

Colorado Court of Appeals Issues New Precedent Regarding State's Interest on Damages Statute for Personal Injury Cases

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Prejudgment Interest Applies From the Date of Claim Accrual to the Date of Final Judgment, and Most Appeals Do Not Reset the Clock

On November 19, 2020, a three-judge Colorado Court of Appeals, Division I panel, unanimously affirmed a \$3.6 million interest award on top of a \$2.9 million verdict against Ford Motor Co. in a case involving an allegedly defective driver's seat. The Court awarded interest at a rate of 9% for 10 years, despite a lengthy appellate process and Ford's successful appeal for retrial.

The case arose from a 2009 motor vehicle accident, when Plaintiff Forrest Walker's 1998 Ford Explorer was rear-ended by another motorist, causing Walker to suffer traumatic brain and neck injuries. Walker settled his negligence claim against the motorist who rear-ended him and proceeded to trial against Ford on product liability claims.

In April 2013, a jury awarded Walker approximately \$2.9 million in damages. Ford appealed, seeking a new trial. In 2015, the Colorado Court of Appeals granted Ford's request for a new trial and, in 2017, the Colorado Supreme Court affirmed. However, the 2019 retrial produced a nearly identical result, with the jury again awarding Walker approximately \$2.9 million. Thereafter, the trial court awarded Walker prejudgment interest at a rate of 9% for 10 years (from the date of the accident to the date of the 2019 jury verdict) pursuant to Colorado's interest on damages statute for personal injury cases, Co. Rev. Stat. § 13-21-101(1).

On appeal, Ford conceded that it owed interest on the judgment, but argued that postjudgment interest should apply from the date of the first appeal, which would have yielded a significantly lower interest award. Ford supported its argument by "relying on the last sentence of section of 13-21-101(1), which states, verbatim: "if a judgment for money in an action brought to recover damages for personal injuries is appealed by the judgment debtor, postjudgment interest must be calculated on the sum . . . from the date of judgment through the date of satisfying the judgment and must include compounding of interest annually."

The appellate court observed that the district court's order had not considered this last sentence, and instead relied on an earlier part of the statute in making its ruling. Nevertheless, reading the statute as a whole, including subsections 2(a) and 2(b), the appellate court rejected Ford's argument and found that the correct interpretation of the statute is for prejudgment interest to apply from the date of accrual to the date of final judgment.

Rejecting Ford's argument that "every appeal triggered a switch from prejudgment to postjudgment interest," the appellate court held that a switch to the lower postjudgment interest rate is only triggered in two instances: when a money judgment is "[i] modified on appeal or [ii] reversed with a direction that a judgment for money be entered in the trial court." Because Ford's original appeal did not fall into either category — and instead constituted an outright reversal of the judgment — nothing remained for postjudgment interest to accrue on while the retrial was pending. Rather, "the effect of that reversal was to put the parties in the same posture they were in before the original judgment was entered in 2013." According to the Colorado Appellate Court, "for the purposes of [the statute] that [posture] was 'pre-judgment.'"

Suggesting that litigants must weigh the inherent risks of trial, the appellate court further found that "because interest can only accrue if there is a judgment, the interest that did accrue up until the point that the supreme court issued its opinion reversing the outcome of the first trial vanished along with the judgment." At that point, "Ford and Walker were . . . free to proceed in any way they saw fit, including by settling the case."

Notably, the appellate court left open the question of whether including an appeal on the monetary award triggers the use of postjudgment interest for the judgment debtor. In any case, Colorado's recent ruling on the judgment interest statute may be a harbinger of change for Colorado defendants considering how to proceed following an adverse verdict. Judgment debtors must weigh the potentially significant financial risks posed by prejudgment interest accrual, especially during lengthy appellate proceedings.

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