

Don't Forget About Pre-Judgment Interest On Wrongfully Withheld Policy Benefits

July 19, 2016 | [Claims, Policyholder Protection](#)



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Has your insurer informed you that belated payment of policy benefits somehow “cures” any prior delay and insulates the insurer from any further liability? Don't believe it. In fact, under California law a wide range of damages are potentially available for an insurer's failure to timely pay an insurance claim under a bad faith theory. These include, among other things, consequential damages for the insurer's tortious conduct – such as attorneys' fees incurred in seeking the subject policy benefits – and punitive damages upon a proper showing. Bad faith damages, however, do not constitute the sole remaining policyholder remedy for wrongfully withheld policy benefits.

Indeed, insureds often forget that pre-judgment interest is available in instances where the benefits sought are capable of being made certain by calculation, among others. With respect to certainty, courts consider whether the insurer knew the amount of policy benefits claimed by the policyholder or could have computed that amount from reasonably available information. Notably, a dispute regarding liability under the policy does not preclude the potential recovery of pre-judgment interest. Accordingly, pre-judgment interest may be a permissible element of contract damages in connection with a coverage dispute over wrongfully withheld policy benefits. Moreover, until and unless the pre-judgment interest is paid in full, attorneys' fees for seeking the subject policy benefits continue to accrue.

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