

# Expert Insights: Chubb Excess Casualty's Liability Market Analysis

Arizona  
Punitive Damages  
and Illinois  
Pre-judgment  
Interest

## Arizona Supreme Court - Favorable Opinion on Punitive Damage

The Supreme Court of Arizona recently clarified the state's law regarding the punitive damages standard in negligence cases. In *Mountz v. Swift Transportation et al.*, No. CV-20-0119-PR (S. Ct. Ariz. August 23, 2022), the Court held that, in a negligence case, a plaintiff must establish "that the defendant's conduct was 'outrageous, oppressive, or intolerable,' and 'create[d] [a] substantial risk of tremendous harm,' thereby evidencing a 'conscious and deliberate disregard of the interest[s] and rights of others.'"

To meet this standard, the Court stated that proof must exist to show that the defendant's conduct was either "intended to cause harm, motivated by spite or ill will, or outrageous in which the defendant consciously pursued a course of conduct knowing that it created a substantial risk of significant injury to others."

In so deciding, the Court stated that punitive damages may only be applied when a defendant had a "knowing, culpable state of mind" (citing *Gurule v. Ill. Mut. Life & Csa. Co.*, 152 Ariz. 600,601(1987)). The Court further reasoned that by asserting

a claim for negligence, by definition, the plaintiff acknowledges no intent existed to injure them and so the defendant's conduct must be so outrageous that it demonstrates the defendant had an "evil mind" (citing *Volz v. Coleman Co.*, 155 Ariz. 567 (1987)).

Insurers and insureds alike should be mindful of this shift in Arizona law as it may provide a basis for summary judgment on these claims.



# Illinois Pre-judgment interest in tort-related lawsuits is ruled unconstitutional and invalid

**T**his Expert Insights edition focuses on *Jennifer Hyland v. Advocate Health and Hospital Corp., et al.*, Case No. 17 L 3541. In this case, Judge Marcia Maras of the Cook County Circuit Court found Illinois newly passed pre-judgment interest statute unconstitutional and invalid. The Court, citing arguments made by the defendants, found the law violated several provisions of the Illinois Constitution, including the right to a jury trial and the prohibition against special legislation.

The statute mandated that in lawsuits brought to recover damages for personal injury or wrongful death, pre-judgment interest – at a rate of 6% per annum – would be included on damage awards

calculated from the date of the filing of the lawsuit with exceptions applying for punitive damages and certain statutory fees and costs.

Judge Maras found the law improperly strips away a sitting jury's right to assess all issues in a case, including those related to damages, and requires a jury to award pre-judgment interest that would often exceed a defendant's time-limited offer prior to trial. Further, the Court found that by excluding certain torts from pre-judgment interest, the law creates an arbitrary division between personal injury torts and all others.

Considering these inconsistencies, Judge Maras held the law could not be maintained. The plaintiffs are expected

to appeal this decision, which would then go directly to the Illinois Supreme Court. Insurers and defendants should continue to factor pre-judgment interest into their settlement offers until such a decision is handed down by the Court on appeal.



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