Interest on Verdicts and Judgements in State and Federal Courts

Robert G. Berry

Follow this and additional works at: http://scholarship.law.nd.edu/ndlr

Part of the Law Commons

Recommended Citation
Available at: http://scholarship.law.nd.edu/ndlr/vol38/iss1/3

This Note is brought to you for free and open access by NDLScholarship. It has been accepted for inclusion in Notre Dame Law Review by an authorized administrator of NDLScholarship. For more information, please contact lawdr@nd.edu.
NOTES

INTEREST ON VERDICTS AND JUDGMENTS IN STATE AND FEDERAL COURTS

A. Introduction

From the commission of a wrong until the controversy has been finally decided by an appellate court, the parties may have made several trips from the trial court through the appellate courts and the time might span several years. The question of whether or not interest should be levied, and the point from which it should run is an important question to be answered in such a suit. The purpose of this note will be to analyze the specific problems of computing interest on liquidated claims.

B. The Pattern

Cases that involve the question of when interest begins to run on liquidated claims arise in one of five ways: (1) The entry of judgment is delayed by the defendant's motion for a new trial or for judgment n.o.v. (2) The trial court enters judgment for the defendant on his motion for a judgment n.o.v., and this judgment is subsequently reversed, the appellate court remanding for entry of judgment for the plaintiff. (3) The trial court, after the return of a jury verdict, orders a remittitur as a condition to denying defendant's motion for a new trial, and a judgment is entered on the reduced amount. (4) The appellate court orders a remittitur, or, in the alternative remands for a new trial. (5) The trial court, faced with a simple direction of the appellate court which does not include the item of interest, either concludes that the mandate permits interest from date of verdict, original judgment, from judgment entered in accordance with the mandate, or denies interest altogether.

Courts have displayed something less than unanimity in dealing with each of these problems. Accordingly, an analysis of each of the situations as they have arisen on both the state and federal levels will be made, with specific emphasis on the interpretation of the statute involved, whether the state interest on judgment statute or Section 1961 of the Federal Judicial Code.

C. The State Courts

1. Absence of Statute

Although this has been the "majority" approach, some courts have granted interest

---

1 E.g., Stockton Theatres, Inc. v. Palermo, 55 Cal. App. 2d 439, 360 P.2d 76 (1961) (case before the Supreme Court of California seven times, covering a period of twelve years).
2 The standard definition of liquidated claims is stated in BLACK, LAW DICTIONARY 468 (4th ed. 1951):
When the amount . . . has been ascertained by the judgment . . . or when a specific sum of money has been expressly stipulated by the parties to a bond or other contract as the amount of damages to be recovered by either party for a breach of the agreement by the other.

The definition of unliquidated claims:
Such as are not yet reduced to a certainty in respect of amount, nothing more being established than the plaintiff's right to recover; or such as cannot be fixed by a mere mathematical calculation from ascertained data in the case. Id. at 469.

For problems of interest on unliquidated claims see Annot., 36 A.L.R.2d 337 (1954). For problems arising from the effect of a statute changing the rate of interest allowable upon transactions or obligations some part or all of which took place prior to the passage of the statute see Annot., 4 A.L.R.2d 932 (1949). For problems of what statute of limitations is applicable to the recovery of interest on a judgment see Annot., 120 A.L.R. 719 (1939).

3 E.g., Baltimore City Passenger R.R. Co. v. Sewell, 37 Md. 443 (1873).
4 E.g., La. & Ark. R.R. Co. v. Pratt, 142 F.2d 847 (5th Cir. 1944).
6 E.g., Capital Airlines, Inc. v. Barger, 341 S.W.2d 579 (Tenn. 1960).
without statutory authority.\(^9\) In so doing, the courts emphasize the "character" of the defendant's actions,\(^{10}\) and whether or not the claim was liquidated when the case came to trial.\(^{11}\) *Fitzgerald v. Bixler*\(^{12}\) is illustrative of the manner in which an appellate court can penalize a party whose improper actions have necessitated an unnecessary appeal. The defendant in *Fitzgerald* was granted a judgment *n.o.v.* although he had not followed correct procedure in his post-trial motions; the Supreme Court of Michigan directed that interest be levied from the time the verdict was rendered. The general principle was enunciated by another court: "where delay in entering judgment on the verdict is occasioned by the act of the party against whom it is rendered, interest is allowed."\(^{13}\) This principle has been extended so that even if the delay is caused by a clerk's negligence in entering judgment, or the court itself is at fault in some way, interest is computed from the date of the verdict.\(^{14}\)

When a claim has become liquidated, usually by a jury verdict, some appellate courts have granted interest from the date of original judgment.\(^{15}\) The reason suggested for so doing is that when plaintiff's verdict had been upheld, the original judgment and verdict were never lost—they were merely affirmed on appeal.\(^{16}\) Another reason advanced for granting interest from either the return of verdict and entry of judgment—or even from the inception of the wrong—is that, with regard to liquidated claims, interest is part of the just compensation due the injured party.\(^{17}\) Most courts hold that, in the absence of a statute, interest on an unliquidated claim will begin as soon as the claim is subject to reasonable computation.\(^{18}\)

2. Under Statute

\(a\). From the time of injury

Interest is compensation. Two distinct forms of compensation are involved: interest on damages and interest on the verdict or judgment.\(^{19}\) Interest on damages is interest which covers the period from the date of the loss to the date of ascertainment of damages and is computed by the judge or jury in assessing total damages.\(^{20}\) The amount thus computed is called interest *qua* damages. Interest on the verdict or judgment, however, is termed interest *eo nomine.*

Even where there is a specific statutory direction regarding computation of interest, courts have seen fit to grant interest from the time the wrong was committed, basing their holdings on the idea that interest, in this sense, is part of the just compensation due the injured party.\(^{21}\) While a liquidated claim is frequently


\(^10\) E.g., Clinton v. Gant, 337 S.W.2d 761 (Tenn. 1960).


\(^12\) Kan. City Ft. S. & M. R.R. Co. v. Berry, 55 Kan. 186, 40 Pac. 288, 289 (1895); See also, Clinton v. Gant, 337 S.W.2d 761 (Tenn. 1960).


\(^14\) E.g., Reimers v. Connet Lumber Co., 273 S.W.2d 348 (Mo. 1954) (overruling Scullin v. Wabash R.R. Co., 192 Mo. 6, 90 S.W. 1028 (1905) which held that interest would run from the filing of the appellate court's mandate).


\(^16\) E.g., Missouri K. & T. Trust Co. v. Clark, 60 Neb. 406, 83 N.W. 202 (1900).

\(^17\) E.g., Nat'l Fire Ins. Co. of Hartford v. Everton, 157 Neb. 540, 60 N.W.2d 698 (1953).

\(^18\) Keen v. Mid-Continent Petroleum Corp., 63 F. Supp. 120, 141 (N.D. Iowa 1945) "It is believed that there is a distinction between interest on a claim before it is reduced to judgment and interest on a judgment as a judgment."

\(^19\) E.g., Miller v. Robertson, 266 U.S. 243 (1924); McCormick, DAMAGES §§ 50-59 (1935).

\(^20\) E.g., Redfield v. Ystalyfera Iron Co., 110 U.S. 174, 176 (1884): "Interest is given on money demands as damages for delay in payment, being just compensation to the plaintiff for a default on the part of his debtor."
stated to be necessary before interest will be computed as a part of the damages, at least one court has recognized the possible injustice that would result from an iron-clad rule:

It has long been recognized that injustice results if interest, even in the case of unliquidated damages, cannot be allowed from the date of the injury. An examination of the authorities in this field reveals little else except a degree of confusion on this problem... the more recent cases support the view that in awarding full compensation even in cases of unliquidated damages account must be taken of interest for the period between the damage and award.

The computation of interest qua damages, is, at best, a highly speculative process which varies among the courts. A particular problem is presented in computing interest eo nomine upon a verdict or judgment (depending on the statute) comprised of interest qua damages. In order to avoid compounding interest, an apparent solution would be to enter judgment for the amount of the initial loss only, and then allow interest on this sum from the date of the loss until payment. It seems, however, that this defeats the purpose of interest qua damages from the date of injury. The best solution would be to allow interest eo nomine on the judgment after the court has decided what amount of interest qua damages is to be included in the judgment.

b. From the time of verdict

The typical statute which provides that interest on money judgments shall accrue from the date of verdict or the finding of the court has the following features: (1) The computation of interest is usually permissive and not mandatory, (2) It makes no difference whether the judge or jury renders verdict, (3) The clerk usually has the duty of entering judgment and computing interest from the date of verdict, (4) The statute operates prospectively.

In a few typical cases, the courts have come up with the following holdings in applying these statutory mandates: In Nugent v. Boston Consolidated Gas Co., the state statute was interpreted to mean that interest runs on the verdict regardless of whether judgment was entered into the docket — any case which has been decided automatically goes to judgment for the purpose of computing interest. However, if there has been a long delay between verdict and judgment, the courts...
will generally deny interest altogether even though there is a statute to the contrary.\textsuperscript{31} If a verdict is appealed, interest is computed from the date of entry in the trial court even though the case is subject to direct attack. Further, any modification on appeal draws interest from the date of the entry of the original award. However, if the judgment is reversed, the new award bears interest only from the time it is entered in the trial court.\textsuperscript{32}

If a trial court sets aside the plaintiff’s verdict, and is reversed on appeal, interest will nevertheless run from the date the original verdict was rendered.\textsuperscript{33}

Judgments nunc pro tunc are sustained . . . in furtherance of justice and in order to save a party from unjust prejudice through a delay caused by the act of the court or the course of judicial procedure. In other words, the practice is intended merely to make sure that one shall not suffer for an event which he could not avoid.\textsuperscript{34}

Occasionally statutes provide for interest from the verdict, to be entered at the time of final judgment. This presents the problem of defining “final judgment.” For purposes of interest, is the judgment final when the clerk enters judgment although the defendant appeals? Will the judgment only become final when the appellate court has made its determination, and the trial court enters judgment in accordance with the higher court’s mandate?\textsuperscript{35} The Illinois court was faced with the problem of defining final judgment in Commissioners of Lincoln Park v. Schmidt,\textsuperscript{36} an eminent domain proceeding. By statute, if at any time during the proceeding the state had a judgment rendered against it, that judgment was conditional upon further action by state officials. The park commissioners claimed that the judgment was conditional upon further action on its part and therefore interest could not be computed until that action had been taken. The court, however, held that the judgment, which included interest, was final within the spirit of the statute—the “equities” being clearly on the side of the plaintiff.

Where the statutory mandate is not clear as to when interest shall begin to run, two approaches seem readily discernable: (1) If plaintiff is to be fully compensated for the delay in collecting his claim,\textsuperscript{37} it is inequitable to compute the interest from the date of final judgment,\textsuperscript{38} when entry of judgment is delayed by defendant’s post-trial motions.\textsuperscript{39} (2) Since the claim becomes liquidated when verdict is rendered, the trial court need not speculate as to the amount of damages.\textsuperscript{40}

Therefore, interest, though permissive, runs from the date verdict is entered.

c. From the time of judgment

The statutes that clearly provide for interest \textit{eo nomine} from time of judgment

\textsuperscript{31} See, \textit{e.g.}, Redfield v. Ystalyfera Iron Co., 110 U.S. 174, 176 (1884): But where interest is recoverable, not as part of the contract, but by way of damages, if the plaintiff has been guilty of laches in unreasonably delaying the prosecution of his claim, it may be properly withheld.


\textsuperscript{33} Ireland v. Connecticut Co., 112 Conn. 452, 152 Atl. 614 (1930).

\textsuperscript{34} Id. at 615.

\textsuperscript{35} This question will be dealt with at length when the general problem of remittitur is considered. Also it will be treated specifically as part of the analysis of the federal courts’ treatment of the matter. The general rule, however, is stated in Schneiderman v. Interstate Transit Lines, Inc., 401 Ill. 172, 81 N.E.2d 861, 863 (1948): “[A] mandate of the Supreme Court to the Appellate Court creates a positive duty upon the Appellate Court to follow such mandate, and therefore to consider only questions not previously decided.”

\textsuperscript{36} 379 Ill. 130, 39 N.E.2d 1012 (1942). See also, State \textit{ex rel.} Peterson v. Anderson, 78 Ore. 761, 69 N.W.2d 688 (1955); Commissioners of Lincoln Park v. Schmidt, 395 Ill. 316, 69 N.E.2d 869 (1946); Commissioners of Lincoln Park v. Schmidt, 386 Ill. 550, 54 N.E.2d 525 (1944).

\textsuperscript{37} \textit{E.g.}, Daly v. Savage, 27 Ohio App. 133, 160 N.E. 881 (1927).

\textsuperscript{38} \textit{E.g.}, Commissioners of Lincoln Park v. Schmidt, 379 Ill. 130, 39 N.E.2d 1012 (1942).

\textsuperscript{39} \textit{E.g.}, Hilton v. State, 60 Neb. 421, 83 N.W. 354 (1900).

\textsuperscript{40} \textit{E.g.}, Phoenix Assurance Co. v. Ocean Accident & Guarantee Corp., 357 P.2d 642 (Colo. 1960).
usually do not create any substantial problems. However, some essential questions
remain: What judgment, the original decree entered by the clerk upon instructions
of the court or the judgment as amended by an appellate court? How definite
need the statute be? Will the statute apply to proceedings in equity? These ques-
tions will be the subject of inquiry under this section.

When courts grant interest from the date of verdict, one of the prime reasons
for so doing is that the plaintiff ought not be penalized by the defendant's post-
trial motions, even though the motions are "made in honest assertions of what
he conceives to be his rights." However, when courts interpret an interest from
judgments statute, they are just as vehement in insisting that post-trial motions
should not be used to penalize the defendant in any way. The leading case is
*Baltimore City Passenger R.R. Co. v. Sewell.* Defendant's motion for a new
trial was not overruled until 16 months after plaintiff's verdict. This ruling was
appealed and affirmed. Upon remand, the plaintiff asked for interest from the
date of verdict and defendant asked that it be computed from the date of final
judgment. The trial court, in interpreting the local statute, allowed interest from
date of verdict, apparently on the theory that interest runs on any claim as soon
as it becomes liquidated. The appellate court reversed, holding that motions after
trial, and the appropriate disestablishment thereof, cannot be the occasion to visit
increased damages on the maker of the motion. The court further reasoned that
a motion for new trial had to be viewed as being as valuable a right as trial by jury.
It, therefore, would not be penalized. Implicit in the opinion, however, is the
notion that the post-trial motions must be made in *good faith* in order to avoid
increased damages. In another case, the statute provided that "All judgments on
verdict shall * * * carry interest from the date of the rendering of such verdict." The
court interpreted this statute as permitting only interest from date of judgment
because of the seemingly punitive effects on the making of motions.

Another problem is that of determining which judgment, the original or
appellate, controls the computation of interest: that is to say, is interest suspended
while the case is on appeal? The holding of most courts is that interest runs from
the time original judgment is entered — not the time the judgment mandate is
rendered by the high court. This is the rule applied whether the appellate court
increases or reduces the original judgment. However, if the trial court does not
include interest in its judgment entry, and the appellate court merely affirms the
trial court, all that can be done is to follow the appellate court's mandate which,
usually, does not make any provision for interest. Thus, the rule that interest
shall run from the time of original judgment only applies to interest bearing
judgments.

The principal point to be observed here is that if a plaintiff received a favorable
verdict, and the judge does not direct the clerk to compute interest from date of
judgment, a motion should immediately be made to direct the clerk accordingly.
However, there may be a statute which specifically authorizes the clerk to add
interest from date of judgment even without a court order to do so. In such a
case, the subsequent motion to include interest in the judgment before appeal
would, of course, be unnecessary.

43 37 Md. 443 (1873).
46 E.g., Yarno v. Hedlund Box & Lumber Co., 135 Wash. 405, 237 Pac. 1002 (1925).
47 E.g., *In re Thomson's Estate*, 192 S.W.2d 867 (Mo. 1946).
48 Martin County Bank v. Bird, 90 Minn. 221, 96 N.W. 915, 916 (1903): *The clerk was authorized to add interest to the amount determined by
the court from the date of the order. It was not necessary for the order
for judgment to specify that such interest should be computed.*

See also, *Arizona Eastern R.R. Co. v. Head*, 26 Ariz. 259, 224 Pac. 1057 (1924); *Bond v.
United R.R. Co.*, 159 Cal. 270, 113 Pac. 366 (1911).
Courts which must interpret a general interest from judgments statute frequently must determine how definite the judgment entry need be before interest may be computed on it. In *Nelson v. Canadian Industrial Alcohol Co.*, the verdict entered was "One Hundred Thousand Dollars and costs, etc." The court held that this verdict was too indefinite to allow interest from the date of verdict. "Any provision relating to interest to be valid and to make such interest collectable must be certain, or, at least, capable of being reduced to a certainty." The court apparently believed that "costs, etc." was not definite enough to indicate that the trial judge considered interest to be part of the just compensation in the case. Therefore, the practitioner should specifically request that interest be included whether the statute calls for interest from date of verdict or date of judgment.

A point that seems to be fairly well settled is that interest computed under statutory authority will apply in equitable as well as legal actions.

It is well established that an equity decree for the payment of money is a judgment made upon a finding of a judge and thus bears interest from the date of the judgment or award to the date the judgment is satisfied.

In concluding this section, it should be noted that whether the particular jurisdiction has an interest from verdict or an interest from judgment statute, the cases discussed imply that the statute only controls the computation of interest *eo nomine*. If the injured party can prove that interest *qua* damages is necessary so that he may be justly compensated, the judge under a proper instruction can send this issue to the jury. When the verdict is rendered, interest is included in the verdict and the only question is what time interest on the verdict will be computed.

This proposition seems simple enough. Yet, many courts have confused the damage with the interest issue. In *Mallory v. Jurgena*, the Supreme Court of Iowa stated the general principle to be that if the claim is definite and liquidated, "[t]he court can either submit the interest question to the jury under an instruction, or the court can enter judgment for the interest after the verdict, on proper motion." Because adequate interest can make the difference between a satisfactory and an unsatisfactory judgment, the following steps seem advisable: (1) If the claim is unliquidated at the time of the wrong, i.e., a personal injury, interest *eo nomine* is the primary concern. Thus reference to a particular jurisdiction's statutes with reference to the problems discussed in this section would be of primary importance. The only real question as to damages is the extent of injury—not what the plaintiff lost in terms of monetary value by the delay in receiving payment; (2) If the claim is liquidated or subject to reasonable computation at the time of the wrong, e.g., conversion, replevin or breach of contract, the issue of interest *qua* damages should be taken into account in determining the amount of damages.

---

50 38 Del. 165, 189 Atl. 591 (1937).
51 Id. at 593.
52 Ibid.
54 Id. at 393.
55 250 Iowa 16, 92 N.W.2d 387 (1958).
56 Id. at 391. This holding seems even more unusual when considered in light of another case, forty seven years earlier in the same jurisdiction, which cited the correct rule. The court in Jacobson v. U.S. Gypsum Co., 150 Iowa 330, 130 N.W. 122, 125 (1911) recognized the rule to be:

"That a personal injury never creates a debt, and does not become one until it is judicially ascertained and determined, has never been departed from by this court, and, if this be true, it was erroneous for the trial court to tell the jury to allow interest *eo nomine* upon the amount of damages awarded in a personal injury suit."
Such factors as loss of immediate resale value with the opportunity of investing the money so received should be transmitted to the jury under appropriate instructions. Only when the jury comes back with its verdict should the question of interest *so nomine* come to the fore. The computation thereof should begin as soon as possible and continue until the defendant pays the outstanding judgment.

d. Remittitur

Although the problem of determining an appropriate time to start computing interest is presented in countless forms and factual situations, a remittitur ordered by the trial or appellate court presents special problems that must be dealt with specifically. The interest question may arise in this procedural context: The jury returns a verdict, the trial judge orders a remittitur and this order is appealed and affirmed. From what date will interest be computed? Another way: The trial judge orders a remittitur and the appellate court reverses, reinstating the original verdict. Another: The trial judge enters judgment in accordance with the jury's verdict and the appellate court orders a remittitur, or in the alternative, a new trial. Within each of these broad areas, specific problems come to the fore: When the verdict is remitted, must the plaintiff remit the interest on the reduced award from the date of rendition of the verdict to the date of the filing of the remittitur, or on the difference between the reduced award and the verdict of the jury? This introduction indicates the complexity of the problems in the area.

In *Sharp v. Keiser*, the statute provided for interest from the date of judgment. The trial court ordered a remittitur and held that plaintiff had to remit interest on the difference between the reduced award and the verdict of the jury. On appeal, in a rather strange opinion, the court affirmed, and further held that when interest is not mentioned, there is a presumption that the award of remittitur will be the correct judgment and interest will not be properly included. Implicit in the opinion is the idea that remittitur is not the kind of order that could be brought within the pale of the statute.

In *Stever v. Associated Transport, Inc.*, the New York Civil Practice Act provided that when "final judgment is rendered for a sum of money awarded by a verdict * * *", there shall be included in the amount of the judgment, interest upon the total amount awarded, from the time when the verdict was rendered * * * to the time of entering judgment * * *." Plaintiff received a verdict for $40,000 in a personal injury suit. Defendant's motion to set aside the verdict was denied, but the trial court offered a remittitur of $22,500. Upon plaintiff's refusal to accept the reduced award, cross-appeals followed. A divided appellate court affirmed. Then the plaintiff agreed to remit the verdict which included $1,185 interest from the date verdict was rendered. The trial court entered judgment accordingly and the defendant appealed again. The Supreme Court, over a cogent dissent, affirmed on the question of interest and held that such a holding was not in conflict with the Practice Act. Again, the court seems to hold that interest in remittitur problems is not covered by the statute. The Act was clear on the problem: Interest will not begin to run until judgment is entered; however, the appellate court clearly upheld the trial court's finding that interest would be computed from the date verdict was rendered. In a similar case, the Court of Appeals of Illinois held that interest could be allowed from the date the verdict was reduced until judgment was entered in accordance with the statute involved. Interestingly enough, the court makes no provision for interest after judgment presumably on the grounds that the statute does not apply to cases in which the trial judge thinks the verdict is excessive and reduces it accordingly.

57 292 Pa. 142, 140 Atl. 772 (1928).
59 Id. at 608-09.
Under a statute that provided for interest from “rendition date” unless otherwise provided for in judgment, the Missouri Appellate Court affirmed the trial judge’s remittitur and also his order that interest would not run on the reduced amount until it was entered into judgment. A new judgment entry on remittitur required the trial court to compute interest from the date the new judgment was entered, not that of the original verdict.

Thus, the three cases just discussed come to different conclusions in interpreting substantially the same kind of statute. The Stever case held that interest was computed from the time the original verdict was rendered. The Illinois Court affirmed the lower court’s finding that interest could be computed from the time verdict was rendered until judgment was rendered. The Missouri Court held that interest would not run until the reduced award was entered into judgment. The conflict may be partially explained by the discretionary nature of interest grants; however, the usual justification seems to be that remittitur is a special case to which the normal rules pertaining to the running of interest simply do not apply.

A similar problem is presented when an appellate court orders a remittitur, or, in the alternative, a new trial. In Capital Airlines, Inc. v. Barger, the jury returned a verdict for $110,000. The trial court denied the defendant’s motion for a new trial after entering judgment according to the verdict. On appeal, the Supreme Court of Tennessee ordered a remittitur of $12,500 and further held that interest would be computed from the date of judgment overruling the motion for a new trial under a statute that provided that “interest shall be computed on every judgment from the day on which it was entered of record.” Judgment in this case was entered before the trial court ruled on defendant’s post-trial motion — still the appellate court held that interest should be computed only on the time after the motion had been disposed of.

The argument is frequently made that when the appellate court orders a remittitur which is accepted, the new judgment wipes out the old one and interest does not begin to run until the new judgment is entered as of record. This type of holding is supported on the rather dubious grounds that since the supreme court of the state hadn’t awarded execution or other process on the judgment, it was incomplete, and that any incomplete judgment that is subsequently modified or overruled ceases to exist. A contrary result, which seems to be more desirable, has been reached in the majority of appellate remittitur cases which have dealt with the interest problem. A case which illustrates the majority approach is Atlantic Coast Line R.R. Co. v. Watkins. Judgment was entered for $10,000 and costs. On appeal, the plaintiff was required to remit $5,000 which he agreed to do. The statute provided for 8% interest from the date judgment was originally entered upon the amount modified by appeal. The reasoning of the court was this: A remittitur is offered as a condition precedent to affirmance because the appellate court determines that verdict and judgment are excessive. If plaintiff will remit, the judgment is voluntarily reduced and will stand affirmed as of the date of original rendition. In a recent case, the Supreme Court of Alabama not only held that interest was to be computed from the date judgment was originally entered, but the trial court was directed to consider the question.

---

62 341 S.W.2d 579 (Tenn. 1960).
63 Id. at 588.
65 Ibid.
67 99 Fla. 395, 126 So. 489 (1930).
68 Fuller v. Martin, 125 So. 2d 4 (Ala. 1960).
of interest as a part of the damages from the time of the commission of the wrong.

A reason for the diversity of holdings in this area seems to be a misinterpretation of what "rendered" means in a statute. A verdict is rendered, a judgment is entered. A good example of this misunderstanding is the Watkins case. The statute provided that interest should be computed from the date of rendition. The appellate court construed this to mean the date when judgment was entered and held accordingly.

In sum, therefore, the three reasons accounting for the diverse holdings of courts when a remittitur is involved are: (1) The discretionary nature of interest grants; (2) The conviction that the remittitur problem does not come within the pale of an interest statute; (3) Faulty statutory construction.

D. The Federal Courts

Interest in the federal courts is authorized by Section 1961 of the Judicial Code, which provides:

Interest shall be allowed on any money judgment in a civil case recovered in a district court. Execution therefor may be levied by the marshal, in any case where, by the law of the State in which such court is held, execution may be levied for interest on judgments recovered in the courts of the State. Such interest shall be calculated from the date of the entry of the judgment, at the rate allowed by State law.

Three distinct problems arise in the interpretation of this statute: (1) Does Section 1961 apply to appealed judgments? (2) May the statute be construed to allow interest from date of verdict when entry of judgment has been unreasonably delayed? (3) Will the statute apply to the original judgment, or the judgment as amended on appeal? As might be suspected, the answers to these questions have been no more uniform than have the solutions to the same problems on the state level. Although all of these questions will be treated during the course of the discussion, the main inquiry will be concerned with the application of the statute to appealed judgments that are affirmed or modified, and the time at which interest begins to run on such an appealed judgment.

The federal courts are unanimous in agreeing that Section 1961 applies to lower court judgments that are not appealed. However, although the statute be strictly construed, if the state law allows interest from verdict to judgment, this law applies to a federal judgment on a non-federal cause of action.

Section 1961 has been generally interpreted to include the following features:

1. Interest is within the discretion of the trial court and will not be upset on appeal; 
2. The statutory authority to grant interest applies only to civil

---

70 Section 1961 is based on section 811 (R.S. § 966), 36 Stat. 1167 (1886), 28 U.S.C. 811 (1940). Many of the cases to be discussed have been decided under Section 811. For practical purposes, all of the materials in the text will only refer to Section 1961, whether the case was based on Section 811 or Section 1961. It is believed that the result would have been the same regardless of which statute was used.
71 See, e.g., Blair v. Durham, 139 F.2d 260 (6th Cir. 1943).
73 Id. at 691.
74 E.g., Woodmont, Inc. v. Daniels, 290 F.2d 186 (10th Cir. 1961).
75 Continental Oil Co. v. U.S., 184 F.2d 802 (9th Cir. 1950). See also, Miller v. Robertson, 266 U.S. 243, 258 (1924):
Both in law and in equity, interest is allowed on money due. [Citing cases]
cases;\(^76\) (3) Penalties as such do not draw interest, but judgments for civil penalties do;\(^77\). (4) The section applies to bankruptcy proceedings as well as general civil actions.\(^78\) Since the general bankruptcy statutes make no provision for interest, the matter is left to the operation of Section 1961.\(^79\) Although there is some authority to the contrary, courts hold that a trustee in bankruptcy may recover interest from the date on which the cause of action was brought, and that interest on this augmented amount will be computed from the date of judgment until the date of payment;\(^80\) (5) Section 1961 permits private litigants to collect interest from the government so long as the statute creating the government's obligation makes specific provision for interest.\(^81\) However, when the government sues a private litigant, it may collect interest even though there has been no specific provision for interest in the statute on which it is relying;\(^82\) (6) Section 1961 refers to the calculation of interest from date of judgment at "the rate allowed by State law." This means the rate of interest allowed by the state in which the judgment was rendered and entered even if it was subsequently registered in another state.\(^83\) The state rate of interest will not be applied if the court considers such a rate to be usurious.\(^84\)

These general features of Section 1961 apply whether or not the case is appealed. The important issue to be analyzed now is this: At what time will interest be computed under a specific factual situation? The law in this area is confusing and complex. When no appeal is taken, it must frequently be determined whether the judgment should be entered before or after defendant's post-trial motions? The court in Christian v. Southern Ry. Co.,\(^85\) held that entry of judgment would be premature when there was a pending motion to set aside the verdict. Further, the court directed the clerk to postpone judgment entry until all the motions were disposed of.\(^86\) Such a rule becomes important in cases involving a remittitur. Extending Christian to the case of remittitur, it would seem that when remittitur is ordered, interest on the reduced amount would run from the time the amount was entered into judgment. This, however, has not been the result. In Litwinowicz v. Weyerhaeuser Steamship Co.,\(^87\) the district

---

Generally, interest is not allowed upon unliquidated damages. [Citing Cases] But when necessary in order to arrive at fair compensation, the court in the exercise of a sound discretion may include interest or its equivalent as an element of damages. (Emphasis added.)


77 E.g., U.S. v. West Texas Cottonoil Co., 155 F.2d 463 (5th Cir. 1946). But see U.S. v. United Drill & Tool Corp., 183 F.2d 998 (D.C. Cir. 1950).


79 Ibid.

80 Salter v. Guaranty Trust Co., 237 F.2d 446 (1st Cir. 1956).

81 E.g., Anglin & Stevenson v. U.S., 160 F.2d 670 (10th Cir. 1947); Reed v. Howbert, 77 F.2d 227 (10th Cir. 1935).


A judgment in an action for the recovery of money ... which has become final ... may be registered in any other district by filing a certified copy of such judgment. A judgment so registered shall have the same effect as a judgment of the district court of the district where registered and may be enforced in like manner.


86 Fed. R. Civ. P. 58 plays an important part here. "Unless the court otherwise directs ... judgment upon the verdict of a jury shall be entered forthwith by the clerk." (Emphasis added.)

court computed interest on the reduced sum, under Section 1961, from the time the original larger verdict was rendered.

When a judgment has been affirmed on appeal, some courts hold that Section 1961 may not be applied to the lower court judgment. This holding is derived from the courts' interpretation of another judgment-interest statute—Section 1912 of the Judicial Code.\(^8\) The statute gives the appellate court discretion to award "just damages for . . . delay" when affirming a lower court judgment.\(^9\) In *Mitchell v. Harmony*,\(^9\) the Supreme Court held that when a lower court judgment was affirmed, Section 1912 applied to the exclusion of Section 1961. The affirmance on appeal, therefore, brought interest within the scope of Section 1912.\(^9\)* Mitchell* has been extended by some courts to justify a rule that the appellate court's silence on the subject of interest is tantamount to a denial thereof.\(^2\)

There is some authority to the contrary however. *Moore-McCormack Lines, Inc. v. Amirault*,\(^3\) holds that Section 1961 *does* apply to allow interest on a lower court's affirmed judgment from the date of its entry. Such a view is substantiated on the idea that interest attaches automatically to the original judgment by the force of Section 1961. If the statute is so construed, interest or an affirmed judgment is not subject to the discretion of the appellate court.

Although the view that interest attaches automatically to the judgment is well established, problems frequently arise when the trial judge takes an affirmative stand on the interest issue and his determination is either accepted or rejected on appeal. In *Millers Nat'l Ins. Co. v. Wichita Flour Mills Co.*,\(^4\) the trial judge determined that the applicable state law did not cover the pre-judgment period. Strictly construing Section 1961, the court held that interest would not run until judgment was entered. However, in *Griffith v. Baltimore & Ohio R.R. Co.*,\(^5\) interest was computed, under Section 1961, from the date of verdict—this being within the "equity" of the statute. Other cases, following the lead of *Wichita Flour* hold that it would be "inequitable" to compute interest for any time prior to judgment\(^6\) instead of using the obvious argument that Section 1961 is clear on this point. But results similar to *Griffith* have been reached especially when there was an appreciable time between the rendition of the verdict and the entry of judgment, so long as plaintiff had nothing to do with the delay.\(^7\) Another line of cases holds that when a claim becomes liquidated, interest begins to run from that date, regardless of when verdict and judgment are entered.\(^8\) However, if a sufficiently long time has elapsed between the time the claim becomes liquidated, and the judgment is entered, the rate of interest may accordingly be lowered.\(^9\)

In short, even though Section 1961 is apparently clear in its direction to compute interest from the date of judgment, there is an impressive list of authority that simply goes around the statute and allows interest to be computed at some time earlier than the date of judgment entry.

\(^9\) The full text of the statute reads:

\(\text{Where a judgment is affirmed by the Supreme Court or a court of appeals, the court in its discretion may adjudge to the prevailing party just damages for his delay, and single or double costs.}\)

The statute also applies to cases that are dismissed on appeal. See, e.g., *Wagner Elec. Mfg. Co. v. Lyndon*, 262 U.S. 226 (1923).

\(^1\) 54 U.S. (13 How.) 115 (1851).
\(^3\) E.g., *Green v. Chicago S. & C. R.R. Co.*, 49 Fed. 907 (6th Cir. 1892).
\(^4\) 202 F.2d 895 (1st Cir. 1953); *Blair v. Durham*, 139 F.2d 260 (6th Cir. 1943).
\(^5\) 257 F.2d 93 (10th Cir. 1958).
\(^6\) 44 Fed. 574 (S.D. Ohio 1890).
\(^9\) E.g., *Soby v. Johnson*, 270 F.2d 193 (9th Cir. 1959).
\(^9\) Montgomery Ward & Co. v. Collins Estate, Inc., 268 F.2d 830 (4th Cir. 1959) (seventeen years).
Just as the distinction between interest *qua* damages and interest *eo nomine* looms large in state court cases, so does it play an important part when federal courts are interpreting Section 1961. The leading case which dealt directly with this problem is *Moore-McCormack Lines, Inc. v. Amirault.* The facts briefly stated are: Defendant's ship collided with plaintiff's fishing vessel; the defendant subsequently admitted liability. The clerk entered judgment and added interest from the date the complaint was filed. Defendant alleged that the computation of interest was erroneous as a matter of law, relying on Section 1961. Plaintiff relied on the Massachusetts interest statute which would allow the entry as made by the clerk. The First Circuit, *inter alia,* held: (1) Since this cause of action was based on a maritime tort, the case occupies the same status as FLSA and FELA cases—to the exclusion of any state pre-judgment interest statute. (2) Under Section 1961, when an action is based on an unliquidated claim, interest cannot be computed from any date prior to the date of judicial ascertainment of the amount of damages; however, in claims upon liquidated sums, federal courts follow the common law rule that plaintiff is entitled to interest, *by way of damages,* from the time payment was due. In addition, the court took great pains to distinguish between pre-judgment interest, which is included as an item of damages in the total amount of an ensuing money judgment, and post-judgment interest, which is computed from the date of judgment until the date of payment. Section 1961, said the court, belongs to this latter category. Thus, if the cause of action is based on an unliquidated claim, no interest will be added until judgment is entered. If the claim is liquidated at the commission of the wrong, interest *qua* damages will be included from the inception of the wrong until judgment is entered; thereafter, under the authority of Section 1961, interest *eo nomine* will be computed until the judgment is paid.

Perhaps no greater problem is presented in the construction of Section 1961 than that which arises when the appellate court reverses defendant's successful motion for judgment *n.o.v.* Does interest run from the time verdict is rendered or from the time the judgment *n.o.v.* is reversed on appeal? Only the Second and Fifth* Circuits have directly dealt with this problem, and they have reached opposed conclusions. In *Briggs v. Penn. R.R. Co.,* the Second Circuit held that interest would be computed from the date of the *corrected judgment* as determined by that court: Since the defendant is entitled to have the judge decide on motions after verdict, if the plaintiff is presented an adverse ruling his remedy is the normal appellate process. It is not until appellate proceedings are completed that the plaintiff has his right to judgment judicially determined. Only when this right has been established, and judgment entered in accordance therewith, will interest begin to run. This rule has applied whether the appellate court simply reinstates the plaintiff's verdict or substantially increases it.

The opposite position was taken by the Fifth Circuit in *La. & Ark. R.R. Co. v. Pratt.* The ruling rested on an "equitable" construction of Section 1961 to allow interest from the date the correct judgment *should* have been entered, and then utilized Federal Rule 58, which orders entry of judgment in most cases immediately upon the verdict, to place the date this judgment should have been entered at the time of verdict. The court reasoned that although the defendant

100 202 F.2d 893 (1st Cir. 1953).
103 164 F.2d 21 (2d Cir. 1944), *aff'd,* 334 U.S. 304 (1948).
104 Powers v. N.Y. Cent. R.R., 251 F.2d 813 (2d Cir. 1958).
105 142 F.2d 847 (5th Cir. 1944). In the subsequent case of *Givens v. Mo.-Kan.-Tex. R.R. Co.,* 196 F.2d 905 (5th Cir. 1952) the court computed interest from the date of the *erroneous decision* to grant defendant's motion for a new trial.
had the right to utilize the process of motionmaking, if, because of his motions, an erroneous ruling was made which made appeal by the plaintiff necessary, the plaintiff should not suffer by the delay.\textsuperscript{107}

Certiorari was granted in the Briggs case, but the Supreme Court apparently felt that the problem should not have been decided because it neatly avoided the question of when interest begins to run and held that when an appellate court remands a case, and makes no provision for interest in the mandate, the lower court has no power to deviate from the mandate by adding interest — either from the date of verdict or the date of judgment.\textsuperscript{108} The basis for the decision was the idea that the appellate court's discretion in the question of interest displaces the operation of Section 1961. A contrary result would not have been unreasonable: In the first place, all of the authority in the case is based on other cases that involved affirmances of lower courts.\textsuperscript{109} When there has been a total affirmance, some of the older cases have held Section 1912 applicable rather than Section 1961.\textsuperscript{110} However, no case has applied Section 1912 when there has been a reversal of the trial court's ruling. Thus, any statement that the appellate court's discretion displaces Section 1961 is without case or statutory authority. In the second place, Briggs seems to be at odds with earlier, analogous Supreme Court decisions in which the high court approved allowance of interest by a lower court on a new judgment entered after receipt of an appellate court's mandate which made no mention of interest.\textsuperscript{111}

E. Conclusion

The function of interest is to fully and adequately compensate the injured party. Although the question of what time interest shall begin to run is presented in countless forms and factual situations, two factors seem to engage the spotlight: (1) If the plaintiff's claim is liquidated at the time of injury, there is no good reason why interest \textit{qua} damages cannot be computed as part of the over-all damages for the wrong. State and Federal statutes that permit interest from the time of judgment should be construed only as permitting interest \textit{eo nomine} until the claim has been paid. When the claim is unliquidated at the time of injury, a weaker case is presented for allowing interest \textit{qua} damages; however, when an appropriate case is presented interest \textit{qua} damages should be included in the judge's instructions. Interest \textit{eo nomine} will be governed by the applicable statute. (2) When the entry of judgment is delayed by defendant's post-trial motions, and the grant of a motion is subsequently found to be erroneous, some of the courts, following the circuit holding in Briggs, rule that time is essential for appellate review and that defendant should not be penalized therefore.\textsuperscript{112} It does not seem to be the answer: The real problem is who should suffer the loss of the use of the money judgment while appeals are pending. Since one of the parties must bear this loss, the risk should fall on the defendant. Although in practical result, this is a kind of "penalty" for utilizing post-trial motions and the appeal process, it is the defendant who has invoked the process — he should therefore bear the burden of increased interest \textit{eo nomine}. Finally, liberal use of the "equity of the statute" argument as it was presented in the Pratt case would seem to insure a just result for both parties concerned, as the computation of interest would not start until a determination of interest \textit{qua} damages was made.}

\textit{Robert G. Berry}

\begin{itemize}
\item \textsuperscript{107} Cf. Globe Constr. Co. v. Brewer, 197 F.2d 707 (5th Cir. 1952).
\item \textsuperscript{108} Briggs v. Penn. R.R. Co., 334 U.S. 304 (1948).
\item \textsuperscript{109} See dissent in Briggs v. Penn. R.R. Co., \textit{supra} note 108.
\item \textsuperscript{110} Green v. Chicago S. & C. R.R. Co., 49 Fed. 607 (6th Cir. 1892).
\item \textsuperscript{111} E.g., Kneeland v. American Loan & Trust Co., 138 U.S. 509 (1891).
\item \textsuperscript{112} E.g., Chemical Bank & Trust Co. v. Prudence-Bonds Corp., 213 F.2d 443 (2d Cir. 1954).
\end{itemize}