

Calculating Judgment Interest in the Wake of Wisconsin Act 69

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A basic understanding of Wisconsin's judgment interest law is a valuable asset for civil lawyers. Attorneys need to understand how to correctly calculate judgment interest when (1) advising clients, (2) proposing a judgment or advising the court, and (3) working with already entered judgments. This article provides an overview of how to correctly calculate judgment interest in the wake of Wisconsin Act 69.

Wisconsin Act 69 and the New Rates

As part of a "Back to Wisconsin" Special Session, Governor Walker signed a bill into law that dramatically reduced Wisconsin's pre- and postjudgment interest rates.¹

Before Wisconsin Act 69, the interest rate on Wisconsin civil money judgments was 12%—among the highest in the nation. Act 69 adjusted this rate to 1% plus the Federal Reserve prime rate as indicated on January 1 or July 1 of the year in which the judgment was entered. As of July 1, 2012, this rate was 3.25%; so postjudgment interest on a judgment entered from July 1, 2012, to the end of year would be 4.25% until the judgment is paid off. The new rate scheme applies to all civil money judgments entered on or after December 2, 2011.

The difficulty with calculating interest rates under the new formula is that the Federal Reserve prime rate is continuously changing. As a result, creditors may be required to track multiple interest rates within the same case. Attorney Kevin T. White offers the following example:

Judgment is entered against the debtor and begins accruing interest at 4.25%. The following year, the creditor files a wage

¹ Wisconsin Special Senate Bill 14 was published on December 1, 2011, as 2011 Wisconsin Act 69, available at <http://docs.legis.wisconsin.gov/2011/related/acts/69>. These changes are codified in Wis. STAT. 807.01(4), 814.04(4), and 815.05(8).

garnishment in an attempt to satisfy the judgment, but the employer fails to respond and judgment is entered against the employer as provided for in Wis. Stat. § 812.41. If the prime rate has changed, the creditor will now be forced to track judgment interest at two different rates.²

To avoid the confusion, parties may choose to “opt-out” of the new interest rates by negotiating a contract rate of interest where feasible. This can occur when the parties enter into a consent judgment, a voluntary agreement between the parties that can memorialize the payment of damages. If the consent decree does not set a specific rate for judgment interest, the interest rate mandated by Bill 14 applies.

Prejudgment Interest

The difference between prejudgment and postjudgment interest is defined by when the interest rate is set. The court determines when the judgment starts accruing interest and, if this date is before the judgment was entered, this is prejudgment interest, even as it accrues years after the entry of judgment.

Prejudgment interest “is awarded where the amount of damages is determinable, either because the damages are liquidated or because there is a reasonably certain standard of measurement.” *City of Merrill v. Wenzel Bros.*, 88 Wis.2d 676, 697, 277 N.W.2d 799, 808 (1979). It is also awarded if the parties have explicitly agreed, either in their principal contract or in a supplementary stipulation or agreement, that damages will include prejudgment interest. *Kleinschmidt v. Aluminum & Bronze Foundry*, 274 Wis. 231, 79 N.W.2d 802 (1956) Finally, prejudgment interest is available as a matter of law when the final judgment award exceeds a prior settlement offer by the winning party.³ In this instance, interest begins to accrue on the date the settlement offer was made.

² Kevin T. White, *Wisconsin Modifies Interest Rate on Civil Money Judgments*, KOHN LAW FIRM, S.C. (Dec. 14, 2011, 3:53PM), <http://www.kohnlaw.com/Legal-Notes-Blog/December-2011-%281%29/Wisconsin-Modifies-Interest-Rate-on-Civil-Money-Ju.aspx>.

³ WIS. STAT. 807.01(4).

Prejudgment interest is designed to promote settlement between litigants. Determining whether a plaintiff is entitled to prejudgment interest can be complicated, but if you are working with an already-entered judgment, the text of the judgment controls. In all cases, once set, the prejudgment interest rate remains constant for the life of the judgment.

Calculating Judgment Interest

All parties awarded monetary damages by the court are entitled to postjudgment interest. Following is a step-by-step guide to calculating either pre- or postjudgment interest.

Step 1: Determine whether the plaintiff⁴ is entitled to postjudgment interest

In all instances where prejudgment interest is not awarded (with the theoretical exception for when parties negotiate a consent judgment with a no-interest provision) parties are entitled to postjudgment interest.

Step 2: Determine the applicable Federal Reserve prime rate

If the judgment was entered on or before June 30, then the judgment interest rate is based on the Federal Reserve prime rate on January 1 of the judgment year. If the judgment was entered on July 1 or later, then the interest rate is based on the Federal Reserve prime rate as indicated on July 1 of the judgment year.

You will almost always need to look up historical Federal Reserve prime rates, which you can do here:
<http://www.federalreserve.gov/releases/h15/data.htm>. If you ever need to look up the current Federal Reserve prime rate, perhaps to estimate what the judgment interest rate will be on an

⁴ Although the judgment creditor is referred to as “the plaintiff” here, this can be the defendant in cases where the defendant is awarded money damages pursuant to a counterclaim.

anticipated judgment, you may do so here:
<http://www.federalreserve.gov/releases/h15/data.htm>.

Step 3: Add 1%

Add 1% to the applicable Federal Reserve prime rate to get the rate of interest that will be applied to the judgment.

Step 4: Determine when the judgment began accruing interest

Postjudgment interest accrues from the date the judgment is entered until the judgment is satisfied, discarded, or otherwise expired.

Prejudgment interest accrues from the date the court so orders, again for the life of the judgment. If you are working with prejudgment interest in the context of an offer of settlement, the interest begins accruing from the date that the offer was made. Nonetheless, the date the judgment is entered is the operative one to determine the applicable interest rate.

In both cases, the judgment interest rate remains constant for the life of the judgment.

The New Rate System in Context

Proponents of the new judgment interest rate argue that the earlier 12% interest rate far exceeded market rates and overcompensated plaintiffs. The Wisconsin Civil Justice Council, Inc. referred to the 12% rate as “exorbitantly high,” “excessive,” and “unfair.” The Council further argued that it impeded settlement. Similarly, the American Tort Reform Association condoned the earlier 12% interest rate as imposing a punitive burden on judgment debtors. Supporters of the new rate scheme emphasize that it will prevent windfall profits to judgment creditors, while still guaranteeing that judgment debtors pay a reasonable rate of interest.

Although there was wide support for lowering Wisconsin judgment interest rates to a percentage more comparable with other states, critics of the new bill are concerned that it unnecessarily complicates the calculation of such rates. Critics also fear that a lower interest rate will reduce the incentive for judgment debtors to timely satisfy their judgments. If debtors are slower to satisfy judgments, creditors may have to expend more money to engage in collection methods such as supplemental examinations and garnishments.

With the new rate, the Wisconsin legislature aims to fairly reflect the current market value. Because the rate is dependent on the Federal Reserve prime rate, it does bear the possibility of again reaching 12%. This, however, is unlikely. The highest the Federal Reserve prime rate has ever peaked is at 11%, and that peak occurred in February of 1989.

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