

June 2022

ILLINOIS CIRCUIT COURT FINDS PREJUDGMENT INTEREST LAW UNCONSTITUTIONAL

INTRODUCTION

This is an update to our client alerts from February 2021 and April 2021 on the Illinois prejudgment interest law.

Illinois's new prejudgment interest law went into effect on July 1, 2021, allowing plaintiffs to recover prejudgment interest on all damages resulting from personal injuries and wrongful death (with certain exceptions, such as punitive damages, sanctions, and statutory attorney's fees). The law permits interest to accrue at a rate of 6% per year starting from when the suit was filed, and it is capped at five years. If a plaintiff rejects a settlement offer made within one year of the suit's filing, prejudgment interest is only awarded on the difference between the settlement offer and the actual judgment. This law was a departure from the status quo, which did not allow prejudgment interest in personal injury cases, and only allowed personal injury plaintiffs to recover *post*-judgment interest.

Proponents of the law believed that it would ensure speedier settlements and discourage delay tactics by defendants. Opponents of the bill argued that it would dramatically increase litigation costs for manufacturers, hospitals, and healthcare providers who are often the defendants in personal injury cases. Opponents also believed that these increases would particularly drive up the cost of medical liability insurance, and cause Illinois doctors and other affected businesses to move away from Illinois. Opponents further argued that these increased costs incurred by businesses would then inevitably trickle down to increase the cost of health care for Illinois consumers.

Opponents also took issue with the fact that the law allowed prejudgment interest to accrue on non-economic damages (*e.g.*, pain and suffering and loss of normal life), which, unlike contractual damages, are unfixed and often difficult to determine at the early stages of litigation. They pointed out that other states that have enacted similar prejudgment interest laws have exempted non-economic of damages for this very reason.

THE RECENT RULING

Defendants in personal injury and medical malpractice cases have been challenging the law since it went into effect. One of those challenges succeeded on May 27, 2022, with a Circuit Court in Cook County holding that the prejudgment interest law is unconstitutional. Specifically, Chicago-based Judge Marcia Maras ruled that the law violated two constitutional rights guaranteed by the Illinois

Constitution: (1) the right to a jury trial as guaranteed by the Illinois Constitution in Article 1, Section 13, and (2) the prohibition against special legislation found in Article IV, Section 13.

The Law Violates the Fundamental Right to a Trial by Jury

On the first point, Judge Maras reasoned that the law violates the right to a jury trial because it effectively usurps one of the jury's fundamental roles at trial: determining appropriate damages. She cited an article that demonstrates that Illinois juries already typically award greater damages for litigation that has been delayed or taken a long time to get to trial. By mandating a predetermined prejudgment interest rate for all cases, Judge Maras held that the legislature stripped juries of their power to determine appropriate damages on a case-by-case basis, and therefore deprived individuals of their right to a jury trial.

Because the prejudgment interest law implicates a fundamental right (*i.e.*, the right to a jury trial), Judge Maras determined that its constitutionality must be reviewed under the "strict scrutiny" standard, which is the most difficult standard to satisfy. To survive strict scrutiny review, a law must be *necessary* to advance a *compelling* State interest. Judge Maras held that the prejudgment interest law did not pass the strict scrutiny test because it did not advance any compelling State interest, and the law was not necessary because the jury can decide appropriate damages. Specifically, Judge Maras found that the law takes away the jury's ability to determine reasonable and just compensation, while also conditioning a defendant's right to a jury trial on the payment of a penalty in the form of interest. Neither of these advance any compelling State interest. Furthermore, because the law automatically requires a court to add prejudgment interest when the verdict exceeds a defendant's offer of judgment, the legislature took away the more restrictive option of giving the jury the right to decide damages.

The Law Violates the Prohibition Against Special Legislation

Judge Maras also held that the law violated the Illinois Constitution's prohibition against special legislation. She explained that the purpose of this section of the Constitution is to "prevent arbitrary legislative classifications that discriminate in favor of a select group without a sound, reasonable basis."

Judge Maras noted a few different ways in which the prejudgment interest law is arbitrarily discriminatory. First, the law only provides for prejudgment interest for plaintiffs in personal injury and wrongful death suits, but not for plaintiffs claiming other torts (*e.g.*, invasion of privacy, emotional distress, fraud, attorney malpractice, etc.). Similarly, only personal injury and wrongful death defendants are forced to pay prejudgment interest. The law also discriminates against defendants that become a party to an action later in litigation because it allows interest to begin accruing against all defendants on the date a lawsuit is *filed*. Thus, the law does not take into account when a defendant actually becomes a party. Furthermore, because the law requires a defendant to extend an offer to settle within one year of the filing of the action, it could also discriminate between similarly-situated defendants in the same case, depending on when those defendants are served or added into the lawsuit after filing.

While Judge Maras already established that the prejudgment interest law would be subject to strict scrutiny review for the reasons discussed above, courts typically apply a less strenuous "rational basis" review to determine the constitutionality of a law that is alleged to violate the prohibition against special legislation. To survive rational basis review, a law only needs to *rationaly relate* to a

legitimate State interest. This is the easiest constitutional standard to satisfy, but Judge Maras held that the prejudgment interest law does not satisfy this more relaxed standard, either.

Specifically, the Court held that the prejudgment interest law fails rational basis review because separating personal injury and wrongful death plaintiffs from other plaintiffs who bring other tort actions is not rationally related to the State interest of compensating tort victims. The Judge noted that personal injury and wrongful death plaintiffs are not the only tort plaintiffs that desire to be compensated for their injuries, and that personal injury and wrongful death defendants are not the only ones that should be subjected to increased damage judgments because of prejudgment interest. In the Court's words, these classifications are not "sufficiently related to the evil to be obviated by the statute." Thus, the Court found the prejudgment interest law to be unconstitutional, regardless of which constitutional standard of review is applied.

EFFECTS OF THIS RULING GOING FORWARD

Judge Maras's decision is only a trial court decision, and therefore is not binding on any other court, and the plaintiffs in this case will likely appeal. However, this decision has provided a roadmap and precedent for defendants in personal injury and wrongful death cases to challenge prejudgment interest damages issued against them. We expect that Illinois courts in other districts will follow Judge Maras's lead, and that this issue should make its way to the Illinois Supreme Court in the coming months. Walker Wilcox Matousek will continue to provide our clients with updates and our analysis of how it may affect their own legal interests. For now, it is a win for personal injury defendants and their insurance carriers.

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