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Statutory Post-Judgment Interest: The Effect of Legislative Changes After Judgment and Suggestions for Construction

I. INTRODUCTION

Post-judgment¹ interest did not exist at common law and is solely a matter of legislative grace.² For the most part, states³ have enacted statutes allowing for an award of interest on money judgments to compensate the judgment creditor for not having use of the judgment money (i.e. during the appeals process) until paid by the judgment debtor.⁴ Such statutes have generally set the rate of interest that is applied to the judgment debt until it is paid in full.

From time to time, legislatures find it necessary to change the set statutory rate of interest for post-judgment debts to keep in line with current economic conditions. These changes, though necessary, have resulted in a wealth of litigation.⁵ Primarily, such a change raises the question whether the new rate is to apply retroactively to all judgments, prospectively to outstanding amounts owed on prior judgments, or only to judgments rendered after the new rate's effective date.

Part II of this comment compares the approaches taken by the courts when interpreting post-judgment interest statutes in light of a change in the rate following entry of judgment. Part III discusses the purposes and language of various post-judgment interest rate statutes and suggests ways in which leg-

1. Spellings of this word are as varied as the statutes and cases which discuss it.

2. *Kaiser Aluminum & Chem. Corp. v. Bonjorno*, 494 U.S. 827, 840 (1990) ("At common law, judgments do not bear interest; interest rests solely upon statutory provision." (citations omitted)).

3. The federal government has also provided for post-judgment interest. See 28 U.S.C. § 1961 (1994). For a comprehensive discussion of post-judgment interest in federal courts, see Susan M. Payor, *Post-Judgment Interest in Federal Courts*, 37 EMORY L.J. 495 (1988).

4. See, e.g., CAL. CIV. PROC. CODE § 685.010 (West 1987) ("on the principal amount of a money judgment remaining unsatisfied"); ILL. ANN. STAT. ch. 735, para. 5/2-1303 (Smith-Hurd 1992) ("until satisfied").

5. See generally Diane M. Allen, Annotation, *Retrospective Application and Effect of State Statute or Rule Allowing Interest or Changing Rate of Interest on Judgments or Verdicts*, 41 A.L.R.4th 694 (1985).

islatures can effectuate rate changes while preventing litigation on the issue. Part IV examines Utah's recent change in the post-judgment interest rate to illustrate how current judicial doctrines are applied to determine the effect of a statutory rate change on existing judgments. This comment concludes that for most states, more careful statutory drafting would better effectuate the purposes of post-judgment interest and eliminate most if not all litigation over this issue.

II. THE JUDICIAL DEBATE: INTERPRETING THE STATUTES

A. *The Plain Language Test*

It is a basic principle of statutory construction that a court should give effect to the plain language of the statute. Determining the applicable rate of interest is an easy question if the language of the statute clearly states what rate applies to judgments entered during a specific period of time or indicates whether or not the new rate is to apply to existing judgments or only to judgments entered after the date of the amendment. For example, the Alaska Supreme Court found the following statutory language plain: "The interest rate provided in sec. 1 of this Act applies only to those judgments rendered after the effective date of this Act."⁶

Courts have found that certain phrases plainly indicate an intent to apply the statute only to future judgments. For instance, in *Puget Sound National Bank v. St. Paul Fire & Marine Insurance Co.*,⁷ the Court of Appeals of Washington held that the phrase "from the date of entry thereof" clearly established the legislature's intent that the statute apply only prospectively. The court found "[t]he language of the act . . . clear. By providing that the interest rate as amended will apply to a judgment 'from the date of entry thereof,' the legislature manifested an intent that the new interest rate apply only to judgments entered after the act's effective date."⁸

6. ALASKA STAT. § 09.30.070 (1980), cited in *Alyeska Pipeline Serv. Co. v. Anderson*, 669 P.2d 956, 957 (Alaska 1983); see also *In re Lattig*, 318 N.W.2d 811, 816 n.4 (Iowa Ct. App. 1982) ("This Act is effective January 1, 1981 and shall not apply to judgments rendered or decrees entered of record before that date."); *Coastal Indus. Water Auth. v. Trinity Portland Cement Div., Gen. Portland Cement Co.*, 563 S.W.2d 916, 918 (Tex. 1978) ("[T]he provision in the amended statute that judgments shall bear interest at the rate of nine percent from and after the date of the judgment, plainly suggests that the rate shall be applied prospectively only." (citation omitted)).

7. 645 P.2d 1122, 1131 (Wash. Ct. App. 1982).

8. *Id.*; see also *Bartlett v. Heersche*, 496 P.2d 1314, 1318 (Kan. 1972) (The

Additionally, in *Southeastern Freight Lines v. Michelin Tire Corp.*,⁹ the Supreme Court of South Carolina held that the words "enrolled or entered" established that the "legislative intent, as shown by the clear language of the statute, was to apply the new interest rate to judgments entered before the effective date of the amendment which remain outstanding on that date."¹⁰

Very broad language which applies to all judgments without limit has also been interpreted by courts as a plain indication that the statute applies to outstanding as well as future judgments. For example, in *Shook & Fletcher Insulation Co. v. Central Rigging & Contracting Corp.*,¹¹ the Eleventh Circuit Court of Appeals held that "[s]ince the statute literally extends to 'all judgments in this state,' and [because] there are strong policy reasons for applying the same," the plaintiff was entitled to post-judgment interest at an increased rate from the effective date of amendment.¹²

Clear statutory language will go a long way toward reducing litigation which results from changes in post-judgment interest statutes. Absent such clear language, however, courts must engage in further analysis to determine legislative intent regarding a rate change.

B. To Be or Not To Be Applied Retroactively (First Prong)

As a general rule, when the statutory language is not clear, courts have followed a two-pronged approach to determine if and when a newly amended post-judgment interest statute applies to an existing judgment. First, a court will address whether the rate change should be applied retroactively to the existing judgment from the judgment date. If not, the court will next consider whether the new rate applies prospectively from its effective date to amounts still owed on existing judgments. Although not all courts considering this issue have applied both prongs, those that have considered only one of the two prongs have either implicitly or explicitly assumed the answer to the other.

language "from the day on which they are rendered [suggests that the statute should] be applied prospectively only").

9. 303 S.E.2d 860 (S.C. 1983).

10. *Id.* at 861.

11. 684 F.2d 1383 (11th Cir. 1982).

12. *Id.* at 1389.

1. *General principles of statutory construction*

When the plain language of the statute does not offer any clear direction to the court, further analysis is necessary to determine whether a newly amended post-judgment interest statute applies retroactively to judgments entered prior to the effective date of the amendment. The general rule for amended statutes is that they do not apply retroactively absent clear legislative intent.¹³ A typical example comes from South Carolina. In considering what application to give to a recently amended post-judgment interest statute, the South Carolina Supreme Court held, "The presumption is [that] statutory enactments are prospective absent clear legislative intent or specific provision to the contrary; however, a remedial or procedural statute is generally held to be retroactive."¹⁴ In a number of states, this presumption has its origin in the state constitution or statutes.¹⁵ Under this approach, determining the retroactive effect of a new statute or amendment providing for post-judgment interest requires the court to determine whether the statute fits within the exception for "procedural" statutes having no substantive effect on the rights of either party.

2. *The procedural/remedial exception*

Each state which has addressed the question of whether a statutory provision for post-judgment interest is substantive or procedural has determined that such statutes are substantive in nature and should not be applied retroactively to pre-existing judgments.¹⁶ The Georgia Court of Appeals has offered a

13. A number of states require not only clear legislative intent for retroactive application, but also that the statute be procedural and not affect the substantive rights of any party. Discussion of the procedural exception is reserved for the next section. See *infra* part II.B.2.

14. *Southeastern Freight Lines v. Michelin Tire Corp.*, 303 S.E.2d 860, 861 (S.C. 1983) (citation omitted).

15. See, e.g., MO. CONST. art. I, § 13.

16. See, e.g., *McKeague v. Talbert*, 658 P.2d 898, 909 n.11 (Haw. Ct. App. 1983) (In dicta, the court states: "The rule swims against the current of the general rule against retroactivity. Also, we do not think that once a judgment is entered and interest awarded a subsequent amendment in the statutory interest rate on judgments can be applied retroactively." (citations omitted)); *Bartlett v. Heersche*, 496 P.2d 1314, 1318 (Kan. 1972) ("A settled principle of statutory construction requires that statutes be given prospective operation only, unless contrary legislative intent is expressed clearly, or necessarily implied from the language used." (citation omitted)); *Shelist v. Boston Redevelopment Auth.*, 215 N.E.2d 748, 751 (Mass. 1966) ("A change in the rate of interest would affect the substantive

reason why applying a statute amending the post-judgment interest rate retroactively should not be allowed: "The law of this State is that 'unless a statute either expressly or by necessary implication, shows that the General Assembly intended that it operate retroactively, it will be given only prospective application.'"¹⁷ The court continued: "[T]o the extent that [construing an amending statute to have a retroactive effect on existing judgments] would cast doubt and uncertainty upon the rights and liabilities of the parties as fixed by judgments under the law as it existed prior to [the effective date of the amendment], it would violate the principle of finality of judgments."¹⁸

In summary, absent clear statutory language expressing the desire to apply the statute retroactively to judgments already in existence, or case law in a particular jurisdiction indicating that statutes providing for interest are procedural rather than substantive, it is unlikely that a court would hold that an amended statute providing for post-judgment interest should be applied retroactively.

C. *Prospective Application From Effective Date (Second Prong)*

Although no court has been willing, absent clear statutory language, to apply from the date of judgment a new post-judgment interest rate to previously entered judgments, many

rights of the parties as of the time of the taking." (citation omitted); *White v. St. Louis-San Francisco Ry.*, 602 S.W.2d 748, 756 (Mo. Ct. App. 1980) ("A statute shall not be applied retrospectively except where the legislature manifests a clear intent that it do so and where the statute is procedural only and does not effect [sic] any substantive right of the parties. The present statute does not meet the exception and shall not be applied retrospectively." (citation omitted)); *People ex rel. Atlantic, Gulf & Pac. Co. v. Miller*, 17 N.Y.S.2d 202, 209 (Sup. Ct. 1939) ("The statute with which we are here concerned contains no express language indicating it is to have retroactive operation. Therefore its effect must be deemed prospective only." (citations omitted)); *Sunray DX Oil Co. v. Great Lakes Carbon Corp.*, 476 P.2d 329, 346 (Okla. 1970) ("A settled principal [sic] of statutory construction requires statutes be given prospective operation only, unless contrary legislative intent is expressed clearly, or necessarily implied from the language used."); *Southeastern Freight Lines v. Michelin Tire Corp.*, 303 S.E.2d 860, 861 (S.C. 1983) ("The presumption is statutory enactments are prospective absent clear legislative intent or specific provision to the contrary; however, a remedial or procedural statute is generally held to be retroactive." (citation omitted)).

17. *Department of Transp. v. Delta Mach. Prods. Co.*, 291 S.E.2d 104, 106 (Ga. Ct. App. 1982) (quoting *Anthony v. Penn.*, 92 S.E.2d 14 (Ga. 1956)).

18. *Id.* at 107.

courts have been persuaded to apply the new interest rate to amounts owed on existing judgments, beginning from the amendment's effective date. Many courts hold that this is a prospective rather than a retroactive application of the new statute. The courts have viewed the issue as whether a judgment and the accompanying interest rate, once rendered, together create a vested contract or property right in a party, or whether the interest is simply statutory and thus subject to change or extinguishment at the will of the legislature that gave it life.

In *Morley v. Lake Shore & Michigan Southern Railway Co.*,¹⁹ the United States Supreme Court held that a cause of action based on a tort or on a contract which did not prescribe a rate of interest was not a contract in the ordinary sense when merged into a judgment. Rather, whether interest accrues upon a judgment is a matter of legislative discretion.²⁰ The Court concluded that a legislature

is free, so far as the Constitution of the United States is concerned, to provide for interest as a penalty or liquidated damages for the non-payment of the judgment, or not to do so. When such provision is made by statute, the owner of the judgment is, of course, entitled to the interest so prescribed until payment is received, or until the State shall, in the exercise of its discretion, declare that such interest shall be changed or cease to accrue. Should the statutory damages for non-payment of a judgment be determined by a State, either in whole or in part, the owner of a judgment will be entitled to receive and have a vested right in the damages which shall have accrued up to the date of the legislative change; but after that time his rights as to interest as damages are, as when he first obtained his judgment, just what the legislature chooses to declare. He has no contract whatever on the subject with the defendant in the judgment, and his right is to receive, and the defendant's obligation is to pay, as damages, just what the State chooses to prescribe.²¹

19. 146 U.S. 162 (1892).

20. *Id.* at 168.

21. *Id.* at 168-69. Within a year, the Supreme Court decided a similar case based on Texas law. The judgment involved had been entered at a time when the statute provided for 8% interest on judgments. Later, the statute was amended to provide for 6% interest on judgments. Without mentioning *Morley*, the Court held that "interest was properly included at the rate which obtained under the law of Texas at the time judgment was rendered, the change in the law in that respect operating only prospectively." *Texas & Pac. Ry. v. Anderson*, 149 U.S. 237, 242

Justice Harlan dissented, taking the position that rights once acquired by legislative enactment cannot be destroyed by subsequent enactment because the judgment is a property right which cannot be infringed by the legislature without due process of law.²²

Subsequently, the Supreme Court followed the *Morley* majority's rationale in *Missouri & Arkansas Lumber & Mining Co. v. Greenwood District of Sebastian County, Arkansas*.²³ Quoting extensively from *Morley*, the Court held that the right to post-judgment interest is based on public policy concerns and is completely "outside the sphere of private contracts."²⁴ The majority of the states addressing this issue have followed

(1893).

22. *Morley*, 146 U.S. at 173-78.

23. 249 U.S. 170 (1919).

24. *Id.* at 173. For another federal case holding similarly, see *Shook & Fletcher Insulation Co. v. Central Rigging & Contracting Corp.*, 684 F.2d 1383, 1389 (11th Cir. 1982) (post-judgment rate of interest under old statute is a "creature of statute, not contract" and thus may be changed by the legislature, where new rate applied from statute's effective date). See also *Glades County v. Kurtz*, 101 F.2d 759, 760 (5th Cir. 1939):

The rate thus determined was not contractual, and the power of the state to change or modify it was neither exhausted by the rendition of the judgment nor restricted by constitutional limitations. . . . In the sense that it is a contract, the provision of the judgment, whether expressed or implied, providing for payment of interest is an expression of the sovereign will, supplying whatever may be lacking in mutual consent. When, because of changing conditions, the will relaxes and substitutes a new and different provision, it modifies or impairs no contract that the parties have made.

Id. (citations omitted).

Morley.²⁵ *Noe v. City of Chicago*²⁶ illustrates a typical holding and rationale. There the Illinois Supreme Court held,

Interest was not allowed at common law, but is solely the creature of the statute, and can only be recovered according to its terms. The rights of the parties in respect to interest were not governed by contract, but by statute, which might be changed at any time, in the pleasure of the legislature, without impairing any contract, or affecting any vested right.²⁷

Finally, the court found "unrealistic" arguments that a judgment and its interest are contractual in nature.²⁸

In spite of the view expressed in *Morley*, a minority of states have held that the rights and liabilities of the parties are fixed by the judgment under the law as it existed at the time the judgment was rendered and that the amended rate applies only to judgments entered after amendment.²⁹ For ex-

25. See, e.g., *McBride v. Superior Court*, 635 P.2d 178, 179 (Ariz. 1981) ("[W]e do not believe that a judgment is a contractual obligation. Judgments are the result of the operation of the law. They are seldom based upon mutuality of the parties."); *Idaho Gold Dredging Corp. v. Boise Payette Lumber Co.*, 37 P.2d 407, 412 (Idaho 1934) ("Interest upon a judgment is not a matter of contract, but is wholly statutory. A judgment can bear interest at such a rate only as the law provides."); *Puget Sound Nat'l. Bank v. St. Paul Fire & Marine Ins. Co.*, 645 P.2d 1122, 1131 (Wash. Ct. App. 1982) ("We recognize that a legislative body may provide that a new interest rate will apply to existing judgments as well as those entered after the act's effective date, the right to such interest being not contractual but a matter of legislative discretion."); see also *Bartlett v. Heersche*, 496 P.2d 1314, 1319 (Kan. 1972) (Prager, J., dissenting) (arguing that judgments are not a matter of contract but an obligation implied or imposed by law); *Ridge v. Ridge*, 572 S.W.2d 859, 861 (Ky. 1978); *Mayor of Baltimore v. Kelso Corp.*, 449 A.2d 406, 409 (Md. 1982); *Senn v. Commerce-Manchester Bank*, 603 S.W.2d 551, 553-54 (Mo. 1980); *White v. St. Louis-San Francisco Ry.*, 602 S.W.2d 748, 756 (Mo. Ct. App. 1980).

26. 307 N.E.2d 376 (Ill. 1974).

27. *Id.* at 379 (citation omitted).

28. *Id.* ("[W]e consider that the holdings that a judgment is a contract or in the nature of a contract are forced and unrealistic. To be preferred are the holdings that interest on a judgment arises from a statute's operation and not from any contract or other agreement of the parties.")

29. See, e.g., *Department of Transp. v. Delta Mach. Prods. Co.*, 291 S.E.2d 104, 106-07 (Ga. Ct. App. 1982). See also *Butler v. Rockwell*, 29 P. 458, 460 (Colo. 1892):

It is unquestionably true that a judgment partakes of the nature of a contract sufficiently to supersede the original contract or cause of action, both as to principal and interest. The original contract or cause of action becomes merged, and the judgment constitutes a new and liquidated debt. This debt, and the liability for interest thereon as provided by statute at the date of the judgment, are obligations binding upon the debtor till the judgment is reversed or satisfied.

ample, the Texas Court of Civil Appeals held that "the rights of the parties as embodied in a judgment, including the rate of interest after judgment, are not changed by a subsequent change in the law."³⁰

III. LEGISLATION AND STATUTORY CONSTRUCTION

A. *The Purpose of Post-Judgment Interest*

There are two discernible purposes for post-judgment interest: 1) compensation to the judgment creditor for not having use of the money owed; and 2) punishment of the judgment debtor to encourage him or her to pay the judgment without undue delay.

The United States Supreme Court has stated that "[i]nterest is the compensation allowed by law, or fixed by the parties, for the use or forbearance of money, or as damages for its detention."³¹ The majority of courts which have discussed the purpose of post-judgment interest statutes have echoed this principle.³² For example, the highest court of Maryland, in interpreting that state's post-judgment interest statute, explained that the "purpose of postjudgment interest is to com-

Id. (citations omitted).

30. *Sammons Enters. v. Manley*, 554 S.W.2d 205, 207 (Tex. Civ. App. 1977), *aff'd*, *Manley v. Sammons Enters.*, 563 S.W.2d 919 (Tex. 1978).

31. *Brown v. Hiatts*, 82 U.S. (15 Wall.) 177, 185 (1872).

32. *See, e.g., Equifax, Inc. v. Luster*, 463 F. Supp. 352, 356 (E.D. Ark. 1978) ("The purpose of interest on judgments is to compensate the judgment creditor for the fact that he has not had the use of . . . money that has been adjudged to be his."), *aff'd sub nom. Arkansas La. Gas Co. v. Luster*, 604 F.2d 31 (8th Cir. 1979), *cert. denied*, 445 U.S. 916 (1980); *Larsen v. Pacesetter Sys.*, 837 P.2d 1273, 1296-97 (Haw. 1992) ("Post-judgment interest on prejudgment interest [would be] a windfall to plaintiff under [this section,] and, as such, [would be] more punitive than compensatory."), *modified*, 843 P.2d 144 (Haw. 1992); *Hunsaker v. Hunsaker*, 786 P.2d 583, 585 (Idaho Ct. App. 1990) ("The apparent policy of this statute is to insure that a prevailing party will receive all the rights and benefits of a money judgment when it is due."); *Farmer v. Stubblefield*, 180 S.W.2d 405, 405 (Ky. Ct. App. 1944) ("At common law judgments did not bear interest and the purpose of the statute was to . . . insure compensation to the creditor for the loss of the use of his money during the period in which he was wrongfully deprived of it."); *Beneficial Discount Co. v. Spike*, 398 N.Y.S.2d 651, 653 (Sup. Ct. 1977) (Statutes providing that money judgments are to "bear interest from date of entry [at rate of 6% indicate] that interest on a judgment represents damages recoverable by the judgment creditor for the non-payment or detention of monies due and owing on [a] judgment" against a judgment debtor.); *Adams v. Nissan Motor Corp.*, 387 S.E.2d 288, 295 (W. Va. 1989) ("legislature intended that post-judgment interest be available to compensate an individual for the delay between the judgment and the receipt of actual payment").

pensate the judgment creditor for the loss of the monies that are due and owing to him from the time the judgment is entered until it is paid."³³ Referring to the statutory amendment which increased the post-judgment interest rate, the court held that "[t]he change in the interest rate, from six to 10 percent per annum, recognized that the old rate no longer fairly compensated judgment creditors."³⁴

The Eleventh Circuit used similar language when forecasting what the Georgia Supreme Court would hold if it were to decide what effect an amendment in Georgia's post-judgment statute would have on a prior judgment. The court found "substantial policy grounds for giving the statute literal effect. The purpose for increasing the rate of interest accruing to judgments was to acknowledge an increase in interest rates in general and to bring the rate of interest on judgments into parity with other comparable market rates of interest."³⁵

Judicial decisions in very few states have viewed post-judgment interest as a measure designed to punish the judgment debtor for not paying the amount of the judgment.³⁶ As a result, the remainder of this comment will assume that the purpose of post-judgment interest is to compensate the judgment creditor for loss of use of the judgment debt.

B. *Post-Judgment Interest Rate Statutes*

States have chosen a variety of methods of setting their post-judgment interest rate, ranging from the simple to the sophisticated. Many states set the interest rate at a specific percentage in the statute itself.³⁷ For example, the relevant Illinois statute provides that "[j]udgments recovered in any

33. *Mayor of Baltimore v. Kelso Corp.*, 449 A.2d 406, 409 (Md. 1982).

34. *Id.*

35. *Shook & Fletcher Insulation Co. v. Central Rigging & Contracting Corp.*, 684 F.2d 1383, 1388 (11th Cir. 1982).

36. *See Courtenay v. Wilhoit*, 655 S.W.2d 41, 42-43 (Ky. Ct. App. 1983) ("The statute's function is to encourage a judgment debtor to timely comply with the terms of the judgment" and in the case of a separation agreement incorporated in a divorce decree, to encourage fulfillment of the obligations incurred in the agreement.); *Herring v. Golden State Mut. Life Ins. Co.*, 318 N.W.2d 641, 646 (Mich. Ct. App. 1982) ("The statute referred to by plaintiff is in the nature of a penalty to be assessed against insurers for dilatory practices in settling meritorious claims Such statutes, having a punitive purpose, are never given retroactive effect." (citation omitted)).

37. *See, e.g.*, ALA. CODE § 8-8-10 (1993); ARK. CODE ANN. § 16-65-114 (Michie 1987); MONT. CODE ANN. § 25-9-205 (1993). *See generally* Appendix 1.

court shall draw interest at the rate of 9% per annum from the date of the judgment until satisfied."³⁸

Other states do not provide for a specific post-judgment interest rate, but tie the rate to some sort of index or standardized market rate. Minnesota, for example, provides that the rate of interest on a judgment "shall be based on the secondary market yield of one year United States treasury bills."³⁹ Texas computes the post-judgment rate "by taking the auction rate quoted on a discount basis for 52-week treasury bills issued by the United States government as published by the Federal Reserve Board on the most recent date preceding the date of computation."⁴⁰ This rate is limited, however, to a minimum of 10% and a maximum of 20%.⁴¹

Many states use a combination: an index or market rate plus a set percentage.⁴² For example, Colorado⁴³ and Delaware⁴⁴ add 2% and 5%, respectively, to the Federal Discount Rate. Nevada adds 2% to the prime rate at the largest bank in the state of Nevada,⁴⁵ while the District of Columbia's rate is "70 percent of the rate of interest set by the Secretary of the Treasury pursuant to section 6621 of the Internal Revenue Code of 1986."⁴⁶

A few states allow for a different rate than that specified by statute to be applied by the judge if circumstances warrant.⁴⁷ Two states simply leave the rate of interest to be applied to judgments to the discretion of the judiciary. Mississippi law provides that "judgments or decrees shall bear interest at a per annum rate set by the judge hearing the complaint from a date determined by such judge to be fair but in no event prior to the filing of the complaint."⁴⁸ In New Jersey, the interest

38. ILL. ANN. STAT. ch. 735, para. 5/2-1303 (Smith-Hurd 1992).

39. MINN. STAT. ANN. § 549.09 (West Supp. 1994).

40. TEX. REV. CIV. STAT. ANN. art. 5069-1.05 (West Supp. 1994).

41. *Id.*

42. *See, e.g.*, COLO. REV. STAT. § 13-21-101 (1987) (discount rate plus 2% per year); NEB. REV. STAT. § 45-103 (1988) (T-bill rate plus 1%); UTAH CODE ANN. § 15-1-4 (Supp. 1994) (federal post-judgment interest rate plus 2%); *see generally* Appendix 1.

43. COLO. REV. STAT. § 13-21-101 (1987).

44. DEL. CODE ANN. tit. 6, § 2301 (1993).

45. NEV. REV. STAT. ANN. § 17.130 (Michie 1993).

46. D.C. CODE ANN. § 28-3302 (1991).

47. *See, e.g.*, KY. REV. STAT. ANN. § 360.040 (Michie/Bobbs-Merrill 1987) ("judgment may bear less interest . . . if the court rendering such judgment, after a hearing on that question, is satisfied that the rate of interest should be less").

48. MISS. CODE ANN. § 75-17-7 (1972).

rates on judgments are established by the New Jersey Supreme Court and set forth in the New Jersey court rules.⁴⁹

C. *Changes in Rates*

When a legislature selects a method for establishing the post-judgment interest rate, it also selects the method for adjusting that rate to reflect market interest rate changes. Where a statute provides for a set interest rate, the legislature must amend the statute to change the rate. While this method leaves all control in the hands of the legislative body, it also takes a great deal of time and effort, and legislatures are frequently slow to react to changes in market interest rates.⁵⁰

For this reason, many states have changed from a statutorily set rate to a rate based on an index or other measure of current market rates. Interest rates based on these indices allow the rate to track market rates without requiring repeated action by the legislature.

Legislatures which leave the rate of interest to the discretion of the judge, or to the judiciary via court rules, have chosen to give the power both to set and to change post-judgment interest rates to nonlegislative bodies. While this approach allows for quicker changes and arguably more equitable results, it is unclear whether it does a better or worse job of effectuating the compensatory purpose of post-judgment interest.

D. *Toward a Better Statute*

The best type of statutory provision for post-judgment interest is one that gives effect to the purpose of post-judgment interest. If the purpose of post-judgment interest is to compensate the judgment creditor for the time during which he or she does not have use of the money, then statutes which provide a rate of interest nearest the market rate while avoiding litigation best fulfill that purpose. Statutes specifying a set percentage interest rate fail to achieve this result. These types of statutes are generally at or near market interest rates only at the time they are created or amended. Thus, absent an amendment

49. N.J. STAT. ANN. § 58:10A-24.6 (West 1992); N.J. CT. R. 4:42-11.

50. Today, when interest rates are as low as 6% and 7%, it is unreasonable for a judgment debtor to be required to pay post-judgment interest at rates of 10% in states like Tennessee, Wyoming, Arizona, and Montana, and 12% in South Dakota, Vermont, Alabama, and Rhode Island. For a complete list of each state's post-judgment interest rate, see Appendix 1.

every six or twelve months, either the judgment creditor or judgment debtor is disadvantaged during the appeals process because of the disparity between the statutory and the market rates.

In addition, fixed-rate statutes are the most likely to result in litigation when a change in the rate is made. Litigation in turn results in prolonging the payment of interest and subjecting the rate applied to uncertainty. A change in a fixed-rate statute inevitably results in one party seeking to apply the new rate to the judgment debt and the other party wanting to apply the old rate to the judgment. Furthermore, most amendments simply change the numeric rate without providing clear direction to courts or litigants when the new rate is to apply. Some legislatures have addressed this problem by including express language explaining which judgments the amended rate applies to. This modification is helpful. Other states simply amend the statute to list each rate ever used, along with the time period during which each rate applied, so that a judgment rendered during a particular period must bear the corresponding rate of interest.⁵¹ Although these modifications result in less confusion about which rate applies to a judgment, they are unfair to the judgment debtor or creditor unless they expressly provide for the new rate to apply to outstanding judgments as of the date the statute takes effect. As a result, they do not give effect to the purpose of the statute.

Statutes which tie the rate of post-judgment interest to an index come much closer to giving effect to the compensatory purpose of post-judgment interest provisions. These statutes inherently have the effect of establishing a post-judgment interest rate very near the current market rate, at least at the time the judgment is rendered.⁵² Their flaw, however, is that once the judgment is rendered, the rate of interest is fixed and then applies during the entire time the judgment is outstanding. Because the appeals process can take years and market rates of interest have shown a tendency to have wide fluctuations in short periods of time, the purpose of the statute—adequately

51. See, e.g., LA. CIV. CODE ANN. art. 2924 (West 1994).

52. Those statutes which add a fixed percentage to an index rate are simply providing for the fact that the index is generally that of very low risk investments and the additional percentage increase anticipates the possibility that the judgment debtor could have invested the judgment money in higher yielding securities.

compensating the judgment creditor—is not effectuated as time passes and market rates change.

Specific provisions should be included in post-judgment interest legislation which seeks to compensate the judgment creditor via interest on unpaid judgment debt. The actual rate provided for in the statute should be measured or based on an index which accurately reflects market interest rates on the date of the judgment. In addition, the statute should expressly provide for the rate on the outstanding judgment amount to change periodically. Thus, the outstanding judgment bears interest at the market rate over the entire period until payment is complete, and not just for the first few months until the market rate changes.

A good post-judgment interest statute will also expressly state the date upon which the statute will go into effect, as well as whether it applies to all judgments, including outstanding judgments, or only to judgments entered after its effective date. This provision will discourage potential litigation on the retroactivity issue.

Nevada's post-judgment interest statute fulfills the purpose of allowing for post-judgment interest. The rate is equal to "the prime rate at the largest bank in Nevada as ascertained by the commissioner of financial institutions on January 1 or July 1, as the case may be, immediately preceding the date of judgment, plus 2 percent."⁵³ The use of the prime rate at the largest bank in the state guarantees that the rate applied is the market rate for the state, regardless of rates prevailing in other states or set by the federal government via its sale of government securities.

The Nevada statute goes even further, providing that "[t]he rate must be adjusted accordingly on each January 1 and July 1 thereafter until the judgment is satisfied."⁵⁴ This provision guarantees that the rate on an outstanding judgment stays in line with Nevada market interest rates. Thus, the judgment creditor is compensated properly even if the market rates fluctuate after the date of judgment.

Finally, the Nevada legislature expressly provided, "The provisions of this act apply only to causes of action which arise on or after July 1, 1987."⁵⁵ Thus, litigation over when the

53. NEV. REV. STAT. ANN. § 17.130 (Michie 1993).

54. *Id.*

55. 1987 NEV. STAT. ch. 413, § 8.

change became effective was eliminated by the express language of the amendment. A model post-judgment interest statute, based on the principles discussed in this section and the Nevada statute, is included as Appendix 2.

IV. AN APPLICATION: UTAH'S CHANGE IN POST-JUDGMENT INTEREST

Effective May 3, 1993, Senate Bill Number 279 amended Utah Code § 15-1-4, changing the interest rate on judgments other than those rendered on contracts to "bear interest at the federal post-judgment interest rate as of January 1 of each year, plus 2%."⁵⁶ The federal post-judgment interest rate is based on the rate of one-year U.S. Treasury bills.⁵⁷ On January 1, 1993, this rate was 3.72%.⁵⁸ Thus, under the amended Utah statute, the rate of interest for the year 1993 for judgments, other than those rendered on contracts, was 5.72%. The statute makes no specific provision regarding the application of the new rate to existing judgments.

Prior to the amendment, the noncontract judgment interest rate was 12%.⁵⁹ For example, on a hypothetical judgment of \$1,000,000, the annual difference in post-judgment interest would be \$62,800. It is clear that the difference between the two interest rates is significant.⁶⁰ Thus, it would clearly be in

56. 1993 Utah Laws 279. The full text of the amended statute reads as follows:

15-1-4. INTEREST ON JUDGMENTS.

(1) Any judgment rendered on a lawful contract shall conform to the contract and shall bear the interest agreed upon by the parties, which shall be specified in the judgment.

(2) Other judgments shall bear interest at the federal postjudgment interest rate as of January 1 of each year, plus 2%.

(3) "Federal postjudgment interest rate" means the interest rate established for the federal court system under 28 U.S.C. Sec. 1961, as amended.

Id.

57. This rate is "[c]alculated from the date of the entry of the judgment, at a rate equal to the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the average accepted auction price for the last auction of fifty-two week United States Treasury bills settled immediately prior to the date of the judgment." 28 U.S.C.A. § 1961 (West Supp. 1994).

58. See "52-Week T-Bill Rate Table Of Changes," distributed to Federal Courts.

59. UTAH CODE ANN. § 15-1-4 (1992).

60. A \$1 million judgment at 12% results in \$120,000 per year in interest, while the same judgment at 5.72% results in \$57,200 per year, a difference of \$62,800 per year, or about \$172 per day.

the best interest of the judgment debtor to argue in favor of applying the new lower rate and the judgment creditor to argue for applying the old higher rate in effect on the day of the judgment. Litigation will be the result.

In determining the retroactivity of the amended rate to existing judgments, the starting point of analysis is the plain language of the statute. The language "shall bear interest" is similar to statutes in other states, but alone is not sufficient basis for a court to find clear legislative intent regarding retroactive application. As a result, it will be necessary for a reviewing court to go beyond the language of the statute to determine whether the new interest rate will apply to a judgment rendered prior to its effective date.

Although Utah courts have not directly addressed this issue, an argument can be made, based on Utah case law, that the new interest rate should be applied retroactively to the judgment from the date of entry of the judgment. The general rule in Utah is that amendments to statutes are not retroactive.⁶¹ However, in accordance with the prevailing view in other states, statutes that are procedural or remedial in nature are exceptions to the rule prohibiting retroactivity.⁶² "A statute is considered procedural or remedial . . . if the statute does not enlarge, eliminate, or destroy vested rights."⁶³

In *Marshall v. Industrial Commission*,⁶⁴ the Utah Supreme Court addressed the question of whether to apply new amendments to workers' compensation statutes (providing for the inclusion of interest on awards for benefits) to an award based on an injury which occurred prior to the effective date of the amendments. After considering the general rule of nonretroactive application of a statute and its exception for procedural or remedial statutes, the court found:

Interest on a compensation award is incident to a right and a remedy that already exists. Retroactive application of the statute does not alter the substance of the compensation award. Payment of interest on an unpaid benefit neither creates a new right nor destroys an existing right. Therefore,

61. UTAH CODE ANN. § 68-3-3 (1993) ("No part of these revised statutes is retroactive, unless expressly so declared.")

62. See, e.g., *State v. Abeyta*, 852 P.2d 993, 995 (Utah 1993); *Department of Social Servs. v. Higgs*, 656 P.2d 998, 1000-01 (Utah 1982).

63. *Smith v. Cook*, 803 P.2d 788, 792 (Utah 1990).

64. 704 P.2d 581 (Utah 1985).

interest payments should be made on any benefits awarded after the effective date of the statute even though the injury had occurred before.⁶⁵

This holding, however, applies only to benefits awarded after the effective date of the statute. As a result, it is unlikely that a Utah court would apply the newly changed rate retroactively to prior judgments.

The Utah court would next consider whether the newly amended statute should apply prospectively—from its effective date of May 3, 1993—to the pre-existing judgment. No Utah case law considers whether a judgment is a contract or simply the result of legislative grace. As a result, the court would have to consider decisions from other jurisdictions and their underlying rationale to determine whether, in Utah, a judgment is to be treated as a contract or as the result of legislative grace.

V. CONCLUSION

Post-judgment interest is a valuable statutory provision which compensates the judgment creditor for not having the use of the judgment money during the appeals process. As a result, all fifty states and the federal government have made provisions for allowing post-judgment interest. However, because amendments to these statutes are common, a plethora of avoidable litigation has resulted. Simple changes suggested in this comment would result in a decrease in litigation and ensure that post-judgment interest statutes fulfill their purpose more efficiently and effectively.

Until these changes are made by legislatures, judgment creditors and debtors alike should be aware of the judicial treatment of amendments to post-judgment statutes following entry of a judgment. No court has retroactively applied an amended statute to a prior judgment from the date of judgment; however, the majority of the courts have applied the new statute to outstanding judgments prospectively from the date they become effective.

Brian P. Miller

65. *Id.* at 583 (citations omitted).

APPENDIX 1

State	Rate	Statute
Alabama	12% / yr	ALA. CODE § 8-10 (1993).
Alaska	10.5% / yr	ALASKA STAT. § 09.30.070 (1983).
Arizona	10% / yr	ARIZ. REV. STAT. ANN. § 44-1201 (1994).
Arkansas	10% / yr	ARK. CODE ANN. § 16-65-114 (Michie 1987).
California	10% / yr	CAL. CIV. PROC. CODE § 685.010 (West 1987).
Colorado	Discount rate + 2% / year	COLO. REV. STAT. § 13-21-101 (1987) (limited to personal injury cases).
Connecticut	10% / yr	CONN. GEN. STAT. § 50a-59 (Supp. 1994). <i>See also</i> CONN. GEN. STAT. § 37-3a (Supp. 1994); § 37-3b (1987).
Delaware	Fed Reserve Discount Rate + 5%	DEL. CODE ANN. tit. 6 § 2301 (1993).
District of Columbia	70% of IRS rate.	D.C. CODE ANN. § 28-3302 (1981). <i>See also</i> D.C. CODE ANN. § 15-109 (1981).

Cases	Comments
Conoco, Inc. v. AmSouth Bank (<i>In re Norman</i>), 57 Bankr. 6 (Bankr. M.D. Ala. 1984).	No retroactive effect. Interest at time of judgment is proper rate.
Alyeska Pipeline Serv. Co. v. Anderson, 669 P.2d 956 (Alaska 1983).	Bases decision on clear language of statute. Amendment does not apply retroactively to judgment previously rendered.
McBride v. Superior Ct., 635 P.2d 178 (Ariz. 1981).	Post-judgment interest is result of legislative grace and not contractual obligation. Amended rate applies to outstanding judgment from effective date.
Missouri & Ark. Lumber & Mining Co. v. Sebastian County, 249 U.S. 170 (1919).	Interest is a matter, not of contract, but of legislative discretion, to be changed or ended at will of legislature.
American National Bank v. Bank of Peacock, 165 Cal. App. 3d 1206 (1985). Maurice L. Bein, Inc. v. Housing Auth., 321 P.2d 753 (Cal. Dist. Ct. App. 1958).	Constitutional problems would arise from retroactive application. With pre-judgment interest, no retroactive application given to amendment.
Butler v. Rockwell, 29 P. 458 (Colo. 1892).	Applies contract theory; amendment does not apply to outstanding judgment.
Thomas v. Sugarland Indus., 431 A.2d 1271 (Del. 1981).	Amendment does not apply retroactively to judgment previously rendered.

State	Rate	Statute
Florida	12% / year	FLA. STAT. ANN. § 55.03 (West 1994).
Georgia	12% / year	GA. CODE ANN. § 7-4-12 (1989).
Hawaii	10% / year	HAW. REV. STAT. § 478-3 (Supp. 1992).
Idaho	5% + base rate (weekly avg. yield of U.S. treasury)	IDAHO CODE § 28-22-104 (1993).
Illinois	9% / year	ILL. ANN. STAT. ch. 735, para. 5/12-109 (Smith-Hurd 1992). ILL. ANN. STAT. ch. 735, para. 5/2-1303 (1992).
Indiana	8% / year	IND. CODE ANN. § 24-4.6-1-101 (Burns Supp. 1994).
Iowa	10% / year	IOWA CODE ANN. § 535.3 (West Supp. 1994).

Cases	Comments
Glades County v. Kurtz, 101 F.2d 759 (5th Cir. 1939).	Amended rate applies from effective date. Post-judgment interest is not contractual, but statutory.
Shook & Fletcher Insulation Co. v. Central Rigging & Contracting Corp., 684 F.2d 1383 (11th Cir. 1982). Department of Transp. v. Delta Mach. Prods. Co., 291 S.E.2d 104 (Ga. Ct. App. 1982) Camellia Corp. v. Cornell, 291 S.E.2d 556 (Ga. Ct. App. 1982).	1980 amendment increasing from 7% to 12% applied from effective date to judgments rendered before the effective date of amendment but not yet satisfied. Refuses to apply amended rate to outstanding judgment. Follows holding in Department of Transp. v. Delta Mach. Prods. Co., 291 S.E.2d 104 (Ga. Ct. App. 1982).
McKeague v. Talbert, 658 P.2d 898 (Haw. Ct. App. 1983).	Dicta: amendment cannot be applied retroactively.
Desfosses v. Desfosses, 815 P.2d 1094, 1101 (Idaho Ct. App. 1991).	Because the cause of action "accrued well before effective date of the amendment," rate at time of judgment was proper rate to apply.
Noe v. City of Chicago, 307 N.E.2d 376 (Ill. 1974). Chicago Rock Island & Pacific R.R. v. Chicago, Burlington & Quincy R.R., 55 F.R.D. 209 (N.D. Ill. 1972). Firemen's Fund Ins. Co. v. Western Refrigerating Co., 44 N.E. 746 (Ill. 1896).	Amended rate applied from effective date. Post-judgment interest is solely the creature of statute. Dicta: post-judgment interest is governed by statute not contract. Amended rate applies from effective date. Amended rate applied from effective date. Post-judgment interest is solely the creature of statute.
Indiana Ins. Co. v. Sentry Ins. Co., 437 N.E.2d 1381, 1391 (Ind. Ct. App. 1982).	"Interest is recoverable not as <i>interest</i> but as additional damages to accomplish full compensation. The statutory interest rate is used merely as a measure for the value of the lost use of the property."
<i>In re Lattig</i> , 318 N.W.2d 811 (Iowa Ct. App. 1982).	Bases decision on clear language of statute. Amendment does not apply retroactively to judgment previously rendered.

State	Rate	Statute
Kansas	Discount rate + 4% (but depends on year of judgment)	KAN. STAT. ANN. § 16- 204 (1988).
Kentucky	12% / year	KY. REV. STAT. ANN. § 360.040 (Michie/Bobbs-Merrill 1987).
Louisiana	Variable depending on date.	LA. CIV. CODE ANN. art. 2924 (West 1994).
Maine	15% / year if Dist. Ct.; T-bill + 7% if not	ME. REV. STAT. ANN. tit. 14, § 1602-A (West Supp. 1993).
Maryland	10% / year	MD. CODE ANN., CTS. & JUD. PROC. § 11-107 (1989).
Massachusetts		MASS. GEN. LAWS ANN. ch. 235, § 8 (West 1986).
Michigan	12% / year before 1/1/87, 1% + 5yr T- notes rate after.	MICH. COMP. LAWS § 600.6455 (1987).

Cases	Comments
<p>Maxwell v. Redd, 496 P.2d 1320 (Kan. 1972). Bartlett v. Heersche, 496 P.2d 1314 (Kan. 1972). Lippert v. Angle, 508 P.2d 920 (1973).</p>	<p>Amendment to pre-judgment interest statute given prospective application only. Bases decision on clear language of statute. Amendment does not apply retroactively to judgment previously rendered. (Compelling dissenting opinion). Pre-judgment interest. Amendment not given retrospective effect and doesn't change prior rate of interest.</p>
<p>Ridge v. Ridge, 572 S.W.2d 859 (Ky. 1978).</p>	<p>Post-judgment interest is matter of legislative grace, not contractual in nature. Amended rate applies from effective date of statute.</p>
<p>Hebert v. Travelers Ins. Co., 245 So. 2d 563 (La. Ct. App. 1971).</p>	<p>Bases decision on absence of statutory language intending to apply amendment retroactively. Amendment does not apply retroactively to judgment previously rendered.</p>
<p>Mayor of Baltimore v. Kelso Corp., 449 A.2d 406 (Md. 1982).</p>	<p>Post-judgment interest is a matter of legislative grace, is not contractual in nature. Change in rate applies from date of change to all outstanding judgments.</p>
<p>Trinity Church v. John Hancock Mut. Life Ins. Co., 544 N.E.2d 584 (Mass. 1989). Shelist v. Boston Redevelopment Auth., 215 N.E.2d 748 (Mass. 1966).</p>	<p>Amended rate applied from effective date. Absent clear statutory language, an amendment which affects substantive rights is not retroactive. A change in post-judgment interest affects substantive rights.</p>
<p>Herring v. Golden State Mut. Life Ins. Co., 318 N.W.2d 641, 646 (Mich. Ct. App. 1982).</p>	<p>Statutes "having a punitive purpose, are never given retroactive effect." No retroactive application absent clear legislative intent.</p>

State	Rate	Statute
Minnesota	Secondary market yield on one year T-bill	MINN. STAT. ANN. § 549.09 (West Supp. 1994).
Mississippi	Rate set by judge	MISS. CODE ANN. § 75-17-7 (1972).
Missouri	9% / year	MO. ANN. STAT. § 408.040 (Vernon 1990).
Montana	10% / year	MONT. CODE ANN. § 25-9-205 (1993).
Nebraska	T-bill + 1%	NEB. REV. STAT. § 45-103 (1988). <i>See also</i> NEB. REV. STAT. § 45-103.01 (1988)
Nevada	Prime rate at largest bank + 2%.	NEV. REV. STAT. ANN. § 17.130 (Michie 1993).
New Hampshire	10% / year	N.H. REV. STAT. ANN. § 336:1 (1984).
New Jersey	prior to 4/1/75 6%; 4/1/75 to 9/13/81 8%; 9/14/81 to 1/1/86 12%; 1/2/86 to current based on state fund	N.J. CT. R. 4:42-11.

Cases	Comments
<p>White v. St. Louis-San Francisco Ry., 602 S.W.2d 748 (Mo. Ct. App. 1980).</p> <p>Senn v. Commerce-Manchester Bank, 603 S.W.2d 551 (Mo. 1980).</p>	<p>Post-judgment interest is substantive, not procedural right. However, right to post-judgment interest is statutory, not contractual in nature. Amended rate applies from effective date of statute.</p> <p>Post-judgment interest is matter of legislative grace, is not contractual in nature. Amended rate applies from effective date of statute.</p>
<p>Stanford v. Coram, 72 P. 655 (Mont. 1903).</p>	<p>A judgment rendered prior to the date when the amendment to this section went into effect bore interest of 10% until that date and only 8% thereafter.</p>
<p>Arnold v. Mt. Wheeler Power Co., 707 P.2d 1137 (Nev. 1985).</p> <p>Bhy Trucking, Inc. v. Hicks, 720 P.2d 1229 (Nev. 1986), <i>cert. denied</i>, 479 U.S. 994 (1986).</p>	<p>This is not a post-judgment interest statute, but a computation of interest statute.</p> <p>Cause of action arose before amendment (increasing rate to 12%), interest should have been awarded at the lower rate until judgment satisfied. Not retroactive where complaint filed prior to any amendments.</p>

State	Rate	Statute
New Mexico	8 3/4% / year	N.M. STAT. ANN. § 56-8-4 (Michie Supp. 1994).
New York	9% / year	N.Y. CIV. PRAC. L. & R. 5003 (McKinney 1992). <i>See also</i> N.Y. CIV. PRAC. L. & R. 5004 (McKinney 1992).
North Carolina	8% / year	N.C. GEN STAT. § 24-1 (1991).
North Dakota	12% / year	N.D. CENT. CODE § 28-20-34 (1993).
Ohio	10% / year	OHIO REV. CODE ANN. § 1343.03 (Anderson 1993).
Oklahoma	4% + T-Bill rate at 1st of year	OKLA. STAT. tit. 12, § 727 (1988).
Oregon	9% / year	OR. REV. STAT. § 82.010 (1993).

Cases	Comments
North v. Public Serv. Co., 680 P.2d 603 (N.M. Ct. App. 1983).	1983 Amendment applies prospectively.
<p data-bbox="211 401 558 458"><i>In re</i> Bronx River Parkway, 20 N.Y.S.2d 53 (App. Div. 1940).</p> <p data-bbox="211 487 602 544">Atlantic, Gulf & Pac. Co. v. Miller, 17 N.Y.S.2d 202 (Sup. Ct. 1939).</p> <p data-bbox="211 601 568 658"><i>In re</i> Gillespie, 16 N.Y.S.2d 579 (Sup. Ct. 1939).</p> <p data-bbox="211 715 593 773">Morley v. Lake Shore & Mich. So. Ry., 146 U.S. 162 (1892).</p>	<p data-bbox="649 401 1025 487">Applies interest in "takings" case at old rate until effective date of amendment.</p> <p data-bbox="649 487 1044 601">Interest on tax refunds. Interest is a creature of statute and not of contract. Amended rate applies from effective date.</p> <p data-bbox="649 601 1035 715">"Takings" case. Amendment does not impair existing contractual obligations. Amended rate applies from effective date.</p> <p data-bbox="649 715 1035 830">Once merged into judgment, post-judgment interest is not a matter of contract. Legislature may change at will.</p>
EEOC v. Liggett & Myers, Inc., 690 F.2d 1072 (4th Cir. 1982).	Clear legislative language and intent. Not retroactive.
Swanson v. Flynn, 31 N.W. 2d 320 (N.D. 1948).	Post-judgment interest is statutory and not contractual in nature. Amended rate applies to outstanding judgment from effective date.
<p data-bbox="211 1100 600 1176">Prepakt Concrete Co. v. Koski Constr. Co., 573 N.E.2d 209 (Ohio Ct. App. 1989)</p> <p data-bbox="211 1186 593 1262">Tony Zumbo & Son Constr. Co. v. Transportation Dept., 490 N.E.2d 621 (Ohio Ct. App. 1984).</p>	<p data-bbox="649 1100 1025 1157">Pre-judgment interest. Apply the rate at time of judgment.</p> <p data-bbox="649 1186 1012 1262">Pre-judgment amended rate applies to outstanding judgment from effective date.</p>
Sunray DX Oil Co. v. Great Lakes Carbon Corp., 476 P.2d 329 (Okla. 1970).	Bases decision on clear language of statute. Amendment does not apply retroactively to judgment previously rendered.
<p data-bbox="211 1429 584 1487">Turner v. Japan Lines, Ltd., 702 F.2d 752 (9th Cir. 1983).</p> <p data-bbox="211 1572 593 1629">Convoy Co. v. Sperry Rand Corp., 672 F.2d 781 (9th Cir. 1982).</p>	<p data-bbox="649 1429 1044 1572">Following prior state supreme court ruling, refused to apply amended rate to outstanding judgment, but see footnote 9 for suggested "sounder rule."</p> <p data-bbox="649 1572 1035 1648">Pre-judgment interest: allows amended rate to apply from effective date forward.</p>

State	Rate	Statute
Pennsylvania	Unable to determine	PA. STAT. ANN. tit. 42, § 8101 (1982)
Rhode Island	12% / year	R.I. GEN. LAWS § 6-26-1 (1992).
South Carolina	14% / year	S.C. CODE ANN. § 34-31-20(B) (Law. Co-op. 1987).
South Dakota	10% / year	S.D. CODIFIED LAWS ANN. § 54-3-5.1 (1990); S.D. CODIFIED LAWS ANN. § 54-3-16(2) (Supp. 1994).
Tennessee	10% / year	TENN. CODE ANN. § 47-14-121 (1988).
Texas	Discount rate (but, min of 10% and max of 20%)	TEXAS REV. CIV. STAT. ANN. art. 5069-1.05 (West Supp. 1994).
Utah	Federal post-judgment interest rate + 2%.	UTAH CODE ANN. § 15-1-4 (Supp. 1994).

Cases	Comments
<p>Carner v. Grist Mill '76 Corp., 645 F. Supp. 331, 337 (D.R.I. 1986).</p>	<p>Pre-judgment interest: 1981 amendment (6% to 12%), was intended to apply to inchoate obligations previously executed—that is, to have retrospective effect.</p>
<p>Sears v. Fowler, 358 S.E.2d 574, 575 (S.C. 1987).</p> <p>Southeastern Freight Lines v. Michelin Tire Corp., 303 S.E.2d 860 (S.C. 1983).</p>	<p>"[P]urpose of post-judgment interest is to penalize nonpayment of a judgment by a judgment debtor."</p> <p>Post-judgment interest is matter of legislative grace, is not contractual. Amended rate applies to outstanding judgments from effective date.</p>
<p>Commissioner of Transp. v. McDougal, 648 S.W.2d 254 (Tenn. Ct. App. 1983).</p>	<p>Post-judgment interest is a matter of statutory grace, not in the form of contract. Thus, amended rate applies to outstanding judgment from effective date.</p>
<p>Manley v. Sammons Enter., Inc., 563 S.W.2d 919 (Tex. 1978).</p> <p>Costal Industrial Water Auth. v. Trinity Portland Cement Div., 563 S.W.2d 916 (Tex. 1978).</p> <p>Herron v. Lackey, 556 S.W.2d 246 (Tex. 1977).</p>	<p>Amendment does not apply retroactively to judgment previously rendered.</p> <p>Bases decision on clear language of statute. Amendment does not apply retroactively to judgment previously rendered.</p> <p>With little analysis, court refuses to apply amended rate to outstanding judgment.</p>

State	Rate	Statute
Vermont	12% / year	VT. STAT. ANN. tit. 12, § 2903 (Supp. 1993).
Virgin Islands	9% / year	V.I. CODE ANN. tit. 5, § 426 (Supp. 1994).
Virginia	9% / year	VA. CODE ANN. § 6.1-330.54 (Michie 1993).
Washington	Higher of 12% / year or yield of 26 week T-bill + 4%.	WASH. REV. CODE § 4.56.110 (Supp. 1994) and WASH. REV. CODE § 19.52.020 (Supp. 1994).
West Virginia	10% / year	W. VA. CODE § 56-6-31 (Supp. 1994).
Wisconsin	12% / year	WIS. STAT. ANN. § 815.05(8) (1994).
Wyoming	10% / year	WYO. STAT. § 1-16-102 (Supp. 1994).

Cases	Comments
<p data-bbox="200 554 606 639">Puget Sound Nat'l Bank v. St. Paul Fire & Marine Ins. Co., 645 P.2d 1122 (Wash. Ct. App. 1982).</p> <p data-bbox="200 757 533 811">Palmer v. Laberee, 63 P. 216 (Wash. 1900).</p>	<p data-bbox="642 554 1027 750">Bases decision on clear language of statute. Amendment does not apply retroactively to judgment previously rendered. Dicta: post-judgment interest is not contractual matter, but one of legislative discretion.</p> <p data-bbox="642 757 1038 864">Post-judgment interest is a matter of legislative grace, is not contractual. Amended rate applies from effective date.</p>
<p data-bbox="200 972 606 1052">Ferris v. First Nat'l Bank & Trust Co., 292 N.W.2d 357 (Wis. Ct. App. 1980).</p>	<p data-bbox="642 972 1018 1052">Amended rate applies prospectively from the date of judgment previously rendered.</p>

APPENDIX 2

Model Post-Judgment Interest Statute

- (1) Any judgment rendered on a lawful contract shall conform to the contract and shall bear interest agreed upon by the parties.
- (2) All other judgments shall bear interest from the date of the judgment until payment, at a rate equal to the prime rate at the largest bank in STATE on January 1 or July 1, as the case may be, immediately preceding the date of the judgment, plus __ percent. The rate must be adjusted accordingly on each January 1 and July 1 thereafter until the judgment is satisfied.
- (3) The post-judgment interest provided for in this section shall be collectable as a part of each judgment whether or not the judgment specifically reflects the entitlement to such interest.
- (4) The provisions of this act apply only to judgments entered on or after _____, 19__.