IMPLICATIONS OF ILLINOIS' NEW PREJUDGMENT INTEREST ACT IN TORT ACTIONS (EFFECTIVE JULY 1, 2021)

Effective July 1, 2021, a plaintiff shall be able to recover prejudgment interest on all damages rendered in a judgment against a tortfeasor in a personal injury or wrongful death action at an interest rate of 6 percent per year. This is due to Illinois Governor JB Pritzker's signing of the Illinois Senate Bill 72 ("Prejudgment Interest Act") on May 28, 2021. Prior to the signing of the Prejudgment Interest Act, Illinois did not recognize an award of prejudgment interest in tort actions for personal injury or wrongful death. Illinois had imposed post-judgment interest in tort actions that accrued at the rate of 9 percent per year, but only after a judgment was awarded (735 ILCS 5/2-1303).

The Prejudgment Interest Act becomes effective on July 1, 2021, and provides that prejudgment interest shall begin on the date the action is filed or the effective date of the bill, whichever is later. In other words, if a lawsuit was filed prior to July 1, 2021, the prejudgment interest will begin to be calculated on July 1, 2021. However, if a lawsuit is filed after July 1, 2021, the prejudgment interest will begin on the date the lawsuit was filed.

The Prejudgment Interest Act does not apply to punitive damages, statutory attorney's fees, and statutory costs. If the plaintiff voluntarily dismisses the action and refiles, the accrual of prejudgment interest tolls from the date the action is voluntarily dismissed to the date the action is refiled.

The Prejudgment Interest Act is designed to encourage settlement, and has a provision that provides defendants with an opportunity to reduce prejudgment interest through early settlement offers. If a defendant makes a settlement offer within the first 12 months of the filing of the lawsuit, the settlement offer will be credited towards any judgment award before the calculation of prejudgment interest. Further, if the settlement offer meets or exceeds a judgment award, no prejudgment interest will apply.