

Cray • Huber

NEW PREJUDGMENT INTEREST STATUTE—A DEFENSE PRACTITIONER'S GUIDE TO THE NEXT ASSAULT ON YOUR CHECKBOOK BY ILLINOIS COURTS

- The statute applies to all personal injury and wrongful death cases;
- The statute applies to pending and future cases;
- The 6% per annum simple interest rate applies to all categories of damages except punitive damages, sanctions, statutory attorneys' fees and statutory costs;
- On cases filed after July 1, 2021, interest begins to run from the date the complaint is filed;
- On cases filed before July 1, 2021, interest begins to run on the date of the occurrence or July 1, 2021—whichever date is later;
- Interest can run only for a total of 5 years;
- Interest does not run while a case is voluntarily dismissed;
- Interest can be cut off by the highest written settlement offer made within 1 year after July 1, 2021, or the date the complaint is filed if the offer is rejected by the plaintiff or not accepted within 90 days. In other words:
 - On pending cases, you have until July 1, 2022, to make a written settlement offer to cut off interest;
 - On future cases, you have 1 year from the date the complaint is filed to make a written settlement offer to cut off interest;
 - For example, if you make a \$500,000 settlement offer to a plaintiff on a pending case before July 1, 2022, the plaintiff rejects the offer, and there is a \$1,000,000 verdict, then interest is charged only on \$500,000 of the verdict.

The statute leaves many questions unanswered—

1. When does interest run as to a defendant added in an amended complaint?
2. When is the deadline for a later added defendant to make a written settlement offer that will cut off interest?
3. How does the statute apply to third-party defendants?
4. What happens if a third-party defendant makes a settlement offer to a plaintiff?

In many cases, you may not even have the plaintiff's deposition testimony within 1 year of the filing of the complaint. Therefore, you must be more aggressive in obtaining facts necessary to advise your client of the information needed to make a settlement offer within 1 year of the filing of the complaint (or July 1, 2022, for pending cases). You may not be able to delay issuing written discovery, getting a HIPAA order, getting medical records, etc. You may want to issue written discovery when you file your answer or even before filing your answer (as long as all parties have appeared). You may want to obtain a list of treaters and have a HIPAA order entered ASAP. You also need to think more about giving plaintiffs extensions of time to respond to written discovery, failing to enforce 28-day written discovery deadlines, and the time it will take to resolve discovery disputes. There is no provision in the statute to toll or extend the 1-year settlement offer provision. The clock continues to run while the plaintiff attempts to serve the defendant, while motions are briefed, and while the court decides motions and handles discovery disputes, etc.

Any questions regarding this statute, contact Zachary Shook: zgs@crayhuber.com or (312) 332-8516.