

# HOW INTERESTING ...

## Statutory Interest on Awards, Verdicts, Judgments, and Debts in Minnesota

By PETER L. GREGORY

*In an economy where margins are thin and the average return on investment continues to scuffle, the statutory interest rates for awards, verdicts, debts, and judgments are an increasingly important consideration for attorneys and their clients. The interest rates are higher than one might think, but the statutes and cases governing interest are complex and even ambiguous in some respects.*

Not every civil case has potential for a large financial award, but when the possibility exists, attorneys and their clients should focus not only on the likely amount of the award itself but also on the issue of statutory interest. Particularly in economic times such as these, given the interest rates being levied on such awards, the cost or benefit of such statutory interest to the client may be substantial. Practitioners often generically refer to statutory interest as “prejudgment interest.” However, there are three distinct categories of interest that can be awarded by a court.

### Postverdict and Postjudgment Interest

The first and simplest category is interest accruing after a jury, court, or arbitrator has determined a verdict or award. This category, which is governed by section 549.09 of the Minnesota Statutes, can be further broken down into two types of interest: so-called “postverdict” interest, which accrues “from the time of the verdict, award, or report until judgment is finally entered,”<sup>1</sup> and postjudgment interest, which accrues on the unpaid balance of judgments from final entry until satisfaction of the judgment.<sup>2</sup>

Prior to 2009, the rate for all interest taxed under section 549.09 was computed annually according to a formula and remained steady at about 4 per-

cent for many years.<sup>3</sup> But the legislature amended section 549.09 in 2009, setting the interest rate for judgments, verdicts, and awards over \$50,000 (except those against a governmental body) at an eye-popping 10 percent.<sup>4</sup>

The 10 percent rate is noteworthy because a substantial amount of postverdict and postjudgment interest can accrue on large awards or verdicts even in the normal case where the verdict, entry of judgment, and payment are close in time. But postverdict and postjudgment interest amounts will be even larger in cases where a significant amount of time elapses between verdict, entry of judgment, and payment—such as where parties contest judicial confirmation of an arbitration award or where a party appeals a judgment.

### Preverdict Interest

The second category of interest is also governed by section 549.09, but is more complicated. “[P]reverdict, preaward, or prereport interest on pecuniary damages” (hereafter “preverdict interest”) accrues from the earlier of “the time of the commencement of the action or a demand for arbitration, or the time of a written notice of claim” until there has been a verdict or award.<sup>5</sup> Preverdict interest accrues even if the damages are not “readily ascertainable,” such as with consequential damages or pain and suffering.<sup>6</sup> However, preverdict interest does not accrue for certain enumerated amounts, including judgments or

awards for future damages, costs and disbursements, punitive or other non-compensatory damages, and workers’ compensation awards.<sup>7</sup>

Like postverdict and postjudgment interest, the rate for preverdict interest is 10 percent under the 2009 amendments.<sup>8</sup> This increased rate has and will continue to result in large preverdict interest amounts being added to judgments because the period of time from notice of a claim to an award or verdict is typically a year or more. For example, a plaintiff who obtains a \$500,000 award or verdict may have given notice of the claim three years earlier. In that case, the successful plaintiff can tack an additional \$150,000 onto the judgment. However, a plaintiff cannot take advantage of the 10 percent rate by waiting indefinitely. To obtain an interest award dating back to written notice, the claimant must commence the action “within two years of a written notice of claim.”<sup>9</sup>

The 10 percent rate is noteworthy not only because it is so high but because section 549.09 applies to any award, whether in an arbitration or a civil lawsuit. Section 549.09 also applies when a federal court is applying Minnesota law.<sup>10</sup> Furthermore, preverdict interest is generally added to the principal amount of the judgment on which postverdict and postjudgment interest is awarded because preverdict interest is conceptually viewed as “an element of damages awarded to provide full compensation by converting time-of-demand (either by written settle-

ment offer or commencement of action) damages into time-of-verdict damages.”<sup>11</sup>

The most complicated provisions governing preverdict interest under section 549.09 are the offer/counteroffer provisions, which are intended to harness the risk and reward of statutory interest to “promote settlements.”<sup>12</sup> Under those provisions, if a party against whom a verdict or award was obtained made an offer or counteroffer that is closer to the actual verdict award than the prevailing party’s offer or counteroffer (if any), then the preverdict interest is limited in two ways. First, preverdict interest is awarded only on the lesser of the losing party’s settlement offer or actual verdict. Second, the preverdict interest accrues only from the notice of the claim or commencement of the action or from the accrual of special damages (if those damages accrued later) until the date the losing party made the offer or counteroffer.<sup>13</sup>

By contrast, if a prevailing party made an offer or counteroffer that is closer to the verdict or award, then the preverdict interest is computed as it would be under the general rule except that interest on special damages, if arising after the offer or counteroffer, accrues “from the time when special damages were incurred.”<sup>14</sup> Although this seems to discourage a plaintiff from making an offer since a plaintiff would be better off under the default calculation, one court has suggested that this provision still promotes settlement by allowing a defendant to be “relieve[d] from the obligation to pay preverdict interest on special damages incurred after suit was filed” even in a case where the defendant unilaterally triggers the offer/counteroffer provisions.<sup>15</sup>

### Interest on Legal Indebtedness

The third category of interest is governed by Minn. Stat. §334.01, which provides, “[t]he interest for any legal indebtedness shall be at the rate of \$6 upon \$100 for a year [6%], unless a different rate is contracted for in writing.”<sup>16</sup> Section 334.01 generally applies to a “liquidated claim” or any claim that is “ascertainable by computation or reference to generally recognized standards” and accrues “from the time the money becomes due and payable until the payment is made.”<sup>17</sup> Courts agree that section 334.41 applies to interest on unpaid loans where the interest rate is not contractually agreed-upon or is usurious.<sup>18</sup> Interest awarded under section 334.01 is not compounded unless a contract provides otherwise.<sup>19</sup> Federal courts apply Minn. Stat. §334.01 when sitting in diversity jurisdiction, just as they apply section 549.09.<sup>20</sup>

One perplexing and important ques-

tion for parties and practitioners considering interest on an award or verdict is whether interest on preverdict amounts accrues at 6 percent under section 334.01 or 10 percent under section 549.09. Courts have been inconsistent on that issue. One court has suggested that the 6 percent rate under section 334.01 should be applied in most cases because, by its terms, section 549.09 applies only where preverdict interest is not “otherwise provided by contract or allowed by law.”<sup>21</sup> Other courts have stated that “Minnesota caselaw supports the sole utilization of Minnesota Statutes §549.09 for all pre-judgment interest other than loans and other obligations governed by specific interest-rate laws.”<sup>22</sup> Given this split of authority, attorneys and litigants should be aware that for liquidated amounts other than loans, (*i.e.*, amounts that are “ascertainable by computation or reference to generally recognized standards”), there are legitimate legal arguments to be made in support of applying either the 6 percent or 10 percent rate.

### Conclusion

Interest on awards, verdicts, and judgments is a significant consideration for attorneys and litigants in any case where there is potential for a large monetary award or verdict. The governing statutes present interpretive challenges for courts but also legitimate opportunities for attorneys to advocate applying the interest rate that favors their client. Litigants who are managing a claim that could result in a large monetary award should be prepared to invest time and effort early in the case to explore how the interest statutes apply to their case and the degree to which a potential interest award impacts the strategy for their case. ▲

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### Notes

<sup>1</sup> Minn. Stat. §549.09, subd. 1(a) (2010).

<sup>2</sup> Minn. Stat. §549.09, subd. 2 (2010).

<sup>3</sup> See Minn. Stat. Ann. §549.09, hist. and stat. notes.

<sup>4</sup> Minn. Stat. §549.09, subd. 1(c); 2009 Minn. Laws ch. 83, §35.

<sup>5</sup> Minn. Stat. §549.09, subd. 1(b) (2010).

<sup>6</sup> *Schwicker, Inc. v. Winnebago Seniors, Ltd.*, 680 N.W.2d 79, 88 (Minn. 2004); *Lienhard v. State*, 431 N.W.2d 861, 865 (Minn. 1988).

<sup>7</sup> *Id.* at (1)-(5).

<sup>8</sup> Minn. Stat. §549.09, subd. 1(c); 2009 Minn. Laws ch. 83, §35.

<sup>9</sup> Minn. Stat. §549.09, subd. 1(b).

<sup>10</sup> Minn. Stat. §549.09, subd. 1(a)-(c); *Northwest Airlines, Inc. v. Flight Trails*, 3 F.3d 292, 297 (8th Cir. 1993).

<sup>11</sup> *Lienhard*, 431 N.W.2d at 865; Minnesota State Court Administrator’s Office, “Frequently Asked Questions Re: Interest on Judgments under Minn. Stat. §549.09,” <http://www.mncourts.gov/?page=1641>.

<sup>12</sup> *Hodder v. Goodyear Tire & Rubber Co.*, 426 N.W.2d 826, 840 (Minn. 1988); *Trapp v. Hancuh*, 587 N.W.2d 61, 65 (Minn. App. 1998).

<sup>13</sup> Minn. Stat. §549.09, subd. 1(b).

<sup>14</sup> *Id.*

<sup>15</sup> *Marvin Lumber and Cedar Co. v. PPG Indus.*, 401 F.3d 901, 919 (8th Cir. 2005). There are several other complications involving the offer/counteroffer provisions, such as how an offer

of settlement should be treated under section 549.09 and the overlapping yet contradictory provisions of Minn. R. Civ. P. 68. See Matthew Frantzen, “Rule 68: The Prejudgment Interest Wrinkle,” *Minnesota Defense* (Fall 2010), at 3-4; compare *A & L Potato Co. v. Aggregate Indus.*, 759 N.W.2d 57, 58 (Minn. App. 2009) with *Quade & Sons Refrig. v. Minnesota Min. & Mfg. Co.*, 510 N.W.2d 256, 259 (Minn. App. 1994), review denied (Minn. 03/15/1994).

<sup>16</sup> Minn. Stat. §334.01, subd. 1. (2010).

<sup>17</sup> *Thompson v. Gasparro*, 257 N.W.2d 355, 356 (Minn. 1977); *Deutz & Crow Co., Inc. v. Anderson*, 354 N.W.2d 482, 489 (Minn. App. 1984).

<sup>18</sup> *Barton v. Moore*, 558 N.W.2d 746, 750-51 (Minn. 1997); *General Mills, Inc. v. State*, 303 Minn. 66, 71, 226 N.W.2d 296, 300 (1975).

<sup>19</sup> *Lampert Lumber Co. v. Ram Constr.*, 413 N.W.2d 878, 883 (Minn. App. 1987).

<sup>20</sup> See *Northwest Airlines, Inc.*, *supra* n. 10, at 297-98.

<sup>21</sup> *Smith v. Lurie*, \_\_\_ F. Supp. 2d \_\_\_, 2011 WL 1790332, \*8 (D. Minn. 2011) (citing Minn. Stat. §549.09, subd. 1(b)).

<sup>22</sup> *Best Buy Stores, L.P. v. Developers Diversified Realty Corp.*, 715 F. Supp. 2d 871, 878 (D. Minn. 2010) (quoting *Richard Knutson, Inc. v. Lumber One, Avon, Inc.*, No. A04-76, 2004 WL 2093582, at \*5 (Minn. App. 09/21/2004)).