12 Percent Interest? In This Economy? The Massachusetts SJC Affirms Statutory Interest Rate Added to Judgment

By Daniel P. McCarthy

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The Massachusetts Supreme Judicial Court recently handed down a decision affirming that the 12 percent interest rate imposed on damage awards is constitutional.

Chief Justice Scott L. Kafker wrote the May 9, 2023, decision in *Patricia Walsh Green v. Philip Morris USA Inc.*, a personal injury case where the defendant tobacco company was ordered to pay millions in damages. The Supreme Judicial Court transferred the case from the Appeals Court on its own initiative after defendant Philip Morris raised federal and state constitutional law questions in its appeal.

The Supreme Judicial Court held that the fixed, 12 percent per annum prejudgment and postjudgment interest rates set by G. L. c. 231, § 6B and G. L. c. 235, § 8 are not excessive or a violation of a defendant's due process rights under the Federal and State Constitutions.

In tort cases such as personal injury or damage to property, prejudgment interest accrues even before the award is determined, as it is calculated retroactively, starting from the day the case is filed. Further, postjudgment interest is added to any such award from the date it is entered until it is paid.

Unlike G. L. c. 93A's provisions for multiple damages in consumer protection litigation, which are designed to be punitive, the purpose of prejudgment and postjudgment interest rates is not to penalize the wrongdoer, but to make the damaged party whole.

Defendant Philip Morris argued that in today's low interest rate environment, 12 percent interest is excessive. It goes beyond making a party whole and, in actuality, is a windfall for plaintiffs. The rate, which was originally established at eight percent in 1974, has been set at 12 percent per annum since 1982.[1]

The Supreme Judicial Court disagreed, finding that the interest rate is not irrational or punitive, but ensures that plaintiffs "are fully compensated for the loss of the time value of their money during often lengthy periods of appeal."[2] It is considered to be a return on the money that a party would have had, but for the other party's wrong doing—even if it results in overpayment. The court noted that the interest awarded was comparable to the stock market's performance over the course of the case.

While the high interest rate may incentivize defendants to settle cases, the court found that it does not violate a defendant's due process rights. Philip Morris had argued that the high rates have an improper, chilling effect on litigation, which results in defendants settling or not appealing cases as they would under lower and fair rates.

Because of this, they claimed that the high interest rate violates their right to due process under both the federal and state constitutions. However, since fundamental rights and equal protection concerns were not at stake, the Supreme Judicial Court only needed to find that the legislature had a rational basis for the statute, and that it was reasonably related to the legislature's purported goal. Unlike a strict scrutiny review, the court did not have to find that the statute was narrowly tailored to its purpose, it just needed to be reasonably related to a valid state interest.

The decision noted that in the past decade, Vermont[3] and Rhode Island[4] have applied similar reasoning to uphold statutory provisions for 12 percent interest rates. In a due process challenge in the US District Court for the Southern District of New York, the court found that a nine percent prejudgment interest rate "rationally serves a legitimate government interest."[5]

Although one argument in favor of set rates is that it makes the amount of interest foreseeable and easy to calculate, defendant Philip Morris also pointed out that other Massachusetts statutes set variable rates for other litigation. For medical malpractice judgments, G. L. c. 231, § 60K applies an interest rate of the Treasury yield plus two percent, which is capped at 12 percent. For judgments against the commonwealth, G. L. c. 231, § 6I caps the interest rate at ten percent per annum, but sets interest rates based on the weekly average one-year constant maturity treasury yield for the week prior to the judgment.

Ultimately, as the court noted, the decision is up to the legislature.[6] Until the legislature revises the statutes, defendants will have to factor in the prejudgment and postjudgment rates, together with the anticipated length of the case, when determining their litigation strategies.

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[1] *Green et. al. v. Philip Morris USA Inc. et al.*, No. SJC-13330, slip op. at n.16 (Mass May 9, 2023).

[2] *Id*. at 32.

[3] *Concord Gen. Mut. Ins. Co. v. Gritman*, 2016 VT 45.

[4] *Oden v. Schwartz*, 71 A.3d 438 (R.I. 2013).

[5] *Citibank, N.A. v. Barclays Bank, PLC*, 28 F. Supp. 3d 174, 183 (S.D.N.Y. 2013).

[6] *Green*, slip op. at n.19.

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