

Illinois Pre-Judgment Interest Statute Declared Unconstitutional

Article

Amundsen Davis Health Care Alert

May 27, 2022

On May 27, 2022, Judge Marcia Maras in the Circuit Court of Cook County issued a memorandum, holding Illinois's recently enacted prejudgment interest statute unconstitutional, and holding that the legislation violated both the right of trial by jury and the prohibition against special legislation.

The amendments to 735 ILCS 5/2-1303, effective July 1, 2021, provided for the awarding of pre-judgment interest (PJI) in all actions seeking damages for personal injury or wrongful death caused by the negligence, willful and wanton conduct, intentional conduct, or strict liability of another. PJI begins to accrue on the date of filing of the action or July 1, 2021, whichever is later, and would be awarded in the amount of 6% per annum. The interest would accrue on the entire judgment (excluding punitive damages, sanctions, and statutory attorney fees and costs), and be capped at five years. If a written settlement offer was made within 12 months of the filing date of the action or July 1, 2021 (whichever is later) and the plaintiff rejected or failed to respond to that offer, PJI would only be awarded on the difference between the judgment and the highest written settlement offer. No prejudgment interest was to be awarded where the judgment was equal to or less than the highest written settlement offer made. Governmental entities were exempted from the prejudgment interest provisions.

In Judge Maras's ruling, she found that Section 2-1303(c) violates defendants' rights to trial by jury by infringing on the right of the jury to determine damages, which is an "inviolable right" and "not an issue for the Legislature." The amended PJI statute "strips the function and role of the jury in assessing all issues, including damages, and instead requires an award of prejudgment interest." In response to the plaintiff's argument that PJI was necessary to counter a defense litigation strategy of refusing to engage in settlement negotiations, which delays trials and "erodes the real value of a plaintiff's award," Judge Maras pointed to research showing that Illinois juries, and specifically those in Cook County, already provide larger awards to longer delayed cases, noting that in effect, juries were already awarding interest for the time period between injury and trial as part of damages.

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The order further found that the PJI amendment violates the Illinois Constitution's prohibition against special legislation, which is defined as "arbitrary legislative classifications that discriminate in favor of a select group without a sound, reasonable basis." Here, Judge Maras found both plaintiffs and defendants faced arbitrary classifications. Her order notes that the Amendment not only "discriminates in favor of personal injury and wrongful death plaintiffs by granting a substantial benefit on them while excluding all similarly situated tort plaintiffs," but also discriminates against "personal injury and wrongful death defendants as being the only defendants paying PJI, as against all other tort defendants." These classifications were found to be arbitrary and a violation of the ban on special legislation.

As Judge Maras's ruling is a trial-level decision, it does not apply statewide. The plaintiff has the right to a direct appeal to the Illinois Supreme Court under Rule 302. For the time being, defendants in personal injury and wrongful death cases would be well-served by filing an affirmative defense to the PJI statute, citing to its unconstitutionality. Alternatively, if plaintiffs have pleaded PJI in their complaint, a motion to strike should be filed. Amundsen Davis will continue to provide updates as the situation develops.

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