

STATE OF ILLINOIS TO ALLOW COLLECTION OF PRE-JUDGMENT INTEREST IN PERSONAL INJURY AND WRONGFUL DEATH ACTIONS

March 31, 2021

Last week, the Illinois legislature passed **Senate Bill 0072**, which allows plaintiffs in personal injury and wrongful death actions that go to verdict in Illinois to collect pre-judgment interest at a rate of 6% per annum. Under the current version of the bill, interest begins to accrue on the date the plaintiff files his or her lawsuit. For currently pending lawsuits, pre-judgment interest will begin to accrue as soon as the bill is signed into law. A previous version of the bill called for a 9% interest rate, which began to accrue on the date a defendant had notice of the injury. That prior version was also passed by both houses, but was vetoed by whether **Illinois Governor, J.B. Pritzker**. Gov. Pritzker's veto was based on the 9% interest rate, which he stated was too high. At this time we do not know if Gov. Pritzker will sign the current bill, but we expect some form of this bill will be passed at some time in the near future.

Under the current bill awaiting Gov. Pritzker's signature, a plaintiff is entitled to recover interest "on all damages, except punitive damages, sanctions, statutory attorney's fees, and statutory costs." Unlike some other states' laws allowing for pre-judgment interest, the language of the bill suggests a judge has no discretion in awarding prejudgment interest: "[i]n entering judgment for the plaintiff in the action, the court shall add to the amount of the judgment interest calculated at the rate of 6% per annum on the amount of the judgment" (emphasis added).

If a defendant makes a settlement offer within a year from the passage of the bill, or from the filing of the complaint, the plaintiff can only recover pre-judgment interest on the difference between the amount offered and the amount ultimately awarded if the plaintiff fails to accept the offer within 90 days. In other words, if a jury awards a plaintiff \$100,000, but a defendant offered \$75,000 within a year after the complaint was filed, the defendant must pay pre-judgment interest on \$25,000 instead of the full \$100,000 verdict. Additionally, the accrual of pre-judgment interest is capped at 5 years.

Finally, the State, local governments, school districts, and other governmental entities are exempt from paying any pre-judgment interest.

We expect this bill, if passed, will significantly change how plaintiffs in personal injury and wrongful death actions approach litigation and assess settlement valuations moving forward. Based on the last publicly available data from the Illinois Supreme Court, civil cases with an amount in controversy over \$50,000 took on average 30.1 months to progress from filing to verdict in Cook County, Illinois.

Phillip G. Litchfield concentrates his defense litigation practice on construction negligence, personal injury, toxic tort and wrongful death claims. He also concentrates on corporate defense, professional liability and medical malpractice. Phil defends insureds, contractors and tradesmen as well as manufacturers and distributors in actions alleging injuries or property damage. Phil's representative experience includes defective products, construction defects, motor vehicle accidents and other casualties. Phil litigates throughout Illinois and Indiana, in state and federal courts.

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