

Judgment Day: Recovering Pre- and Post-Judgment Interest

In many cases, interest is a recoverable item of damage. Yet, it is often overlooked either until late in the case or when it is too late to recover. Although recoverable, it varies depending on the type of claim. For long-term disputes that last years, recouping interest can substantially add to the amount of recovery. For example, after a little over seven years, an investment earning compound interest at 10% will double without having to do anything! Of course, you must be a "prevailing party" before you can recover interest and the courts use simple interest, not compound. But, the point is that it can add up.

Pre-judgment interest is governed by Civil Code sections 3287 *et seq.*, whereas post-judgment interest is governed primarily by Code of Civil Procedure sections 680.010 *et seq.*, also known as the "Enforcement of Judgments Law."

Pre-judgment Interest

The general rule in recovering pre-judgment interest is set forth in Civil Code section 3287(a), which states:

"Every person who is entitled to recover damages certain, or capable of being made certain by calculation, and the right to recover which is vested in him upon a particular day, is entitled also to recover interest thereon from that day"

Thus, a party must have ascertainable damages, occurring on a specific day, in order to qualify automatically for pre-judgment

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ment interest. In determining whether damages are certain, the relevant issue is not one of the defendant's liability, but the certainty of damages suffered by the plaintiff. (*Wisper Corp. v. Cal. Commerce Bank* (1996) 49 Cal.App.4th 948, 958.) When the amount of the plaintiff's claim can be established by market values or computation, then pre-judgment interest is awarded. (*Ibid.*)

The right to recover pre-judgment interest can arise in claims involving (1) contracts, (2) torts, and (3) claims based on statutory obligations (such as wrongfully withheld welfare benefits.) (*Tripp v. Swoap* (1976) 17 Cal.3d 671 overruled on other grounds in *Frink v. Prod* (1982) 31 Cal.3d 166, 180.) This right to all claims of pre-judgment interest is necessarily waived when a party accepts payment of the whole principal. (Civil Code, § 3290.)

Contract Claims

For contract claims, liquidated and unliquidated damages are distinguished. Liquidated damages are those established by the

parties as a reasonable estimate of what would be actual damages. Unliquidated damages are not established in advance by the parties, but awarded by a court after a breach of contract as compensation for that breach.

Liquidated damages are governed by Civil Code section 3287(a) because liquidated damages are, by nature, certain and ascertainable. Unliquidated damages follow the rule stated in Civil Code section 3287(b) which allows the recovery of pre-judgment interest beginning on a particular day that is to be determined by the court. This day, however, cannot be earlier than the date the action was filed.

If a contract states the legal rate of interest within its provisions, then that rate governs. (Civil Code, § 3289(a).) When the contract does not provide an interest rate, a legislatively set rate of 10 percent per annum is applied. (Civil Code, § 3289 (b).)

Tort Claims

Like contract claims, pre-judgment interest is available for some tort claims, so long as the damages are certain. For example, pre-judgment interest is available "as a matter of law in tort actions for property damages from the date when the defendant has notice of an amount certain or capable of being made certain." (*Levy-Zentner Co. v. So. Pac. Trans. Co.* (1977) 74 Cal.App.3d 762, 769-70.)

For the breach of noncontractual obligations, pre-judgment interest is awarded in the discretion of the jury. It can also be awarded in the jury's discretion for cases involving oppression, fraud, or malice. (Civil Code, § 3288.) The rate of interest applicable to tort actions is 7 percent

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per annum. (Cal. Const., art. XV.)

For personal injury claims, a plaintiff can recover interest for the injury so long as it is pled in the complaint. (Civil Code, § 3291.) In order to recover under this section, though, the plaintiff must make an offer to compromise, the defendant must reject this offer either prior to trial or within 30 days of the offer, and the plaintiff must receive a more favorable judgment than the offer. When this occurs, the plaintiff may recover interest at the rate of 10 percent per annum from the date of the first offer to the satisfaction of the judgment. Note, however, that this section does not apply to public entities or employees acting within the scope of employment.

Post-judgment Interest

Post-judgment interest accrues at a rate of 10 percent per annum on the principal of an unsatisfied judgment. (Code of Civ. Proc., § 685.010(a).) Interest begins to accrue on the date judgment is entered. (Code of Civ. Proc., § 685.020(a).) When the judgment is payable in installments, however, interest accrues on the date each installment becomes due. (Code of Civ. Proc., § 685.020(b).) Generally, interest ceases to accrue on the date the judgment is fully satisfied. (Code of Civ. Proc., § 685.030.) Similar to interest on tort claims, public entities are exempt from this provision of the Code of Civil Procedure, but are held to the constitutionally mandated rate of 7 percent per annum. (*Cal. Fed. Savings & Loan Assn. v. City of Los Angeles* (1995) 11 Cal.4th 342, 347-48.)

Correlation between Pre- and Post-judgment Interest

Interest on a judgment can fall under both Civil Code section 3287 and Code of Civil Procedure section 685.010. Interest cannot, however, exceed the constitutional limitation of 10 percent. For instance, interest awarded under Civil Code section 3291 cannot be

added to interest recoverable under Code of Civil Procedure section 685.010, even though Civil Code section 3291 explicitly states that interest is awarded until the satisfaction of the judgment. In addition, a person cannot recover interest on pre-judgment interest. Once a judgment is renewed, though, accrued post-judgment interest may be incorporated into the principal, thus allowing for a compounding of interest.

Enforceability and Renewal

Judgments are enforceable upon entry, and for ten years following that date. (Code of Civ. Proc., § 683.010-020.) Once ten years has expired, though, the period of enforceability of a judgment may be extended by renewal of the judgment. (Code of Civ. Proc., § 683.110.) While an appeal stays the enforcement of a judgment, interest continues to accrue regardless of the appeal. (Code of Civ. Proc. § 683.102; *City of Union City* (2009) 73 Cal.App.4th 199, 203 (internal citations

omitted).) When a judgment is modified on appeal, the new amount draws interest from the date of entry of the original judgment; when a judgment is reversed, however, interest accrues only from the date of entry of the new judgment. (*Ibid.*)

Conclusion

It is rumored that Albert Einstein once said "the most powerful force in the universe is compound interest." Though pre-judgment interest is calculated on a simple interest basis, a successful attorney should remember the strength of Einstein's words. Neglecting to analyze interest recovery before your next trial can have a substantial impact on the size of a judgment recovered for your client. The length of trial only compounds the potential dollars left on the table. Make sure to implement a plan on interest recovery at the beginning of any case (our clients will thank you later. Be proactive, plan accordingly and see your judgments grow! ☺

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