

**RECENT DECISION HOLDING DEFENDANTS ARE JOINTLY AND SEVERALLY LIABLE FOR PREJUDGMENT INTEREST FOLLOWING REJECTION OF PLAINTIFF'S §998 OFFERS WHERE PLAINTIFF GETS MORE FAVORABLE JUDGMENT**

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In Cadlo v. Metalclad Insulation Corporation (March 30, 2009) 09 C.D.O.S. 4004, Division Five of the First Appellate District reviewed an issue of first impression regarding the amount of prejudgment interest owed by two defendants in a personal injury action after both rejected plaintiff's CCP section 998 offers to compromise and plaintiff went on to obtain a more favorable judgment against both of them. The trial court held that each defendant was jointly and severally liable for prejudgment interest on the judgment and each was obligated to pay the statutory annual rate of 10 percent on the amount of the judgment attributable to it. Plaintiff argued each defendant should be obligated to pay the 10 percent on the amount of the entire judgment. The court of appeal rejected plaintiff's contention and affirmed.

"Civil Code section 3291 provides that if a defendant does not timely accept a Code of Civil Procedure section 998 offer to compromise (hereafter 998 offer) and the plaintiff obtains a more favorable judgment, the plaintiff is entitled to specified annual interest." The statutory rate is 10 percent.

After the trial, "respondents stipulated to satisfy the joint and several economic damages award by the same allocation ratio made by the jury (4 percent of fault to Metalclad, 3 percent of fault to John Crane). Thus, Metalclad agreed to compensate appellant for 57 percent of the economic damages award and Crane agreed to compensate appellant for 43 percent of the economic damages award." Thereafter, the court entered a remittitur and both respondents tendered their payments to appellant in an effort to satisfy the judgment. Appellant rejected respondent's tenders of payment on the ground that neither contained enough interest. Appellant maintained she was entitled to 10% annual interest on the entire judgment award from each defendant.

Defendants moved for a final determination on the judgment and for entry of satisfaction of judgment. The trial court agreed with defendants that they were jointly and severally liable for the interest under section 3291, and rejected appellant's assertion. The court observed that appellant was seeking double the amount of interest to which she was entitled by statute. The trial court found that each tendering defendant had satisfied its share of the judgment and stopped the accrual of interest as of the date each tendered to appellant. Appellant timely appealed the court's order on respondent's motion for determination of final judgment and satisfaction of judgment.

The Court of Appeal rejected appellant's efforts to seek 20% interest on the judgment and affirmed. "The words of the statute are clear and unambiguous: the judgment shall bear interest at the legal rate. Though two defendants were found liable by the jury, only one judgment resulted, and the interest imposed by section 3291 is to be calculated on that amount."

Appellant's effort to seek 20% interest on the judgment was inconsistent with the purpose and intent of the statute. "Section 3291 serves two purposes. It encourages settlements in personal injury cases by creating "an incentive for recalcitrant defendants to accept reasonable settlement offers in a timely manner."...[and] "to provide just compensation to the injured party for loss of use of the [damage] award during the prejudgment period—in other words, to make the plaintiff whole as of the date of the injury." The court would not countenance appellant's effort to obtain a windfall. "Section 3291 creates a penalty to be imposed on those defendants who reject reasonable settlement offers, but limits that penalty to making the plaintiff whole as of the date of the injury."

This decision makes clear that when multiple defendants reject section 998 offers to compromise and plaintiff gets a more favorable judgment against them, defendants will be jointly and severally liable for the prejudgment interest on the judgment pursuant to CC 3291 and plaintiff is not entitled to more than 10% prejudgment interest on the judgment.