

McKinney's CPLR § 5002

McKinney's Consolidated Laws of New York Annotated [Currentness](#)

Civil Practice Law and Rules ([Refs & Annos](#))

Chapter Eight. Of the Consolidated Laws

▣ [Article 50](#). Judgments Generally ([Refs & Annos](#))

➔ **§ 5002. Interest from verdict, report or decision to judgment**

Interest shall be recovered upon the total sum awarded, including interest to verdict, report or decision, in any action, from the date the verdict was rendered or the report or decision was made to the date of entry of final judgment. The amount of interest shall be computed by the clerk of the court and included in the judgment.

CREDIT(S)

(L.1962, c. 308.)

HISTORICAL AND STATUTORY NOTES

2007 Main Volume

Derivation

C.P.A.1920, § 480 amended L.1927, c. 623; L.1935, c. 807; L.1939, c. 359.

C.C.P.1876, § 1235.

C.P. (Field Code) 1848, § 310.

SUPPLEMENTARY PRACTICE COMMENTARIES

2009 Electronic Update

By David D. Siegel

**2009**

**When Trial in Bifurcated Personal Injury Action Establishes Liability, Subsequent Damages Award, Even by Arbitrator, Carries Interest from Liability Determination**

Rejecting the suggestion that the interest should be given a relation back like that only when the defendant is found to have caused delay in the trial of the damages issue, the Court of Appeals held in its 1991 *Love* decision, noted in the original Commentary at page 90 in the main volume, that that would be using interest as a punishment, while its aim is to make the victim whole, not to punish a wrongdoer. Hence the relation back to the time of the liability finding. The award of an arbitrator, moreover, has been held the equivalent of a court decision so as also to carry such relation-back interest. (See [Siegel, New York Practice 4th Ed. § 411.](#))

The bifurcated trial is, as might be expected, the most usual context for this issue, involving as it does a determination of liability (if the plaintiff wins on that point) often followed by a substantial hiatus before damages are tried. It's interest covering the hiatus that the parties fight over, as illustrated again in the recent Second Department decision in [Grobman v. Chernoff, 63 A.D.3d 786, 881 N.Y.S.2d 458 \(June 9, 2009\)](#), involving an especially long delay.

The liability trial brought a plaintiff's verdict on June 25, 2000. The subsequent proceedings, culminating in the submission of the damages issues to arbitration, produced an award of \$125,000 on April 9, 2008. The appellate division court held that interest had to be computed from the time of the liability verdict.

*Grobman* is the subject of a note in SPR 212:4 on Westlaw database SIEGELPR.

**2008**

## In Case With No-Fault Involvement, When Does Interest Start to Run?

In a personal injury case, in which [CPLR 5001](#) doesn't allow interest on the claim until the verdict is in, the moment of verdict (CPLR 5002) of course becomes all important for starting interest.

In a bifurcated trial, so frequent an event in personal injury cases today, where liability is tried first but damages may not be tried until some time later, what happens when the verdict establishes liability, but damages are not set until a long time after that, maybe months or even years? The general rule is that interest on the sum found now is deemed to start back then, when liability was determined--a kind of nunc pro tunc effect. The original Commentary notes that. (See page 90 et seq. in the main volume.)

A complicating element when the injury occurs in a car accident and therefore falls under the no-fault law is that the very entitlement of the case to stay in court may depend on a finding that the plaintiff suffered a "serious injury" (as defined by [Ins.L. § 5102\[d\]](#))--else the case remains strictly no-fault and can't be litigated. Whether there's a "serious injury", however, is a determination made as part of the damages trial. If the case is bifurcated, and liability, tried first, is established, what result when the later damages trial does establish serious injury? Does the same rule of relation back apply to start interest from the earlier liability verdict?

Yes, says the appellate division in [Van Nostrand v. Froehlich, 44 A.D.3d 54, 844 N.Y.S.2d 293 \(2d Dep't, July 17, 2007\)](#), but with an acknowledgment that there's a conflict on the point among the courts. And, indeed, there's a conflict within the Second Department itself, producing a two-judge dissent in *Van Nostrand*.

### PRACTICE COMMENTARIES

#### 2007 Main Volume

By David D. Siegel

In [CPLR 5001](#), 5002, and [5003](#), the CPLR separately addresses three distinct periods for the computation of interest on a money claim:

1. interest on the claim itself until reduced to verdict or decision;
2. interest on the verdict or decision until judgment;
3. interest on the judgment until the judgment is paid.

Any money claim--anything ultimately reduced to a money judgment--draws interest in the second and third categories. Most do in the first category, too, but not all. A notable exception is the personal injury claim. There, no interest at all may be awarded until at least a verdict (in a jury trial) or a decision (in a bench trial) is rendered. See Commentary C5001:2 on [CPLR 5001](#) above.

The time between verdict and judgment is short, however, and can usually be as short as the winning party wants to make it. Absent congestion in the judge's or clerk's office that can delay things, the prompt drawing and entry of a judgment can follow just about on the heels of a verdict or decision, making interest in category two negligible. Sometimes it is so negligible that the winning party won't bother with it at all, just including in the draft of the judgment submitted to the judge or clerk interest on the claim itself (category one), so that the bottom line of the judgment will include the category one interest, but none from category two. The whole of the judgment will then draw interest in the third category: interest on the judgment itself.

Category one interest awarded as part of a verdict or decision can be included in a judgment without bothering with the intermediate interest that CPLR 5002 would allow on the verdict itself (whose total would presumably include the category one interest), so in most cases CPLR 5002's gift is not very interesting. Its main potential for becoming interesting is when the particular claim is one that doesn't carry category one interest at all, the personal injury claim being the prime example. There the rendition of a verdict marks the earliest moment that interest starts, so if a verdict arrives on the scene, but then gets suspended or delayed only to be later resurrected, an argument is likely to ensue

about whether the category 2 interest can be applied only from the new verdict, or stretched back to the earlier one. The issue sometimes arises in the so-called "bifurcated trial" of a personal injury claim, in which liability is tried first and, if liability is established, the damages trial comes later.

### **Effect of Delayed Damages Trial After Liability Established**

If liability is established, but it takes some time before the damages trial comes on, the question of whether the damages later awarded will bear interest from the earlier liability finding can mean the difference of a substantial sum of money. If the finding of liability is made on July 1, 1990, for example, and damages are not tried until a year later, on July 1, 1991, when they are determined to be \$1 million, the 9% interest (the rate comes from [CPLR 5004](#)) on the \$1 million for one year comes to \$90,000. Does the plaintiff get the \$90,000?

The Court of Appeals answered yes in [Love v. State of New York, 78 N.Y.2d 540, 583 N.E.2d 1296, 577 N.Y.S.2d 359 \(1991\)](#). It held that the plaintiff gets the interest regardless of who may be responsible for delaying the damages trial. Before the *Love* decision, some caselaw had held that the interest would relate back to the earlier liability finding only when the defendant is found at fault for delaying things. The court in the *Love* case rejected that qualification as premised on a misunderstanding of what interest is. (See [Siegel, New York Practice 4th Ed. § 411](#).)

Allowing interest based only on who is at fault in delaying a damages trial amounts to treating it as a penalty. The court in *Love* stressed that interest is not a penalty. What interest is, is the cost of the use of money, and once it has been established, through a liability finding, that the defendant is in debt to the plaintiff, the defendant must be deemed to be holding the plaintiff's money as of that moment. It makes no difference that the amount of the debt has not yet been determined. Whatever the amount may be, the defendant has had the use of all of it in the interim and has presumably used all of it to some personal advantage. When ultimately the amount is determined, the defendant should therefore pay the plaintiff the cost of that use of the plaintiff's money, and interest is merely the standard for measuring that cost.

In *Love*, a court of claims case in which there was of course no jury, almost a year passed between the court's finding of liability and the later finding of damages. The state pleaded that it was not at fault in the delay. The court said it makes no difference.

The result would be the same if the defendant should appeal the liability finding in a bifurcated case (which the defendant can do, for example, if an interlocutory judgment is entered on it), and the finding is then upheld. That was the situation in [Trimboli v. Scarpaci Funeral Home, Inc., 37 A.D.2d 386, 326 N.Y.S.2d 227 \(2d Dept., 1971\)](#), aff'd [30 N.Y.2d 687, 283 N.E.2d 614, 332 N.Y.S.2d 637 \(1972\)](#).

### **Appeal When Liability and Damages Have Been Tried Together**

If the first determination is of both liability and damages, and on appeal by the defendant the appellate court orders a new trial of only the damages question, it was held in [Beyer v. Murray, 33 A.D.2d 246, 306 N.Y.S.2d 619 \(4th Dept., 1970\)](#), that there, too, interest on the new damages determination must run from the old verdict. The *Love* case indicates that the Court of Appeals would approve that result.

Apparently not yet definitively determined is what rule to apply when P wins a liability determination, D appeals it and wins a new trial of the liability (not just the damages) issue, and on the new trial liability is found again. Would interest run from the old liability finding, or only from the new one?

### **Effect of Other Delays on CPLR 5002 Interest**

Another case entailing delay and the issue of CPLR 5002 interest is [Gordon v. City of New York, 188 Misc.2d 246, 727 N.Y.S.2d 287 \(Sup. Ct., Kings Co., 2001\)](#). There the defendant failed to make required discovery and the court struck its answer on December 23, 1996. Apparently for the reason that there was another, and active, defendant in the action, no severance was directed. The plaintiff's claim against that party got resolved later, though, and only on May 10, 2000 was there finally an assessment of damages made against the defendant--for some \$328,000. Now P sought interest on it.

The plaintiff argued for CPLR 5002 interest from the time of the striking of the answer, and was

upheld by the court. Liability in that situation is established as of the moment of the striking of the defendant's answer, the court held.

The court observed that the plaintiff wanted to sever the action against the defendant guilty of nondisclosure and proceed to a damages inquest promptly, but the request was denied for the apparent purpose of having damages tried against that defendant and the other (the still active) defendant at the same time. However that be, the delay until the assessment was made was three and a half years, making for a tidy bit of CPLR 5002 interest.

### Effect of Judge's Making Additur Order

An interesting issue arises when the jury has rendered a money verdict in favor of the plaintiff but the trial judge finds the sum awarded inadequate as a matter of law and orders a new trial unless the defendant stipulates to accept the increased amount specified by the judge, which is the sum the judge finds to be the minimum that the record calls for. This is the well known step called "additur". (See Commentary C4404:4 on [CPLR 4404](#), above.) If the defendant stipulates to the additur, the issue would subside, at least at trial level.

It does not subside, however, when it is the appellate court that orders the additur, as happened in [DePaolo v. Wisoff, 184 A.D.2d 745, 585 N.Y.S.2d 480 \(2d Dept., 1992\)](#). The original verdict was \$250,000, and the defendant paid it. Plaintiff contested the sum as inadequate, however, and brought it up on appeal. The appellate division agreed that it was inadequate and made a conditional additur: it required the defendant to pay double the figure or else face a new trial. The defendant agreed to the increased sum.

The issue was interest. From what point would interest run on the increased sum? The court held that interest even on the sum added would run from the original verdict, not just from the time of the appellate division increase.

Now suppose the defendant resists the additur and takes an appeal from the trial court's directing it. Can the defendant in the meantime avoid interest on the lower sum that the jury had awarded by depositing it into court? The court in [Trala v. Egloff, 298 A.D.2d 878, 747 N.Y.S.2d 625 \(4th Dept., 2002\)](#), holds this impermissible. It says that CPLR 5002 allows interest from verdict to judgment and that "[d]efendants have cited no authority that would allow for the entry of a partial judgment under these circumstances".

Any other remedy for the defendant in those circumstances? If it were certain that the lower sum would at all times belong to the plaintiff anyway, the defendant should be able to pay the plaintiff that amount immediately--avoiding interest on it--while disputing the balance through the appellate procedure. But there is no such certainty. If the appellate court were to order a new trial, the amount of damages found by the new jury could turn out to be less than the earlier jury's verdict, which would then entail some kind of restitution procedure by the defendant against the plaintiff, introducing time-consuming complications that the court in *Trala* apparently wanted to avoid.

We see one possibility that might convince the court to go along with the procedure the defendant wants, but in a way that won't please the defendant. The defendant might stipulate with the plaintiff to guarantee the plaintiff *at least* the jury-awarded sum. If the plaintiff should accept that, interest on that sum would not be an issue. Then, if the defendant prevails on the appeal, the case should be over, with the plaintiff having already been paid the lower sum the court has affirmed. If the defendant does not prevail, and a retrial is ordered, the result should be this:

If the new jury awards less than the old sum, the old sum remains valid under the stipulation, the plaintiff keeps it but gets no more, and that's the end of it. If the new jury awards more than the old sum, the defendant can just pay the plaintiff the difference between it and the first jury's lower sum, closing things out. Or, the defendant can prolong (or reintroduce) the agony by contesting the additional sum with a new motion to set aside the verdict, etc.

This is an unusual scenario, but the court should be able to work out anything that seems fair and feasible. On the *Trala* facts, the outcome would seem to be easy enough if the defendant guarantees the plaintiff the original jury-awarded sum outright, and even pays it to the plaintiff now, before appealing the additur order. We suspect the plaintiff would be amenable to that.

## Effect of Plaintiff's Delay in Seeking CPLR 5002 Interest

What about a delay by the plaintiff in seeking interest on the verdict under CPLR 5002? That issue arose in [Rodriguez v. Long Island College Hosp.](#), 289 A.D.2d 556, 735 N.Y.S.2d 611 (2d Dept., 2001).

Since the plaintiff is entitled to interest on the verdict or decision under CPLR 5002 as a matter of right, it should be included in the judgment entered on that verdict. In *Rodriguez*, the interest had been omitted from the judgment, which the defendant had drafted. (While it is customary for the plaintiff to secure entry of the judgment on a money claim, either side is allowed to seek the entry as long as it reflects the holding.) The defendant was aware, however, that the plaintiff sought the CPLR 5002 interest and therefore could not claim prejudice. Hence the delay was disregarded and the interest allowed.

Interest under CPLR 5002 is a matter of right for all who win in a money action, regardless of what the source of the underlying claim may have been. Here we can draw an important contrast with interest under [CPLR 5001](#), which runs on the claim itself from the time of its accrual until the time of verdict or decision, but with some qualifications, such as the ubiquitous personal injury action, where the plaintiff is not entitled to interest at all until a verdict or decision is reached in the case.

And even in those categories in which [CPLR 5001](#) interest does obtain, such as with commercial and property damage transactions, there may be issues of fact on which the interest and its running depends. Delay in seeking interest in such an instance under [CPLR 5001](#) can indeed result in forfeiting the right to that category of interest altogether. See Commentary C5501:5, and note the \$88,000 forfeiture the plaintiff suffered for overlooking this in the *Lee* case discussed in Commentary C5001:6, above.

Since interest under CPLR 5002 does not depend on such extrinsic facts--if the verdict awards money, the money it awards is now a liquidated figure and carries interest--it was not difficult for *Rodriguez* to reach the conclusion it did. Had the court instead been addressing [CPLR 5001](#), it would not have had such clear sailing and the plaintiff would likely have ended up forfeiting the [CPLR 5001](#) interest.

### PRACTICE COMMENTARIES CITED

2007 Main Volume

[Pires v. Frota Oceanica Brasileira, 1998, 91 N.Y.2d 948, 694 N.E.2d 877, 671 N.Y.S.2d 709.](#)

[Love v. State, 1991, 78 N.Y.2d 540, 577 N.Y.S.2d 359, 583 N.E.2d 1296.](#)

### LEGISLATIVE STUDIES AND REPORTS

2007 Main Volume

This section is a simplification of the first sentence of § 480 of the civil practice act. No change in meaning is intended, states the Third Report to the Legislature.

The Sixth Report to the Legislature informs us that the limiting word "final" was added before the word "judgment" in view of the new general definition of judgment to include interlocutory as well as final judgments.

Official Reports to Legislature for this section:

3rd Report Leg.Doc. (1959) No. 17, p. 91.

5th Report Leg.Doc. (1961) No. 15, p. 105.

6th Report Leg.Doc. (1962) No. 8, p. 428.

### LAW REVIEW AND JOURNAL COMMENTARIES

Mysteries in New York practice and procedure. 7 Syracuse L.Rev. 223 (1956).

Survey of New York law of damages. 15 Brook.L.Rev. 74, 90 (1948).

## LIBRARY REFERENCES

2007 Main Volume

[Interest](#) ¶21, 22, 39(3).

Westlaw Topic No. 219.

C.J.S. Interest and Usury; Consumer Credit §§ 22 to 23, 42 to 43, 48, 50 to 51, 66.

## RESEARCH REFERENCES

2009 Electronic Update

ALR Library

[10 ALR 5th 191](#), Divorce and Separation: Award of Interest on Deferred Installment Payments of Marital Asset Distribution.

[62 ALR 4th 156](#), Prejudgment Interest Awards in Divorce Cases.

[60 ALR 3rd 487](#), Comment Note.--Allowance of Prejudgment Interest on Builder's Recovery in Action for Breach of Construction Contract.

[1 ALR 2nd 479](#), Date of Verdict or Date of Entry of Judgment Thereon as Beginning of Interest Period on Judgment.

[72 ALR 1150](#), Power of Court to Add Interest to Verdict Returned by Jury.

Encyclopedias

[8 Am. Jur. Proof of Facts 2d 1](#), Discount Rate for Future Damages.

[35 Am. Jur. Proof of Facts 3d 161](#), Proving Damages Caused by Securities Brokers' Excessive, Unsuitable, or Unauthorized Trading.

[NY Jur. 2d, Annuities § 23](#), Interest on Arrears.

[NY Jur. 2d, Attorneys at Law § 199](#), Interest on Fees Owed by Client to Attorney.

[NY Jur. 2d, Contracts § 590](#), Prejudgment Interest.

[NY Jur. 2d, Damages § 123](#), Actions for Personal Injury.

[NY Jur. 2d, Insurance § 1996](#), Payment of Interest.

[NY Jur. 2d, Interest & Usury § 16](#), Interest from Date of Award to Entry of Judgment.

[NY Jur. 2d, Interest & Usury § 18](#), Interest After Entry of Judgment.

[NY Jur. 2d, Interest & Usury § 21](#), Generally; Legal Rate.

[NY Jur. 2d, Interest & Usury § 27](#), Rate on Verdicts and Judgments Generally.

[NY Jur. 2d, Judgments § 34](#), Basis for Determining Judgment; Amounts Exempted.

[NY Jur. 2d, Judgments § 46](#), Separate Judgment for Part of Cause or Upon Less Than All Enumerated Causes.

[NY Jur. 2d, Judgments § 311](#), Generally; Various Methods of Satisfying or Discharging Money Judgment.

## Forms

[Carmody-Wait, 2d § 63:74](#), Generally; Award of Interest as Within Court's Discretion.

[Carmody-Wait, 2d § 63:85](#), Actions for Personal Injury or Wrongful Death.

[Carmody-Wait, 2d § 63:89](#), What Constitutes a Verdict, Report, or Decision.

[Carmody-Wait, 2d § 63:95](#), Generally; Effect of Change in Statutory Rate.

[Carmody-Wait, 2d § 63:97](#), Compound Interest.

[Carmody-Wait, 2d § 63:118](#), Generally; Tender.

[Carmody-Wait, 2d § 92:464](#), Affirmation of Defendant's Attorney in Support of Motion to Vacate Order Settling and Approving Receiver's Account, to Compel Receiver to Account, and for Judge to Recuse Herself.

[Carmody-Wait, 2d § 130:134](#), Separate Verdicts in Consolidated Personal-Injury and Wrongful-Death Actions.

[McKinney's Forms, Civil Practice Law & Rules § 8:3](#), Contents of Judgment; Interest, Costs, Disbursements.

[McKinney's Forms, Civil Practice Law & Rules § 8:352](#), Basis for Judgment to be Entered ([CPLR 5041](#)).

McKinney's Forms, Matrimonial and Family Law § 6:08, Allowances and Interest in Enforcement Actions.

[McKinney's Forms, Selected Consol. Law, Highway Law § 58 Form 3](#), Judgment in Court of Claims--General Form.

[McKinney's Forms, Selected Consol. Law, Public Authorities Law § 361-B Form 3](#), Judgment in Claim Against New York State Thruway Authority.

## Treatises and Practice Aids

[Harris 5th N.Y. Estates: Probate Admin. & Litigation § 18:114.5](#), Interest on Fees Awarded.

[Medical Malpractice § 17:1.2](#), Bench Trial.

[Medical Malpractice § 17:2.1](#), Exposition: Actions for Personal Injury Generally and the Old New Scheme for Medical Malpractice.

[Medical Malpractice § 17:3.3](#), Court's Calculation of the Interest.

[Mortgages and Mortgage Foreclosure in New York § 36:4](#), Interest.

[New York Pattern Jury Instructions--Civil 2:277](#), Damages--General.

[New York Pattern Jury Instructions--Civil DIV 2 G 1 INTRO 1](#), Intro. 1.

[NY Prac. Comm. Lit. in NY State Courts § 44:27](#), Interest on Contract Damages.

[NY Prac. Comm. Lit. in NY State Courts § 46:27](#), Award.

[New York Practice, Employment Litigation in New York § 8:12](#), Post-Judgment Interest.

[New York Practice, Enforcing Judgments and Collections § 6:59](#), Amount Recoverable Under Judgment--Pre-Judgment Interest--Computation of Interest in Determining Full Judgment Amount--Post-Verdict/Decision Interest.

[New York Practice, Enforcing Judgments and Collections § 3:317](#), Prejudgment Interest--Contract Actions--Interest Provision.

[New York Practice, Landlord & Tenant Practice in New York § 9:110](#), Interest.

[New York Practice, Landlord & Tenant Practice in New York § 14:469](#), Judgment--Interest.

[New York Practice, Landlord & Tenant Practice in New York § 15:592](#), Judgment--Interest.

[Siegel's New York Practice, 4th § 411](#), Allowance of Interest.

[Siegel's New York Practice, 4th § 412](#), Rate of Interest.

[Siegel's New York Practice, 4th § 417](#), Form of Judgment.

#### UNITED STATES CODE ANNOTATED

Costs on judgment, see [Fed.Rules Civ.Proc. Rule 54, 28 USCA](#).

Interest and damages, see [Fed.Rules Civ.Proc. Rule 56, 28 USCA](#).

Interest on judgments, see [Federal Rules of Appellate Procedure Rule 37, 28 USCA](#).

Interest when United States a party, see [28 USCA § 2411](#).

#### NOTES OF DECISIONS

Actions in which recoverable [5-8](#)

Actions in which recoverable - In general [5](#)

Actions in which recoverable - Arbitration [8](#)

Actions in which recoverable - Landlord and tenant [7](#)

Actions in which recoverable - Separation and divorce [6](#)

Amendment of verdict [9](#)

Arbitration, actions in which recoverable [8](#)

Arbitration, period subject to interest [14](#)

Authority of court [12](#)

Bifurcated trials [19](#)

Condemnation proceedings, period subject to interest [17](#)

Conflict of laws [2](#)

Costs [23](#)

Delays, period subject to interest [18](#)

Demand, generally [10](#)

Divorce, actions in which recoverable [6](#)

Eminent domain, period subject to interest [17](#)

Employment actions, period subject to interest [16](#)

Federal causes of action [3](#)

Function of court [12](#)

Future damages [11](#)

Landlord and tenant, actions in which recoverable [7](#)

Period subject to interest [13-18](#)

Period subject to interest - In general [13](#)

Period subject to interest - Arbitration [14](#)

Period subject to interest - Condemnation proceedings [17](#)

Period subject to interest - Delays [18](#)

Period subject to interest - Employment actions [16](#)

Period subject to interest - Personal injuries or wrongful death [15](#)

Personal injuries or wrongful death, period subject to interest [15](#)

Preverdict interest [20](#)

Punitive damages [24](#)

Purpose [1](#)

Rate of interest [4](#)

Reversed or vacated verdicts [21](#)

Review [25](#)

Separation and divorce, actions in which recoverable [6](#)

Vacated verdicts [21](#)

Waivers [22](#)

Wrongful death, period subject to interest [15](#)

### [1. Purpose](#)

Intent of New York statute providing for postdecision interest is to indemnify plaintiff for nonpayment of what is due him, her, or it. [Tucker Leasing Capital Corp. v. Farber, 1995, 882 F.Supp. 1290. Interest ↩ 39\(1\)](#)

Purpose of statute governing accrual of prejudgment interest in civil proceedings is not to be punitive as against defendants, but rather, to indemnify plaintiffs for the cost of the defendants having the use of another person's money between the time it is determined that compensation is due until judgment. [Van Nostrand v. Froehlich \(2 Dept. 2007\) 44 A.D.3d 54, 844 N.Y.S.2d 293. Interest ↩ 39\(2.6\)](#)

Intent of this section governing allowance of interest from date of verdict to entry of final judgment is to indemnify plaintiff for nonpayment of what is due him, and, hence, delay in rendition of damages may properly be charged against party causing it in considering allowance of interest. [Trimboli v. Scarpaci Funeral Home, Inc. \(2 Dept. 1971\) 37 A.D.2d 386, 326 N.Y.S.2d 227, affirmed 30 N.Y.2d 687, 332 N.Y.S.2d 637, 283 N.E.2d 614. Interest ↩ 39\(1\)](#)

Statutory interest is simply the cost of using another person's money, chargeable as of the date that liability is established, and not a penalty. [Pay v. State, 1998, 176 Misc.2d 540, 672 N.Y.S.2d 987. Interest ↩ 9](#)

### [2. Conflict of laws](#)

Court would apply law of New York, jurisdiction with most significant contacts with matter in dispute, in determining postjudgment interest due on jury's award of \$120,000, to bailor following loss of art deco screen, when bailment contract was signed in New York and screen was stored in state for over ten years, and only contact with New Jersey, proposed alternate source of controlling law, was bailee's fortuitous transfer of stored items from warehouse in New York to one in New Jersey. [Sere v. McNally Intern. Corp., 2004, 2004 WL 187128, Unreported. Interest ↩ 2](#)

### [3. Federal causes of action](#)

State courts may not award prejudgment interest in action to recover damages under Federal Employers' Liability Act (FELA). [Eschberger v. Consolidated Rail Corp. \(4 Dept. 1992\) 181 A.D.2d 1073, 583 N.Y.S.2d 65. Interest ↩ 39\(2.40\)](#)

In action under Federal Employers' Liability Act, [45 U.S.C.A. § 51 et seq.](#), interest on amount of jury's verdict for plaintiff from date of verdict to date of judgment thereon will not be granted. [Hanley v. Erie R. Co., 1948, 81 N.Y.S.2d 100. Interest ↩ 39\(1\)](#)

### [4. Rate of interest](#)

When a contract provides for interest to be paid at a specified rate until principal is paid, contract rate of interest, rather than legal rate, governs until payment of principal or until contract is merged in a judgment. [NYCTL 1998-2 Trust v. Wagner \(2 Dept. 2009\) 61 A.D.3d 728, 876 N.Y.S.2d 522. Interest ↩ 36\(1\)](#)

Contract interest rate, rather than statutory rate, governed rate of interest payable to plaintiff until entry of judgment in action to foreclose tax lien, where city tax lien certificate provided specifically that holder of lien was entitled to principal balance plus interest accruing thereon at rate of 18% per annum, compounded daily, and that accrued interest on tax lien principal balance for each tax lien was payable until tax lien principal balance was paid in full. [NYCTL 1998-2 Trust v. Wagner \(2 Dept. 2009\) 61 A.D.3d 728, 876 N.Y.S.2d 522. Interest ↩ 60](#)

Although 16% interest accruing on unpaid legal fees, in attorney's written retainer agreement, was not usurious, interest was not fair and reasonable, and would be reduced to statutory pre-judgment rate of 9%, given lower interest rates for pre-judgment and post-judgment awards, bank accounts, home equity loans, and personal loans from financial institutions. [Kutner v. Antonacci, 2007, Misc.2d , 16 Misc.3d 585, 837 N.Y.S.2d 859. Attorney And Client ↩ 143; Interest ↩ 31](#)

In determining whether to set post-decision and post-judgment interest rate lower than statutory 9% interest rate for obligations of State and other public entities, Court of Claims would compare presumptively reasonable statutory rate to actual market interest rates between time of decision and entry of judgment, and

between entry of judgment and time of payment. [Auer v. State, 2000, 185 Misc.2d 254, 712 N.Y.S.2d 768](#), affirmed in part, reversed in part [283 A.D.2d 122, 727 N.Y.S.2d 507](#). [Interest ↩ 31](#)

Average interest rate for Treasury bills, rather than statutory 9% rate, was appropriate interest rate when awarding post-decision and post-judgment interest to prevailing plaintiff in tort action against State; Treasury bill rate was several percentage points below the presumptively reasonable statutory rate, although rate of return of diversified portfolio of stocks and bonds would have exceeded 9% during the relevant period. [Auer v. State, 2000, 185 Misc.2d 254, 712 N.Y.S.2d 768](#), affirmed in part, reversed in part [283 A.D.2d 122, 727 N.Y.S.2d 507](#). [Interest ↩ 31](#)

#### 5. Actions in which recoverable--In general

Prejudgment interest is available in New York libel action once a verdict, report, or decision has been rendered, even though no judgment has yet been entered; in fact, such interest is mandatory. [Wachs v. Winter, 1983, 569 F.Supp. 1438](#). [Interest ↩ 39\(2.20\)](#)

Interest under statute pertaining to interest from verdict, report, or decision to judgment is a matter of right and is not dependent upon the court's discretion or a specific demand for it in complaint. [NYCTL 1998-2 Trust v. Wagner \(2 Dept. 2009\) 61 A.D.3d 728, 876 N.Y.S.2d 522](#). [Interest ↩ 66](#)

Trial court could assess interest on costs awarded to prevailing party in proceeding to value shares of corporation. [Quill v. Cathedral Corp. \(3 Dept. 1997\) 241 A.D.2d 593, 659 N.Y.S.2d 919](#), leave to appeal denied [90 N.Y.2d 812, 666 N.Y.S.2d 100, 688 N.E.2d 1383](#). [Interest ↩ 22\(9\)](#)

"Action" within this section providing that interest shall be recovered upon total sum awarded, including interest to verdict, report or decision, in any action, from date verdict was rendered or report or decision was made to date of entry of final judgment includes a special proceeding. [Kavares v. Motor Vehicle Acc. Indemnification Corp. \(1 Dept. 1967\) 29 A.D.2d 68, 285 N.Y.S.2d 983](#), affirmed [28 N.Y.2d 939, 323 N.Y.S.2d 431, 271 N.E.2d 915](#). [Interest ↩ 39\(2.6\)](#)

Preferred stockholders were entitled to interest in the discretion of the court in their derivative actions against utility companies and their directors, and where stockholders failed to establish any actual fraud or bad faith and recovery was due to the failure properly to compute the price for the sale of gas by one subsidiary company to another under compulsion of the parent company, the interest rate would be limited to 2 per cent. per year to be computed from December 31 of each year on balance then due to date of entry of judgment. [Espach v. Nassau & Suffolk Lighting Co., 1941, 177 Misc. 521, 31 N.Y.S.2d 259](#), affirmed [265 A.D. 1063, 39 N.Y.S.2d 1022](#), appeal denied [266 A.D. 733, 41 N.Y.S.2d 909](#), affirmed [293 N.Y. 463, 57 N.E.2d 835](#), motion denied [293 N.Y. 859, 59 N.E.2d 447](#), reversed [265 A.D. 455, 266 A.D. 669, 39 N.Y.S.2d 625](#), affirmed in part, reversed in part [293 N.Y. 442, 57 N.E.2d 825](#), motion denied [293 N.Y. 859, 59 N.E.2d 446](#). See, also, [Chelrob, Inc. v. Barrett, 1943, 265 A.D. 455, 266 A.D. 669, 39 N.Y.S.2d 625](#), affirmed in part and reversed in part on other grounds [293 N.Y. 442, 57 N.E.2d 825](#), motion denied [293 N.Y. 859, 59 N.E.2d 446](#). [Corporations ↩ 320\(12\)](#)

#### 6. ---- Separation and divorce, actions in which recoverable

Wife was entitled to interest on marital property she was awarded, pursuant to divorce judgment, from date of decision to entry of judgment. [Haymes v. Haymes \(1 Dept. 2002\) 298 A.D.2d 117, 748 N.Y.S.2d 542](#), leave to appeal denied [100 N.Y.2d 509, 766 N.Y.S.2d 163, 798 N.E.2d 347](#), reargument denied [1 N.Y.3d 546, 775 N.Y.S.2d 242, 807 N.E.2d 292](#). [Interest ↩ 39\(2\)](#)

Trial court's award to wife of post-judgment interest at statutory rate on distributive award from the date of entry of the judgment of divorce to the date of final payment was provident exercise of discretion. [Lipsky v. Lipsky \(2 Dept. 2000\) 276 A.D.2d 753, 715 N.Y.S.2d 427](#). [Interest ↩ 39\(3\)](#)

#### 7. ---- Landlord and tenant, actions in which recoverable

Tenant for whom judgment was entered pursuant to rent overcharge award by State Division of Housing and Community Renewal (DHCR) was entitled to legal interest on award subsequent to DHCR's order denying landlord's petition for administrative review (PAR), despite language in order denying PAR that clerk could add interest from issuance date of Rent Administrator's order to denial of PAR; there was no showing that any delay was tenant's fault, and nothing in Rent Stabilization Code's enforcement scheme required tenant to file judgment sooner than he did. [Mohassel v. Fenwick \(1 Dept. 2004\) 6 A.D.3d 234, 775 N.Y.S.2d 257](#),

clarification denied [10 A.D.3d 846](#), [783 N.Y.S.2d 22](#), motion denied [4 N.Y.3d 753](#), [790 N.Y.S.2d 642](#), [823 N.E.2d 1290](#), affirmed [5 N.Y.3d 44](#), [799 N.Y.S.2d 758](#), [832 N.E.2d 1174](#), reargument denied [5 N.Y.3d 825](#), [804 N.Y.S.2d 39](#), [837 N.E.2d 738](#). Interest [↔ 39\(2.20\)](#)

Tenant was entitled to prejudgment interest on rent overcharge from date of administrative determination that overcharge occurred; Rent Stabilization Code provided that judgment on unpaid overcharge order could be entered, filed, and enforced by tenant in same "manner" as judgment of the Supreme Court, and such "manner" included prejudgment interest. [Abend v. Argo Corp. \(1 Dept. 1994\) 208 A.D.2d 476, 617 N.Y.S.2d 726](#), leave to appeal dismissed in part, denied in part [85 N.Y.2d 882, 626 N.Y.S.2d 752, 650 N.E.2d 410](#). Interest [↔ 39\(2.20\)](#)

#### [8. ---- Arbitration, actions in which recoverable](#)

Trial court could impose 15% surcharge for legal cost and interest on award in favor of plaintiff member of organization whose members were in business of buying and selling precious gems, arising out of transaction for sale of diamonds between plaintiff member and defendant member, where arbitration panel found in favor of plaintiff and directed defendant to pay specified amount, and organization's rules provided for 15% surcharge upon defendant's failure to pay when winning party was forced to resort to judicial process to enforce award. [Israel Discount Bank Ltd. v. Rosen \(1 Dept. 1991\) 169 A.D.2d 650, 565 N.Y.S.2d 29](#), appeal denied [78 N.Y.2d 852, 573 N.Y.S.2d 465, 577 N.E.2d 1057](#). [Alternative Dispute Resolution ↔ 269](#); Interest [↔ 38\(2\)](#)

Final and definite awards of arbitrators rendered pursuant to MVAIC law qualified as "decisions" or "reports" within this section providing that interest shall be recovered upon total sum awarded, including interest to verdict, report or decision, in any action, from date verdict was rendered or report or decision was made to date of entry of final judgment. [Kavares v. Motor Vehicle Acc. Indemnification Corp. \(1 Dept. 1967\) 29 A.D.2d 68, 285 N.Y.S.2d 983](#), affirmed [28 N.Y.2d 939, 323 N.Y.S.2d 431, 271 N.E.2d 915](#). Interest [↔ 39\(2.6\)](#)

#### [9. Amendment of verdict](#)

For purposes of calculating interest owed by state on future damage award to child seriously injured in utero in car accident, future damage award was discounted back to present value as of date on which, in wrongful death action by estate of child's mother, state was found to be liable for negligently maintaining guardrail; discounting of future damage award to date over three years later when damages were assessed in child's personal injury action, as trial court had done, resulted in interest windfall for child. [Pay v. State, 1996, 87 N.Y.2d 1011, 643 N.Y.S.2d 467, 666 N.E.2d 172](#), on remand [176 Misc.2d 540, 672 N.Y.S.2d 987](#). Interest [↔ 56](#)

Plaintiffs were entitled to interest on amount of the additur computed from the date of the jury's verdict, rather than date of Appellate Court's decision and order adopting the additur, where Appellate Court's judgment required defendants to enter into written stipulation consenting to increase the "verdict" as to damages, and the defendants so stipulated. [DePaolo v. Wisoff \(2 Dept. 1992\) 184 A.D.2d 745, 585 N.Y.S.2d 480](#). Interest [↔ 39\(1\)](#)

#### [10. Demand, generally](#)

If C.P.A. § 480 which provided for addition of interest from time verdict was rendered to time of entering of judgment in any action where final judgment is rendered for sum of money, was applicable, demand for such interest was not necessary. [23 West St. Corp. v. Gibbs & Cox, Inc. \(1 Dept. 1953\) 282 A.D. 362, 123 N.Y.S.2d 386](#), affirmed [307 N.Y. 723, 121 N.E.2d 543](#). Interest [↔ 61](#)

Motion to add interest to award or fix date from which interest should be computed may be made at any time prior to execution of judgment. [Buffalo Oil Terminal, Inc. v. William B. Kimmins & Sons, Inc., 1964, 42 Misc.2d 499, 248 N.Y.S.2d 499](#), affirmed [23 A.D.2d 970, 260 N.Y.S.2d 621](#). Interest [↔ 64.1](#)

#### [11. Future damages](#)

Future damages are properly treated as a debt owed entirely as of the date of liability verdict, and interest is properly charged against present value of future damages from that date. [Pay v. State, 1996, 87 N.Y.2d 1011, 643 N.Y.S.2d 467, 666 N.E.2d 172](#), on remand [176 Misc.2d 540, 672 N.Y.S.2d 987](#). Interest [↔ 56](#)

## 12. Authority of court

Where it cannot be established that jury did not take interest into consideration in arriving at lump-sum verdict, court cannot add interest to award returned. [Lindwall v. Talent Cab Corp., 1966, 51 Misc.2d 381, 273 N.Y.S.2d 261. Trial ↪ 340\(5\)](#)

## 13. Period subject to interest--In general

Plaintiffs who had prevailed in diversity action seeking damages for breach of contract, and who later sought award of prejudgment interest under rule permitting relief from judgment or order for clerical error, were entitled to interest which accrued between rendering of jury verdict and entry of judgment due to failure of clerk of court to comply with this section requiring clerk to add to a judgment in any action interest from date of verdict to entry of judgment. [Lee v. Joseph E. Seagram & Sons, Inc., C.A.2 \(N.Y.\)1979, 592 F.2d 39. Interest ↪ 39\(2.30\)](#)

Under New York law, prejudgment interest was available in conversion action between date summary judgment was granted to plaintiff on issue of liability and date amount of damages were determined. [Zhejiang Tongxiang Import & Export Corp. v. Asia Bank, N.A., 2005, 352 F.Supp.2d 469. Interest ↪ 39\(2.50\)](#)

Although the decision whether to award prejudgment interest and the rate to be applied is left to the discretion of the district court, to the extent that the damages awarded to the plaintiff represent compensation for lost wages, it is ordinarily an abuse of discretion not to include prejudgment interest. [Collins v. Suffolk County Police Dept., 2004, 349 F.Supp.2d 559. Interest ↪ 39\(2.10\)](#)

Judgment was ascertained in meaningful way, for purpose of calculation of date when period for collecting prejudgment interest ended and post-judgment interest began under New York law, on date when judgment was entered, not when summary judgment was granted on account stated claim. [FTI Consulting, Inc. v. Rossi, 2004, 332 F.Supp.2d 677. Interest ↪ 39\(3\)](#)

Under New York law, interest could not begin to run until rendering of magistrate judge's report and recommendation following inquest, which was functional equivalent of verdict or decision setting forth amount of damages; interest could not run from date of entry of default against defendants, since default related only to liability, with amount of damages to be determined subsequently. [Sales v. Republic of Uganda, 1993, 828 F.Supp. 1032. Interest ↪ 39\(1\)](#)

Under New York law governing recovery of prejudgment interest, plaintiff in action arising from default by short position holders in potato futures market would be entitled to preverdict interest from date on which his total damages became ascertainable to day before verdict was rendered, and would be entitled to prejudgment interest upon verdict from date of verdict to date of entry of final judgment. [Strobl v. New York Mercantile Exchange, 1984, 590 F.Supp. 875, affirmed 768 F.2d 22, certiorari denied 106 S.Ct. 527, 474 U.S. 1006, 88 L.Ed.2d 459. Interest ↪ 39\(2.30\)](#)

Normal interest and penalties were properly included in final determination of New York City comptroller of delinquent use taxes and business taxes due by Massachusetts citizens, who maintained shoe business in New York City, and City was also entitled to interest at rate allowable in New York from date of determination until judgment ordering payment was rendered. [City of New York v. Shapiro, D.C.Mass.1954, 129 F.Supp. 149. Taxation ↪ 3697](#)

Interest on award of damages for breach of agreement relating to exploitation of wood preservative patents was to be computed from date of decision to date of entry of judgment at 5 per cent. [Osmose Wood Preserving Co. of Canada v. Osmose Wood Preserving Co. of America, 1947, 74 F.Supp. 435, 75 U.S.P.Q. 72, 76 U.S.P.Q. 188. Interest ↪ 31; Interest ↪ 39\(2.30\)](#)

Where financial responsibility of defendant was not questioned, plaintiff could not be prejudiced by stay of entry of judgment pending disposition of other motions, notwithstanding that some question might arise as to time of running of interest as against judgment, since, under C.P.A. § 480 interest is computed from time when verdict is rendered, and such practice obtains in federal courts. [Voelker v. Delaware, L. & W.R. Co., 1939, 31 F.Supp. 515. Federal Civil Procedure ↪ 2624](#)

In divorce proceeding, wife was entitled to interest on her net distributive award of \$556,611.82 at the statutory rate commencing from the date of the court's decision distributing the parties' marital assets. [Smith v. Winter \(4 Dept. 2009\) 64 A.D.3d 1218, 883 N.Y.S.2d 412. Interest ↪ 39\(3\)](#)

When lender purchased right to enforce underlying deficiency judgment from mortgagee, the lender stepped into the shoes of mortgagee, and thus accrual date for interest was the date of entry of the judgment of foreclosure and sale, and not date lender and mortgagors entered into agreement for bridge loan to satisfy judgment in mortgagee's underlying foreclosure action. [Abir v. Malky, Inc. \(2 Dept. 2009\) 59 A.D.3d 646, 873 N.Y.S.2d 350](#). [Interest ↻ 39\(3\)](#)

Inclusion of interest from date of trial court's order granting summary judgment for insurer to entry of final judgment was warranted, in insured's action seeking declaratory judgment that its policy covered it for injuries to third party resulting from malfeasance of insured's vendor, an additional insured, was warranted, although parties' stipulation was clear and unambiguous in that it contained no provision for payment of interest, the case was not an action based on a breach of performance of a contract, and insurer did not interfere with title to, possession, or enjoyment of any property belonging to insured. [Raymond Corp. v. National Union Fire Ins. Co. of Pittsburgh, Pa. \(3 Dept. 2007\) 46 A.D.3d 1251, 849 N.Y.S.2d 101](#). [Interest ↻ 39\(2.35\)](#); [Interest ↻ 43](#)

Although motorist had not yet established existence of serious injury, as required under Comprehensive Motor Vehicle Insurance Reparation Act, until her damages trial, prejudgment interest for motorist's damages accrued from date that common-law liability attached by summary judgment in her favor, in motorist's personal injuries action, not date of jury's damages verdict; computation of interest was held in abeyance until amount of damages was later determined at damages trial, retroactive to liability finding, after serious injury threshold was affirmatively met at damages trial. [Van Nostrand v. Froehlich \(2 Dept. 2007\) 44 A.D.3d 54, 844 N.Y.S.2d 293](#). [Interest ↻ 39\(2.50\)](#); [Interest ↻ 51](#)

Determination of threshold question of whether motor vehicle plaintiff incurred serious injury, under Comprehensive Motor Vehicle Insurance Reparation Act, is quintessentially an issue of damages, not liability under such No Fault Law, and regardless of whether damages are set at zero or at liquidated amount, calculation of prejudgment interest can be made against jury's determination of damages measured from court's earlier finding of common-law liability by default, stricken pleading, summary judgment, or bifurcated trial; if plaintiff at damages trial fails to establish serious injury, plaintiff is not entitled to any recovery despite proof of liability, but if serious injury is established, the jury will render monetary award that fairly and justly compensates for all loss. [Van Nostrand v. Froehlich \(2 Dept. 2007\) 44 A.D.3d 54, 844 N.Y.S.2d 293](#). [Automobiles ↻ 251.15](#); [Automobiles ↻ 251.18](#); [Interest ↻ 39\(2.50\)](#)

In statute governing prejudgment interest in civil proceedings, accruing from date verdict, report, or decision was rendered to date of entry of final judgment, the terms "verdict," "report," or "decision" generally refer to the date that liability is established, even though the damages verdict is reached at a later time. [Van Nostrand v. Froehlich \(2 Dept. 2007\) 44 A.D.3d 54, 844 N.Y.S.2d 293](#). [Interest ↻ 39\(2.6\)](#)

The cause of the delay between a verdict and a judgment is not the controlling factor in determining whether a litigant is entitled to prejudgment interest for that period. [Sawtelle v. Southside Hosp. \(2 Dept. 2003\) 305 A.D.2d 659, 760 N.Y.S.2d 206](#). [Interest ↻ 39\(2.6\)](#)

Prejudgment interest should not have been allowed for the period following tender of the full verdict amount. [O'Rourke v. Berner \(4 Dept. 1998\) 249 A.D.2d 975, 672 N.Y.S.2d 216](#). [Interest ↻ 50](#)

Regardless of whether damages award is to compensate past damages, future damages, or both, interest is awarded as of the date of the verdict, and applied against the total sum awarded. [Bermeo v. Atakent \(1 Dept. 1998\) 241 A.D.2d 235, 671 N.Y.S.2d 727](#). [Interest ↻ 39\(3\)](#); [Interest ↻ 56](#)

Postjudgment interest would accrue in medical malpractice action on periodic payments that were due and owing in future. [Silvestri v. Smallberg \(1 Dept. 1996\) 224 A.D.2d 172, 637 N.Y.S.2d 115](#), leave to appeal granted [88 N.Y.2d 803, 645 N.Y.S.2d 446, 668 N.E.2d 417](#), affirmed [88 N.Y.2d 1004, 648 N.Y.S.2d 870, 671 N.E.2d 1267](#). [Interest ↻ 22\(6\)](#)

Teacher wrongfully terminated was entitled to interest on back-pay award from date of reinstatement order. [Ricca v. Board of Educ. of City School Dist. of City of New York \(2 Dept. 1983\) 91 A.D.2d 993, 457 N.Y.S.2d 853](#), appeal dismissed [61 N.Y.2d 603, 472 N.Y.S.2d 1026, 460 N.E.2d 1107](#), reargument denied [61 N.Y.2d 905, 474 N.Y.S.2d 1027, 462 N.E.2d 1205](#). [Interest ↻ 39\(1\)](#)

Claimants who were awarded damages on claim against state for injuries claimants sustained because of alleged defect in state highway which caused automobile in which claimants were riding to go out of control

and strike a tree, were entitled to interest from date decision was made to date judgment was entered by clerk. [Sletten v. State \(3 Dept. 1953\) 282 A.D. 751, 121 N.Y.S.2d 923](#). Interest ↩ 39(1)

Prejudgment interest was payable in a lump sum on the net present value of annuity contracts at the presumptively fair and reasonable statutory rate of 9% interest from date summary judgment was entered on scaffold law claim to date that final judgment was entered and from date that final judgment was entered to date of payment or delivery of annuity contracts for structured award for injured worker's future damages. [Schifelbine v. Foster Wheeler Corp., 2002, 3 Misc.3d 151, 776 N.Y.S.2d 146](#), affirmed as modified [4 A.D.3d 736, 772 N.Y.S.2d 140](#), appeal and reargument denied [6 A.D.3d 1250, 776 N.Y.S.2d 530](#), leave to appeal dismissed [3 N.Y.3d 656, 782 N.Y.S.2d 695, 816 N.E.2d 568](#). Interest ↩ 31; Interest ↩ 39(2.50); Interest ↩ 56

When a plaintiff is awarded summary judgment on the issue of liability, interest begins to accrue on the date that the summary judgment order is entered, because that is the time that the plaintiff's right to compensation is fixed at law. [Gordon v. City of New York, 2001, 188 Misc.2d 246, 727 N.Y.S.2d 287](#). Interest ↩ 39(2)

When a plaintiff is awarded a default judgment, interest begins to accrue from the date on which the order of default is entered. [Gordon v. City of New York, 2001, 188 Misc.2d 246, 727 N.Y.S.2d 287](#). Interest ↩ 39(2)

Statutory interest on award of future damages began to accrue on date that defendant became liable for full amount of damages awarded. [Pay v. State, 1998, 176 Misc.2d 540, 672 N.Y.S.2d 987](#). Interest ↩ 39(1)

Where nothing in order confirming award denied plaintiff's right to interest from date of award, court would allow interest from date of the award. [Oursler v. Cole, 1957, 5 Misc.2d 3, 162 N.Y.S.2d 982](#). Interest ↩ 39(1)

Under New York law, provider of professional telecommunications services was entitled to prejudgment interest on unpaid invoices, at nine percent statutory rate, with commencement date set at midpoint of dates of various invoices. [Nuera Communications, Inc. v. Telron Communications USA, Inc., 2002, 2002 WL 31778796](#), Unreported. Interest ↩ 31; Interest ↩ 39(2.20)

#### 14. ---- Arbitration, period subject to interest

Court was powerless to award prearbitration award interest and, therefore, erroneously awarded interest for period between denial of motion to stay arbitration and arbitration award on claim for uninsured motorist (UM) benefits. [Aetna Cas. and Sur. Co. v. Rosen \(2 Dept. 1996\) 233 A.D.2d 499, 650 N.Y.S.2d 29](#). [Alternative Dispute Resolution](#) ↩ 152

Interest on arbitrator's award upon claim based on policy issued by MVAIC would run from date of arbitrator's award. [Durant v. Motor Vehicle Acc. Indemnification Corp. \(2 Dept. 1964\) 20 A.D.2d 242, 246 N.Y.S.2d 548](#), modified on other grounds [15 N.Y.2d 408, 260 N.Y.S.2d 1, 207 N.E.2d 600](#), reargument denied [16 N.Y.2d 716, 261 N.Y.S.2d 1028, 209 N.E.2d 565](#). Interest ↩ 39(1)

Successful party in arbitration proceeding was entitled to interest on award for period from date thereof to entry of judgment. [East India Trading Co. v. Dada Haji Ebrahim Halari \(1 Dept. 1952\) 280 A.D. 420, 114 N.Y.S.2d 93](#), affirmed [305 N.Y. 866, 114 N.E.2d 213](#). [Alternative Dispute Resolution](#) ↩ 235

#### 15. ---- Personal injuries or wrongful death, period subject to interest

Future damages were properly treated as debt owed entirely as of date of liability verdict in personal injury case, and interest was properly charged against present value of future damages from that date, although damages award was subject to statutory structured judgment scheme. [Rohring v. City of Niagara Falls, 1994, 84 N.Y.2d 60, 614 N.Y.S.2d 714, 638 N.E.2d 62](#). Interest ↩ 39(1)

In personal injury action arising out of an automobile collision, plaintiff was entitled to interest on damages award of \$35,000 for the noneconomic loss sustained as a result of his serious injury incurred in the accident as of date of trial court's order granting plaintiff's motion for summary judgment on issue of common-law liability. [Odumbo v. Perera \(2 Dept. 2008\) \\_\\_\\_ A.D.3d \\_\\_\\_, 854 N.Y.S.2d 769](#). Interest ↩ 39(1)

Plaintiff in personal injury action was entitled to prejudgment interest on \$500,000 damages award for future pain and suffering from the date of the appellate court's decision reversing trial court's denial of plaintiff's

motion for partial summary judgment on issue of liability, rather than from later date on which plaintiff stipulated to \$100,000 reduction from jury's award of \$600,000, where the stipulation to the reduction did not preclude or negate an award of prejudgment interest. [Lifshits v. Variety Poly Bags \(2 Dept. 2005\) 18 A.D.3d 622, 795 N.Y.S.2d 657](#), leave to appeal dismissed [5 N.Y.3d 847, 805 N.Y.S.2d 547, 839 N.E.2d 901](#). [Interest ↪ 39\(2.50\)](#)

Plaintiff in personal injury action was entitled to prejudgment interest on \$200,000 damages award for past pain and suffering from the date of the appellate court's decision reversing trial court's denial of plaintiff's motion for partial summary judgment on issue of liability, rather than from later date of jury verdict on damages, where it was undisputed that date of summary judgment decision was proper date for calculation of such interest. [Lifshits v. Variety Poly Bags \(2 Dept. 2005\) 18 A.D.3d 622, 795 N.Y.S.2d 657](#), leave to appeal dismissed [5 N.Y.3d 847, 805 N.Y.S.2d 547, 839 N.E.2d 901](#). [Interest ↪ 39\(2.50\)](#)

Motorist and her husband were entitled to interest from the date of the verdict to date of entry of judgment in their favor in action arising from motor vehicle accident. [Garigen v. Morrow \(4 Dept. 2003\) 303 A.D.2d 956, 757 N.Y.S.2d 422](#). [Interest ↪ 39\(1\)](#)

Where it was determined, on claim to recover damages for wrongful death against the State, that, based on seat belt defense, claimant was not entitled to recover damages for wrongful death but was only entitled to recover for those personal injuries decedent would have sustained had he been wearing seat belt, interest on award was to be computed from date of decision of Court of Claims, and not from date of decedent's death. [Cappadona v. State \(2 Dept. 1989\) 156 A.D.2d 505, 548 N.Y.S.2d 778](#). [Interest ↪ 44](#)

In personal injury action, when defendant appeals from interlocutory judgment on liability, and trial on assessment of damages is stayed pending appeal, interest will accrue on any final judgment against defendant from date of interlocutory judgment. [Gunnarson v. State \(2 Dept. 1986\) 124 A.D.2d 642, 507 N.Y.S.2d 896](#), appeal granted [69 N.Y.2d 606, 514 N.Y.S.2d 1023, 507 N.E.2d 319](#), affirmed [70 N.Y.2d 923, 524 N.Y.S.2d 396, 519 N.E.2d 307](#). [Interest ↪ 39\(3\)](#)

Unconditional tender by defendants' insurer of damages awarded for plaintiffs' personal injury, including lump sum payments, past due periodic payments, interest, and attorney fees, tolled interest on sums covered under tender, and no additional interest would accrue on annuity contracts, issued as security for certain categories of damages, since there was no dispute as to correctness of amounts tendered or calculation of annuity interest. [Allison v. Erie County Indus. Development Agency, 2007, 16 Misc.3d 445, 837 N.Y.S.2d 491](#). [Interest ↪ 50](#)

Interest on personal injury damages would run from date of Court of Claims' assessment of damages, and not date upon which liability was established, where there was no stay of proceedings and State did not either delay in perfecting its appeal or in bringing case to trial. [Brock v. State, 1978, 97 Misc.2d 400, 411 N.Y.S.2d 528](#). [States ↪ 171](#)

#### 16. ---- Employment actions, period subject to interest

Under New York law, employee who prevailed on her breach of employment contract claim was entitled to interest from date of jury's verdict until entry of judgment and to postjudgment interest. [Gargano v. Diocese of Rockville Centre, 1995, 888 F.Supp. 1274](#), affirmed [80 F.3d 87](#). [Interest ↪ 38\(1\)](#); [Interest ↪ 39\(2.40\)](#); [Interest ↪ 39\(3\)](#)

Individual who was discriminatorily disqualified for position of firefighter was entitled to award of interest on loss of employment opportunity from date of order issued by State Commissioner of Human Rights, not from date when damages ceased to accrue. [City of Fulton v. New York State Div. of Human Rights \(4 Dept. 1995\) 221 A.D.2d 971, 633 N.Y.S.2d 914](#), appeal and reargument denied [1996 WL 46018](#). [Municipal Corporations ↪ 1002](#)

#### 17. ---- Condemnation proceedings, period subject to interest

Where award in eminent domain proceeding was for indirect damage to property not taken, interest on the principal ran from the date of entry of order confirming report. [In re Ford \(3 Dept. 1975\) 48 A.D.2d 473, 369 N.Y.S.2d 855](#), affirmed [39 N.Y.2d 1000, 387 N.Y.S.2d 240, 355 N.E.2d 295](#). [Eminent Domain ↪ 247\(2\)](#)

#### 18. ---- Delays, period subject to interest

The fact that the claimant delayed the entry of the decree by legal proceedings unsuccessfully carried on by it is not any reason for depriving the libelant of any interest which otherwise would have been received. That the allowance of interest on interest in such circumstances is not unjust is evidence by the fact that the Legislature of the state of New York has expressly provided in the Civil Practice Act, § 480, that where final judgment for a sum of money is awarded by a verdict, report, or decision, interest upon the entire sum was rendered or the report or decision was made to the time of entering judgment must be added to the sum awarded and included in the amount of the judgment, and that such judgment shall bear interest from the time it is entered. [The Ansaldo San Giorgio I, 1935, 12 F.Supp. 128.](#)

Death of debtor's sole shareholder and officer did not provide good cause justifying delay in selling property subject to a tax lien and judgment of foreclosure and sale, as would warrant amendment of judgment so as to stop running of interest, where debtor could have avoided most of the interest of which he complained had he at least paid the undisputed portion of the judgment. [NYCTL 1998-2 Trust v. 1985 Jerome Ave. Corp. \(1 Dept. 2006\) 33 A.D.3d 428, 823 N.Y.S.2d 12. Taxation ↩ 2935](#)

Plaintiff was not entitled to interest and damages from the date of verdict on liability where plaintiff had taken cross appeals in response to defendant's appeals, and thus was as responsible for the delay as was the defendant. [Viscomi v. S.S. Kresge Co. \(4 Dept. 1990\) 159 A.D.2d 979, 552 N.Y.S.2d 761](#), appeal denied [76 N.Y.2d 708, 560 N.Y.S.2d 990, 561 N.E.2d 890. Interest ↩ 39\(1\)](#)

State did not cause unreasonable delay in perfecting its appeal or in preparing for damages trial following interlocutory judgment determining liability against State and both State and claimants were willing to wait until appeal on liability issue was determined so as to prevent possible useless expenditure of substantial money; therefore, court of claims correctly determined that interest would not be computed from date of liability decision on award for personal injuries and interest on property damage would not be capitalized as of date of liability decision. [Brock v. State \(3 Dept. 1980\) 77 A.D.2d 670, 429 N.Y.S.2d 778. Interest ↩ 39\(1\); Interest ↩ 56; States ↩ 171](#)

Where claimants' work on highway which they contracted to build for state was completed December 6, 1948, and accepted by State on December 21, 1948 and State completed its final estimate on February 9, 1949, lapse of time was not unreasonable and claimants would be awarded interest from date of final estimate to July 26, 1949, date of entry of judgment on amounts which State and claimants agreed were due claimants and as claimants were entitled to payment of interest on July 26, 1949 and use of it had been withheld from them since that date they were entitled to interest thereon to date of entry of judgment. [D'Angelo v. State, 1951, 200 Misc. 657, 106 N.Y.S.2d 350. Interest ↩ 39\(1\); Interest ↩ 60](#)

#### 19. Bifurcated trials

In a bifurcated personal injury action, prejudgment interest should be calculated from the date of liability determination, even though the actual damages are assessed and judgment entered later. [Pay v. State, 1996, 87 N.Y.2d 1011, 643 N.Y.S.2d 467, 666 N.E.2d 172](#), on remand [176 Misc.2d 540, 672 N.Y.S.2d 987. Interest ↩ 56](#)

In bifurcated personal injury action, prejudgment interest should be calculated from date of liability determination irrespective of whose fault it may be that assessment of plaintiff's damages is delayed. [Love v. State, 1991, 78 N.Y.2d 540, 577 N.Y.S.2d 359, 583 N.E.2d 1296. Interest ↩ 39\(2.50\)](#)

Where there is bifurcated trial, plaintiff is ordinarily entitled to interest from date interlocutory verdict is rendered, rather than date of verdict awarding damages. [Malkin v. Wright \(1 Dept. 1978\) 64 A.D.2d 569, 407 N.Y.S.2d 36. Interest ↩ 39\(1\)](#)

Interest should be computed from date of liability adjudication in bifurcated trials, regardless of who was at fault in delay in rendition of damages. [Krause v. City of New York, 1991, 149 Misc.2d 962, 567 N.Y.S.2d 1004. Interest ↩ 39\(1\)](#)

#### 20. Preverdict interest

Under New York law, plaintiffs were entitled to prejudgment interest from date summary judgment was entered on issue of liability, not later date on which damages were determined, through the date of entry of final judgment. [Schipani v. McLeod, C.A.2 \(N.Y.\)2008, 2008 WL 2890466. Interest ↩ 39\(2.50\)](#)

Under New York law, plaintiffs were entitled to prejudgment interest from date summary judgment was

entered on issue of liability, not later date on which damages were determined, through the date of entry of final judgment. [Schipani v. McLeod, C.A.2 \(N.Y.\)2008, 541 F.3d 158](#). Interest ↪ 39(2.50)

New York statute permitting compounding of prejudgment interest between date verdict is rendered and entry of final judgment did not permit compounding during period between grant of summary judgment to plaintiff on issue of liability in bifurcated conversion action and determination of amount of damages; grant of summary judgment did not resolve significant issue of whether defendant's actions were the cause of plaintiff's injury or whether plaintiff itself was the sole cause of the damages it suffered, and thus did not represent the point at which plaintiff's right to compensation became fixed. [Zhejiang Tongxiang Import & Export Corp. v. Asia Bank, N.A., 2005, 352 F.Supp.2d 469](#). Interest ↪ 60

Failure of judgment to award postdecision interest could be corrected as clerical mistake, but failure of judgment to award predecision prejudgment interest could not be so corrected; postdecision interest must be calculated automatically, but further factual findings would be needed to award predecision interest. [Employers Mut. Cas. Co. v. Key Pharmaceuticals, Inc., 1995, 886 F.Supp. 360](#). [Federal Civil Procedure](#) ↪ 2656; Interest ↪ 56

In personal injury action arising from automobile accident, prejudgment interest should have been calculated from date defendant's answer was struck, not from date of accident; date defendant's answer was struck was date liability was determined. [Diane v. Ricale Taxi, Inc. \(1 Dept. 2006\) 26 A.D.3d 232, 809 N.Y.S.2d 65](#). Interest ↪ 39(2.50)

To award plaintiffs prejudgment interest on award in excess of \$1,500,000 when proof at trial was not based on estimates at time damages were incurred, but rather 11 years later, would bestow an unwarranted windfall, and thus plaintiffs were not entitled to prejudgment interest. [Kassis v. Teachers' Ins. and Annuity Ass'n \(1 Dept. 2004\) 13 A.D.3d 165, 786 N.Y.S.2d 473](#). Interest ↪ 39(2.20)

The purpose of prejudgment interest is to compensate parties for the loss of the use of money they were entitled to receive, taking into account the time value of money. [Kassis v. Teachers' Ins. and Annuity Ass'n \(1 Dept. 2004\) 13 A.D.3d 165, 786 N.Y.S.2d 473](#). Interest ↪ 39(2.6)

Plaintiff was not entitled to preverdict interest on compensatory damages awarded by jury at trial of plaintiff's action against defendant for breaches of contract and fiduciary obligation, since interest award would have constituted windfall double recovery; jury's award was based on present value of stock that had significantly appreciated during period between defendant's misappropriation of partnership opportunity to purchase stock and verdict, and jury charge made clear that verdict was to make plaintiff whole by putting him in same position he would have been in had defendant complied with his contractual obligations. [Bamira v. Greenberg \(1 Dept. 2002\) 295 A.D.2d 206, 744 N.Y.S.2d 367](#). Interest ↪ 39(2.30); Interest ↪ 39(2.50)

Preverdict interest on future damages had to be calculated from the date when liability was determined via the grant of a motion for partial summary judgment rather than from the date of the decedent's death, in a suit against a school district and other defendants alleging that their negligence caused the decedent's fatal fall through the roof of a building owned by the school district, where the award of damages had been discounted to the date of the liability determination. [Shue v. Red Creek Cent. School Dist. \(4 Dept. 1999\) 266 A.D.2d 899, 697 N.Y.S.2d 437](#). Interest ↪ 39(2.50)

Wrongful death plaintiff was entitled to postjudgment interest on preverdict interest. [Hosmer v. Distler \(3 Dept. 1989\) 150 A.D.2d 974, 541 N.Y.S.2d 650](#). Interest ↪ 60

If award contains amounts for which interest from accrual of cause of action is proper along with amounts for which no interest can be awarded until verdict, and amounts cannot be separated, then no interest can be permitted on entire verdict prior to day of verdict. [Brandt Corp. v. Warren Automatic Controls Corp. \(2 Dept. 1971\) 37 A.D.2d 563, 322 N.Y.S.2d 291](#). Interest ↪ 39(1)

Prejudgment interest must be calculated from date that liability is established, irrespective of fact that damages were awarded at a later date, and regardless of who was at fault for the delay between the liability verdict and damages verdict. [Gordon v. City of New York, 2001, 188 Misc.2d 246, 727 N.Y.S.2d 287](#). Interest ↪ 39(2.6)

Liability was established, and thus prejudgment interest began to run, on date that order striking city's answer for discovery abuses was entered, not on later date when verdict was returned on issue of damages. [Gordon v. City of New York, 2001, 188 Misc.2d 246, 727 N.Y.S.2d 287](#). Interest ↪ 39(2.20)

## 21. Reversed or vacated verdicts

Interest awarded to infant plaintiff on medical malpractice settlement as form of sanction against in-state counsel disputing sharing with infant's out-of-state attorney fees awarded in settlement would be vacated, where the sanctions award itself was being vacated and case remanded for further proceedings against in-state counsel, which appeared to have attempted to appropriate entire fee, but was not given reasonable opportunity to be heard; the interest award was intended to compensate infant for delay in settlement payment caused by in-state counsel's conduct. [Leskinen v. Fusco \(1 Dept. 2005\) 18 A.D.3d 387, 796 N.Y.S.2d 54](#), leave to appeal dismissed [6 N.Y.3d 807, 812 N.Y.S.2d 445, 845 N.E.2d 1276](#), on remand [13 Misc.3d 1244\(A\), 831 N.Y.S.2d 360. Appeal And Error ↩ 1172\(1\)](#)

Verdict in first trial could not serve as basis for computing interest where first judgment was set aside and new trial ordered, rendering original verdict a nullity; since original verdict no longer existed, there was no legal basis to conclude that interest could run from that date. [Haddock v. City of New York, 1989, 142 Misc.2d 859, 538 N.Y.S.2d 900. Interest ↩ 39\(1\)](#)

Where plaintiff retried issue of damages, rather than stipulate to accept a reduced award, when jury reassessed damages to plaintiff allowance was made in award for interest from time of plaintiff's injury and loss to time of jury's decision, and plaintiff was not entitled to award of separate interest on second verdict dating from date of first verdict. [Lindwall v. Talent Cab Corp., 1966, 51 Misc.2d 381, 273 N.Y.S.2d 261. Interest ↩ 39\(1\)](#)

Defendants were not entitled to entry of partial judgment in amount of jury verdict plus interest in order to prevent prejudgment interest from accruing during pendency of their appeal from order setting aside jury verdict, since final judgment could not be entered because court granted plaintiff's motion to set aside verdict, and defendants refused to stipulate to additur. [Trala v. Egloff \(4 Dept. 2002\) 298 A.D.2d 878, 747 N.Y.S.2d 625. Judgment ↩ 214](#)

## 22. Waivers

C.P.A. § 480 which required that in every action where a sum of money is awarded, interest shall be recovered upon the principal sum whether liquidated or unliquidated, did not constitute statement of public policy prohibiting an agreement by parties limiting or suspending right to interest. [Lenart Constructors, Inc. v. State, 1957, 6 Misc.2d 473, 165 N.Y.S.2d 407. Interest ↩ 3](#)

## 23. Costs

Assignee of party which received eminent domain award was entitled to interest on allowance for witness and counsel fees from same date as interest began to run on the award itself. [In re Ford \(3 Dept. 1975\) 48 A.D.2d 473, 369 N.Y.S.2d 855](#), affirmed [39 N.Y.2d 1000, 387 N.Y.S.2d 240, 355 N.E.2d 295. Eminent Domain ↩ 247\(1\)](#)

## 24. Punitive damages

Plaintiff was only entitled to interest from date of judgment in his favor in action brought against telephone solicitor for violations of Telephone Consumer Protection Act (TCPA), and analogous state statute, since damages award was punitive in nature. [Kaplan v. First City Mortg., 1999, 183 Misc.2d 24, 701 N.Y.S.2d 859. Interest ↩ 39\(3\)](#)

## 25. Review

Insured was not required to provide a separate reply pleading to preserve for review on appeal challenge to trial court's inclusion of over \$2 million in prejudgment interest in its judgment for insurer, in insured's action seeking declaratory judgment that its policy covered it for injuries to third party resulting from malfeasance of insured's vendor, an additional insured, where only the wherefore clause of insurer's answer demanded interest, and there was no separate cause of action pleaded as a counterclaim for interest. [Raymond Corp. v. National Union Fire Ins. Co. of Pittsburgh, Pa. \(3 Dept. 2007\) 46 A.D.3d 1251, 849 N.Y.S.2d 101. Declaratory Judgment ↩ 393](#)

McKinney's CPLR § 5002, NY CPLR § 5002

Current through L.2009, chapters 1 to 14 and 16 to 495.

Copr © 2009 Thomson Reuters

END OF DOCUMENT

(c) 2009 Thomson Reuters. No Claim to Orig. US Gov. Works.