SWANSON, MARTIN & BELL, LLP

General Trial Practice Group Newsletter
February 2021

What You Need to Know About Illinois' Pre-Judgment Interest Legislation

On January 13th at 3:00 a.m., merely 48 hours after its introduction, Illinois lawmakers approved the amended H.B. 3360 (the bill). Under the bill, injured plaintiffs in all personal injury and wrongful death cases would receive pre-judgment interest at 9%. H.B. 3360 is intended to deter companies or individuals from intentionally stalling or delaying cases that would be successful at trial. The bill also intends to encourage settlements.

Most states make available pre-judgment interest awards, but not without limitations. Even Illinois currently allows limited pre-judgment interest in cases where the amount is known and certain, such as in a contract case, or a suit on a note or mortgage. Like most states, the logic for similar statutes allowing pre-judgment interest in these cases is that the amount was defined, certain, and easily calculable. However, H.B. 3360 is an outlier.

The proposed Illinois legislation provides no explicit or implied damage caps or other reasonable limits on plaintiff awards. The bill would impose interest on an amount that is completely unknown. Since Illinois has no caps on non-economic damages, it is impossible for the defendant in an injury case to know what the amount of interest would be, in order to assess whether the defendant should move toward resolving the claim.

H.B. 3360 passed quickly with little time for meaningful debate. As written, the bill does not accomplish the goal that it set out to address. The virtually limitless pre-judgment interest would incentivize plaintiffs to unfairly pursue stalled and lengthy litigation at defendants' expense. The bill should not be enacted.

Implications for Illinois

Prior to the delaying effects of the current pandemic, Illinois courts had already experienced substantial delays in getting lawsuits to trial or judgment. With the added pandemic complications, it is understandable that the Illinois legislature may want to motivate parties to enter into good-faith settlement negotiations earlier on in the life of a lawsuit, especially in counties where there was already a backlog of cases. However, as written, the bill would have the unintended effect of encouraging plaintiffs to avoid settlement agreements in favor of delayed and lengthy litigation.

Encourages Delayed and Lengthy Litigation Based on Unfair Presuppositions

The bill would incentivize plaintiffs to intentionally delay and pursue lengthy litigation. The 9% pre-judgment interest would be calculated annually from the time the defendant was put on "notice of the injury itself from the incident itself or a written notice" to the date of the judgment. Illinois has a two-year statute of limitations (SOL) for most tort actions and a four-year SOL for construction-related injuries. This amendment has the potential to add anywhere from two to four years of interest to a plaintiff's judgment before any suit is filed, depending on when notice is given, and that interest could be greater for litigation involving minors.

If a plaintiff files just before the expiration of the SOL, the statute allows the plaintiff to voluntarily dismiss the case and refile within a year. Under Illinois' savings statute, plaintiffs could tack on 12 months of interest if a case ends up with a plaintiff verdict. While the case is delayed, the plaintiff could continue to accrue pre-judgment interest. No language in the bill suggests that interest accrual during such a period would be prevented.

To avoid incurring these excessive expenses, defendants would be pressured to compromise investigating plaintiff claims. The bill gives the defendant no time to fairly investigate a claim to decide whether it is meritorious before interest begins to accrue. The "clock" unfairly starts without a reasonable opportunity to assess whether there is a defense to the case.

The bill would discourage plaintiffs from pursuing a timely case resolution outside of litigation. Settlement agreements can already be elusive due to unreasonable demands and intransigence of the opposing party or counsel. H.B. 3360 would make agreements more difficult to reach. While states like Indiana only permit pre-judgment interest when parties have made qualified settlement offers, the proposed bill fails to mandate a similar limitation. Hence, H.B. 3360 would encourage tort victims to decline making and accepting settlement offers to prolong cases and collect greater interest on the judgment amount.

The bill's imposition of 9% pre-judgment interest also presumes that a plaintiff would always be successful at

trial, complicating case resolution outside of court. For instance, if settlement negotiations were to occur, Illinois plaintiffs would calculate anticipated pre-judgment interest in their evaluation of the disputed claim and what the verdict potential would be. Such a calculation would dramatically increase the settlement amount to which a defendant would be expected to agree upon. While states like New York require a showing of liability before interest accrues, H.B. 3360 presumes the plaintiff is entitled to the entire award from the date of the injury without such a showing.

In short, the proposed bill creates situations where plaintiffs would be tempted to stall and pursue lengthy cases based on unfair presuppositions while the defendant simultaneously incurs substantial expenses.

Negatively Impacts Business Operations

Illinois businesses and professionals would be substantially affected by the expense and impact of the bill. H.B. 3360 would impose interest on past injuries and previously filed actions to run from "the later of the effective date of [the bill]" or notice of injury to the defendant. As such, insurers could not have sufficiently underwritten policies to prepare for this additional expense and reserve on current claims. Insurance rates would be expected to rise significantly to account for the 9% pre-judgment interest, which would increase the expenses to defendant businesses and professionals with insurance policies.

The surge in expenses would further harm businesses and professionals already struggling. The ongoing pandemic has forced many businesses and professionals to operate at a decreased capacity or shut down operations altogether causing financial hardships. Instead of providing further assistance, the bill would impose yet another penalty upon them. Businesses and professionals could be expected to flee Illinois to escape the existing and oncoming difficulties associated with operating in the state. This would negatively impact consumers seeking their services and, consequently, Illinois' economy as a whole.

How To Avoid Being Negatively Impacted by the Bill

The Illinois Defense Counsel has lobbied in opposition to H.B. 3360 and submitted statements of opposition to Governor J.B. Pritzker. The Illinois Trial Lawyers Association has a campaign to support the bill by encouraging their clients (individual plaintiffs) to indicate their support via a **"Voice an Opinion" link**. Using the same link, critics of the bill are encouraged to write a short comment opposing the 9% pre-judgment interest bill.

The bill needs only a signature from Governor Pritzker to become law. If Governor Pritzker is to veto the bill, he will need a strong voice of opposition.

The attorneys at Swanson, Martin & Bell, LLP are dedicated to helping you, your business and your employees through this very difficult time and hope that you all are staying safe and healthy. If you have any questions about House Bill 3360, please do not hesitate to contact us.

Prepared by Swanson, Martin & Bell, LLP