606; 312-332-8494; jkh@crayhuber.com.