

[Interest Incurred on Borrowed Funds to Secure an Undertaking is Not Recoverable](#)

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In [Rossa v. D.L. Falk Construction Inc.](#), 2010 DJDAR 6674 (May 6, 2010), a panel from the [First Appellate District](#) decided a novel case interpreting what constitutes a recoverable cost of appeal under the [California Rules of Court](#) (hereinafter “CRC”).

The plaintiffs were awarded \$100,000 on a breach of contract claim against D.L. Falk Construction Inc. (Falk). The trial court added to the jury verdict approximately \$680,000 in expenses, expert fees, and attorney fees. The Defendant appealed only from the award and the appellate court reversed. The court held that the court’s fee award of fees constituted an abuse of discretion because it was not supported by an appropriate explanation from the trial judge. Falk was awarded its costs on appeal.

On remand, Falk sought to recover the costs and expenses necessary to secure the appeal bond, including \$99,289.81 for interest expenses incurred for the posting of an undertaking. The plaintiffs moved to strike the interest component. Plaintiffs argued that the interest was not reimbursable under [8.278 of the CRC](#). The trial court granted the plaintiffs’ motion to strike the expenses. The court ruled that interest incurred on sums borrowed to obtain a letter of credit was not subject to reimbursement under the CRCs. Falk then appealed.

The court of appeal affirmed the decision of the lower court. The court stated that CRC section 8.278(d)(1)(F) specifies the recoverable costs of appeal include the cost to purchase a bond. The court noted that these costs include the premium and cost to obtain a letter of credit as collateral.

However, the court concluded that **interest paid** on sums borrowed to fund a letter of credit used to obtain the undertaking are not within the ambit of the CRC’s. The interest expense Falk attempted to recover was in connection with a letter of credit, which may be recovered under different provisions of the CRC. The court however, refused to extend interest reimbursement allowable to deposits to apply to bond interest. The appellate court concluded that Falk’s attempts to recover these interest expenses were properly denied.