

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

This 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.



Get the Insights

For further information, please contact:

Joseph Fobert
EVP, Chubb Excess Casualty
212.703.7137
joseph.fobert@chubb.com

Alycen A Moss
Vice Chair, Global Insurance Department
Co-Chair of the Property Insurance
Group & Office Managing Partner
of the Atlanta office
Cozen O'Connor
404.572.2052
amoss@cozen.com

CHUBB®

**COZEN
O'CONNOR**

Chubb is the marketing name used to refer to subsidiaries of Chubb Limited providing insurance and related services. For a list of these subsidiaries, please visit our website at www.chubb.com. Insurance provided by ACE American Insurance Company and its U.S. based Chubb underwriting company affiliates. All products may not be available in all states. Surplus lines insurance sold only through licensed surplus lines producers. Chubb, 202 Hall's Mill Road, Whitehouse Station, NJ 08889-1600.

The information contained in this document is intended for general informational purposes only and is not intended to provide legal or other expert advice. You should consult knowledgeable legal counsel or other knowledgeable experts as to any legal or technical questions you may have. Neither Chubb nor its employees or agents shall be liable for the use of any information or statements made or contained in any information provided herein. This document contains links to third-party Web sites solely for informational purposes and as a convenience to readers and not as an endorsement by Chubb of the entities referenced or the contents on such third-party Web sites. Chubb is not responsible for the content of linked third-party sites and does not make any representations regarding the content or accuracy of materials on such linked Web sites. The opinions and positions expressed in this report are the authors' own and not necessarily those of Chubb.

Cozen O'Connor

Ranked among the top 100 law firms in the country, Cozen O'Connor has more than 775 attorneys in 30 cities across two continents. We are a full-service firm with nationally recognized practices in litigation, business law, and government relations, and our attorneys have experience operating in all sectors of the economy. Our diverse client list includes global Fortune 500 companies, middle-market firms poised for growth, ambitious startups, and high-profile individuals.

Copyright ©2022 09/2022