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POSTJUDGMENT INTEREST IN CONTRACT ACTIONS AGAINST THE COMMONWEALTH OF MASSACHUSETTS: WAVE GOOD-BYE TO THE COMMON LAW WAIVER OF SOVEREIGN IMMUNITY

I. INTRODUCTION

The Commonwealth of Massachusetts is not liable for postjudgment interest in contract actions.¹ The Supreme Judicial Court of Massachusetts resolved this previously unsettled issue in *Chapman v. University of Massachusetts Medical Center*.² The court declared “a claim for postjudgment interest is noncontractual and must be authorized statutorily.”³ The court explained the Commonwealth is

¹ See *Chapman v. University of Mass. Med. Ctr.*, 423 Mass. 584, 586, 670 N.E. 166, 168 (1996) (holding the Commonwealth not liable for postjudgment interest). Postjudgment interest is the interest that accrues on a judgment for the time period between final judgment and payment. See MASS. GEN. LAWS ch. 235, § 8 (1986) (authorizing interest on a judgment). Chapter 235, section 8 states in part, that “the warrant or execution issued on a judgment. . . shall require the collection or satisfaction thereof with interest from the day of its entry.” *Id.*

² See *Chapman*, 423 Mass. at 586, 670 N.E.2d at 168 (recognizing no decision or statute directly authorizes Chapman’s recovery for postjudgment interest).

³ *Id.* at 588, 670 N.E.2d at 169. A common law waiver of sovereign immunity exists when the Commonwealth contracts with a private party. See *Monadnock Display Fireworks, Inc. v. Andover*, 388 Mass. 153, 156-57, 445 N.E.2d 1053, 1056 (1983) (finding the municipality owed a duty to the plaintiff upon entering into a contract).

The Commonwealth submits itself to the courts and the laws as if it were a private citizen at the time it enters into a contract. See *Nash v. Commonwealth*, 174 Mass. 335, 339, 54 N.E. 865, 867 (1899) (recognizing the Commonwealth’s accountability in its own courts if the claim against it is just). The court in *Nash* analyzed the affect of the statute that gave the superior court “jurisdiction of all claims against the commonwealth, whether at law or in equity.” *Id.* at 338, 54 N.E. at 865; 1887 Mass. Acts ch. 246. The court held the statute did not create a new obligation upon the Commonwealth or give rise to a new claim, but rather gave Nash a forum to bring an already recognizable claim. See *id.* at 338, 54 N.E. at 865 (discussing Nash’s erroneous interpretation of the statute).

not required to pay postjudgment interest, absent a contractual provision or a statute, because the government enjoys the protections of sovereign immunity.⁴ The court found no common law waiver or express statutory waiver existed that permitted Chapman to collect postjudgment interest.⁵ The statute providing for postjudgment interest on judgments, Massachusetts General Laws chapter 235, section 8, did not apply to an agency of the Commonwealth.⁶

Although the Supreme Judicial Court ruled on the issue of the Commonwealth's liability for interest in contract actions prior to *Chapman*, the reasoning in previous decisions invited plaintiffs to factually distinguish their claims.⁷ The holding in *Chapman*, however, appears to close the door on all private parties who contract with the Commonwealth and subsequently seek postjudgment interest.⁸ The *Chapman* court's conclusion, however, rests on questionable reasoning because 1) the court's reliance on prior case law cannot be reconciled with the facts in *Chapman*, and 2) the doctrine of sovereign immunity precludes such a result.⁹

Part II of this note discusses *Chapman* and presents the current state of the law regarding the Commonwealth's liability for postjudg-

⁴ See *Chapman*, 423 Mass. at 586, 670 N.E.2d at 168 (noting trial court's reasoning for denying Chapman's motion for postjudgment interest).

⁵ See *id.* (disagreeing with Chapman's argument that the Commonwealth must pay postjudgment interest because sovereign immunity is waived in contract actions).

⁶ See *Chapman v. University of Mass. Med. Ctr.*, 423 Mass. 584, 587, 670 N.E.2d 166, 169 (quoting *C & M Constr. Co., Inc. v. Commonwealth*, 396 Mass. 390, 393, 486 N.E.2d 54, 56-57 (1985)).

⁷ See *C & M Constr. Co., Inc.*, 396 Mass. at 391, 486 N.E.2d at 55 (1985) (deciding Commonwealth's liability for interest on a judgment during the time necessary for the Legislature to appropriate funds to satisfy the judgment); *C & R Constr. Co. v. Commonwealth*, 334 Mass. 232, 233, 135 N.E.2d 539, 540 (1956) (deciding Commonwealth's liability for interest absent a clause in a contract).

⁸ See *Chapman*, 423 Mass. at 587, 670 N.E.2d at 169 (concluding Commonwealth not liable for postjudgment interest even when waiver of sovereign immunity exists on underlying contract claim).

⁹ See *id.*

ment interest in contract actions.¹⁰ Part III presents the statutes and rules that govern postjudgment interest in contract actions in Massachusetts.¹¹ Part IV explains the applicability of postjudgment interest in tort actions and discusses the relevant statutory scheme.¹² Part V discusses the judicial and statutory history of postjudgment interest in eminent domain actions.¹³ Part VI analyzes the development of the law in Massachusetts regarding the Commonwealth's liability for postjudgment interest in contract actions and contrasts the Commonwealth's liability for interest in a contract action with tort and eminent domain actions.¹⁴

II. CONTRACT ACTIONS

*Chapman v. University of Massachusetts Medical Center*¹⁵ is the law in Massachusetts regarding the Commonwealth's liability for postjudgment interest.¹⁶ In *Chapman*, the plaintiff, Margaret Chapman, brought an action against the University of Massachusetts Medical Center ("UMMC"), an agent of the Commonwealth, for wrongful discharge in breach of an employment contract.¹⁷ The trial court found that UMMC breached Chapman's contract by wrongfully

¹⁰ See *infra* notes 15-61, and accompanying text.

¹¹ See *infra* notes 62-104, and accompanying text.

¹² See *infra* notes 105-132, and accompanying text.

¹³ See *infra* notes 133-168, and accompanying text.

¹⁴ See *infra* notes 169-231, and accompanying text.

¹⁵ 423 Mass. 584, 670 N.E.2d 166 (1996).

¹⁶ See *Judge Rotenberg Educ. Ctr., Inc. v. Commissioner of the Dep't of Mental Retardation*, 424 Mass. 430, 469, 677 N.E.2d 127, 153 (1997) (stating postjudgment interest against the Commonwealth requires statutory authority as directed in *Chapman*).

¹⁷ *Chapman v. University of Mass. Med. Ctr.*, 423 Mass. 584, 584, 670 N.E.2d 166, 167 (1996). Note the Supreme Judicial Court rendered a decision regarding Chapman's claim for breach of contract in 1994 in *Chapman v. University of Mass. Med. Ctr.*, 417 Mass. 104, 628 N.E.2d 8 (1994) [hereinafter *Chapman I*], and decided Chapman's claim for postjudgment interest in 1996 in *Chapman v. University of Mass. Med. Ctr.*, 423 Mass. 584, 670 N.E.2d 166 (1996) [hereinafter *Chapman II*].

terminating her.¹⁸ The court entered judgment for Chapman on January 10, 1992 for \$243,144.25, with interest from the date of commencement of the action, July 20, 1990.¹⁹ The Supreme Judicial Court affirmed the judgment on February 17, 1994.²⁰

On April 19, 1994, the court entered an amended judgment after rescript awarding Chapman \$243,144.25, with interest from July 6, 1986 to the date of judgment in the sum of \$163,149.63.²¹ In addition, the court awarded postjudgment interest from January 10, 1992, the date of judgment, to the date of judgment after rescript, April 19, 1994, in the sum of \$109,969.97.²² An assistant clerk entered the amended judgment and UMMC did not appeal or attempt to amend it.²³ The clerk, however, refused to include the postjudgment interest award in the certificate of judgment.²⁴

¹⁸ *Chapman II*, 423 Mass. at 584, 670 N.E.2d at 167.

¹⁹ *Id.*

²⁰ *See Chapman I*, 417 Mass. at 105, 628 N.E.2d at 9 (affirming superior court's decision that UMMC violated Chapman's employment contract).

²¹ *See Chapman II*, 423 Mass. at 585, 670 N.E.2d at 168 (noting the original judgment provided for interest from July 20, 1990 but UMMC did not appeal entry of the earlier date).

The court refers to the interest for this time period, from the commencement of the action to the date of judgment, as "prejudgment" interest. *Id.* Two statutes govern prejudgment interest in contract actions and each statute provides for interest during separate time periods. *See* MASS. GEN. LAWS ch. 231, § 6C (West Supp. 1999) (stating the clerk shall add interest from the date of commencement of the action, or date of breach if established, to the verdict); MASS. GEN. LAWS ch. 235, § 8 (1986) (stating interest shall be computed upon the verdict to the time judgment is entered). Prejudgment interest, therefore, is awarded from the date of commencement of the action, or date of breach, to entry of judgment. *See* MASS. GEN. LAWS ch. 231, § 6C (West Supp. 1999); MASS. GEN. LAWS ch. 235, § 8 (1986).

²² *Chapman v. University of Mass. Med. Ctr.*, 423 Mass. 584, 585, 670 N.E.2d 166, 168 (1996).

²³ *Id.*

²⁴ *Id.*

Chapman moved for an order requiring inclusion of postjudgment interest.²⁵ The trial court denied the motion, reasoning that an action for interest after judgment is a separate action that is not part of the underlying contract claim.²⁶ The trial court recognized that postjudgment interest is intended to compensate a party for the loss of use of money, but the Commonwealth was not liable for postjudgment interest because no clear statutory waiver of sovereign immunity existed.²⁷

The Supreme Judicial Court agreed with the trial court's reasoning and affirmed in *Chapman II*.²⁸ The issue in *Chapman II* was Chapman's entitlement to postjudgment interest.²⁹ The court concluded that "whether or not a plaintiff's claim for postjudgment interest is brought in a separate action, a claim for postjudgment interest is noncontractual and must be authorized statutorily."³⁰ This statement has the effect of immunizing the Commonwealth from liability for postjudgment interest in contract actions.³¹ The court relied on and expanded the holding in *C & M Construction Co., Inc.*³²

In *C & M Construction Co., Inc. v. Commonwealth*,³³ C & M recovered \$343,407.93, including interest of \$101,109.94, on July 3, 1975, on a judgment in a contract action against the Common-

²⁵ *Id.*

²⁶ *Id.* at 586, 670 N.E.2d at 168 (relying on *C & M Constr. Co., Inc. v. Commonwealth*, 396 Mass. 390, 391-92, 486 N.E.2d 54, 55-56 (1985)).

²⁷ *Chapman v. University of Mass. Med. Ctr.*, 423 Mass. 584, 586, 670 N.E.2d 166, 168 (1996).

²⁸ *Id.*

²⁹ *Id.* at 585, 670 N.E.2d at 168.

³⁰ *Id.* at 588, 670 N.E.2d at 169.

³¹ *See Judge Rotenberg Educ. Ctr., Inc. v. Commissioner of the Dep't of Mental Retardation*, 424 Mass. 430, 469, 677 N.E.2d 127, 153 (1997) (extending holding in *Chapman* to include postjudgment costs, namely attorney's fees).

³² *See Chapman v. University of Mass. Med. Ctr.*, 423 Mass. 584, 587, 670 N.E.2d 166, 169 (1996) (declaring the court's decision in *C & M Constr. Co., Inc.* is controlling).

³³ 396 Mass. 390, 486 N.E.2d 54 (1985).

wealth.³⁴ The clerk sent a certificate of judgment to the comptroller on July 9, 1975.³⁵ An additional budget request was made on July 21, 1975 and the appropriation bill that included this request was approved in 1976.³⁶ C & M did not receive payment until July 16, 1976.³⁷

C & M sought interest from the date of judgment, July 3, 1975, until the date of payment, July 16, 1976.³⁸ The court issued a money judgment on the contract action, and the claim for postjudgment interest was a second and separate action filed by C & M.³⁹ The Supreme Judicial Court considered the Commonwealth's liability for interest during the time necessary for the Legislature to appropriate the funds.⁴⁰ The court held the Commonwealth not liable for postjudgment interest.⁴¹

The court recognized a common law waiver of sovereign immunity exists when the Commonwealth enters into a contract with a pri-

³⁴ See *C & M Constr. Co., Inc. v. Commonwealth*, 396 Mass. 390, 390, 486 N.E.2d 54, 55 (1985) (setting forth the facts).

³⁵ See *id.* at 390-91, 486 N.E.2d at 55. The procedure for payment was lengthy and satisfaction of the judgment took almost one year. See *C & M Constr. Co.*, 396 Mass. at 391-92, 486 N.E.2d at 55 (describing the timeline for payment to C & M). C & M initially received \$71,721.61, the balance remaining on the funds already appropriated for the project. *Id.* The bureau of building construction made an additional budget request to the Legislature on July 21, 1975 for the balance owed to C & M to satisfy the judgment. *Id.* Payment could not be made until appropriation of the funds. *Id.*

³⁶ *C & M Constr. Co., Inc.*, 396 Mass. at 391, 486 N.E.2d at 55.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.* The court phrased the issue as "whether the Commonwealth is accountable for interest on the unsatisfied portion of a judgment during the time required for the appropriation of funds by the Legislature to satisfy the judgment, where there is no express statutory authority authorizing such recovery." *Id.*

⁴¹ *C & M Constr. Co., Inc. v. Commonwealth*, 396 Mass. 390, 391, 486 N.E.2d 54, 55 (1985).

vate party.⁴² An action for interest, however, is a separate action that requires statutory authorization because it is not part of the underlying contract claim.⁴³ C & M argued the authority for postjudgment interest was found by reading Massachusetts General Laws chapter 235, section 8 into chapter 258, sections 1-12, the Massachusetts Tort Claims Act, because chapter 258 is the "primary statutory basis for the waiver of sovereign immunity."⁴⁴ The court rejected this argument because the statutes that provide for postjudgment interest in private actions, such as chapter 235, section 8, are not *expressly* incorporated into statutes that permit damages against the Commonwealth, such as chapter 258.⁴⁵

The court went on to consider issues of statutory construction.⁴⁶ The court looked to the eminent domain statute expressly authorizing postjudgment interest, chapter 79, section 37.⁴⁷ If the Legislature intended to authorize the Commonwealth's liability for postjudgment interest under chapter 235, section 8, then enactment of a statute authorizing postjudgment interest in eminent domain cases would

⁴² *Id.* (citing *Monadnock Display Fireworks, Inc. v. Andover*, 388 Mass. 153, 156-57, 445 N.E.2d 1053, 1056 (1983)).

⁴³ *Id.* at 392, 486 N.E.2d at 56. The court concluded "the present action [for interest] is not founded on the contract between C & M and the Commonwealth, as to which sovereign immunity is waived." *Id.*

⁴⁴ *Id.* Chapter 235, section 8 authorizes postjudgment interest but does not expressly address the Commonwealth's liability. *See* MASS. GEN. LAWS ch. 235, § 8 (1986) (requiring payment of interest until satisfaction of the judgment). The Massachusetts Tort Claims Act is a statutory waiver of sovereign immunity and permits a private party to bring a tort action against the Commonwealth. *See* MASS. GEN. LAWS ch 258, §§ 1-12 (1985) (delineating the scope of a litigant's rights and obligations in a tort action against the Commonwealth).

⁴⁵ *See* *C & M Constr. Co., Inc. v. Commonwealth*, 396 Mass. 390, 393, 486 N.E.2d 54, 56 (1985) (citing *Broadhurst v. Director of the Div. of Employment Sec.*, 373 Mass. 720, 727, 369 N.E.2d 1018, 1023 (1973)).

⁴⁶ *See id.* at 392, 486 N.E.2d at 56 (examining whether an alternate source of waiver exists).

⁴⁷ *See id.* at 393, 486 N.E.2d at 56 (citing *Woodworth v. Commonwealth*, 353 Mass. 229, 230, 230 N.E.2d 814, 815 (1967)); MASS. GEN. LAWS. ch. 79, § 37 (1993) (governing postjudgment interest in eminent domain actions).

have been unnecessary.⁴⁸ The court found the same reasoning disposed of C & M's claim.⁴⁹

The court makes two assertions to justify the holding in *C & M Construction Co., Inc.*⁵⁰ First, an action for postjudgment interest is a separate action from the underlying claim and requires statutory authorization.⁵¹ Second, the Legislature did not intend chapter 235,

⁴⁸ See *C & M Constr. Co., Inc.*, 396 Mass. at 393, 486 N.E.2d at 56 (discussing rules of statutory construction). The court stated:

[A] statute awarding postjudgment interest in eminent domain cases evinced a legislative intent that [chapter 235, section 8], not be applied to claims against the Commonwealth . . . If that were not so, [chapter 235, section 8] would have made the enactment of a separate statute awarding postjudgment interest in eminent domain cases an unnecessary and redundant legislative gesture. In expressly providing for interest until payment in one type of proceeding, we assume the Legislature meant to "[exclude] by implication other similar matters not mentioned."

Id. (quoting *McArthur Bros. Co. v. Commonwealth*, 197 Mass. 137, 139, 83 N.E. 334, 335 (1908)).

Chapter 79, section 37, governing interest in eminent domain actions, is the only statute that expressly holds the Commonwealth liable for postjudgment interest. See *C & M Constr. Co., Inc.*, 396 Mass. at 392, 486 N.E.2d at 56 (stating the Massachusetts Tort Claims Act and chapter 235, section 8 do not authorize postjudgment interest); MASS. GEN. LAWS ch. 79, § 37 (1985) (expressly authorizing postjudgment interest). Prior to enactment of chapter 79, section 37, recovery for postjudgment interest against the Commonwealth was prohibited. See *C & M Constr. Co., Inc.*, 396 Mass. at 392, 486 N.E.2d at 56 (noting alternative theories of recovery for postjudgment interest, namely on constitutional grounds).

⁴⁹ See *C & M Constr. Co., Inc.*, 396 Mass. at 393, 486 N.E.2d at 56-57 (finding C & M has no claim).

⁵⁰ See *id.* at 391-92, 486 N.E.2d at 55-56 (reasoning the Commonwealth is not liable for postjudgment interest).

⁵¹ See *id.* at 391-92, 486 N.E.2d at 55 (rejecting C & M's argument that the action for postjudgment interest is part of the underlying contract claim).

section 8 to apply to the Commonwealth.⁵² The court in *Chapman II* considers the two assertions and similarly concludes that the Commonwealth is not liable for postjudgment interest.⁵³

Chapman attempted to distinguish the facts in *C & M Construction Co., Inc.* by noting C & M brought a completely separate action for postjudgment interest, while Chapman's claim was being litigated in an underlying contract action.⁵⁴ The Supreme Judicial Court re-

⁵² See *id.* at 393, 486 N.E.2d at 56 (interpreting the Legislature's intent when it authorized postjudgment interest in eminent domain actions).

The court also rejected C & M's argument that failure to pay interest was a wrongful detention of money. See *C & M Constr. Co., Inc.*, 396 Mass. at 394, 486 N.E.2d at 57 (concluding C & M erroneously relied on *Perkins Sch. for the Blind v. Rate Setting Comm'n*, 383 Mass. 825, 423 N.E.2d 765 (1981)). The Commonwealth is liable for postjudgment interest due to wrongful detention of money if the Commonwealth has not done everything the law requires it to do in the particular case. See *Perkins Sch. for the Blind v. Rate Setting Comm'n*, 383 Mass. 825, 831, 423 N.E.2d 765, 770 (1981) (stating interest is payable as compensation for non-performance of a contract).

The court in *C & M Construction Co., Inc.* concluded reliance on *Perkins School for the Blind* was "misplaced" because a claim for wrongful detention of money requires an evaluation of the contractual obligations between the parties, and C & M's claim for postjudgment interest "has no roots in contract." *C & M Constr. Co., Inc.*, 396 Mass. at 394, 486 N.E.2d at 57. If *Perkins School for the Blind* were applicable, C & M's claim still fails because the court concludes that the Legislature did everything required to satisfy the judgment. See *id.* at 394, 486 N.E.2d at 57 (finding C & M cannot succeed on the claim).

⁵³ See *Chapman v. University of Mass. Med. Ctr.*, 423 Mass. 584, 586, 670 N.E.2d 166, 168 (1996) (concluding the Commonwealth's liability for prejudgment interest does not support a claim for postjudgment interest).

⁵⁴ See *Chapman II*, 423 Mass. at 587, 670 N.E.2d at 169 (noting Chapman's flawed argument). C & M claimed interest due for the time it took the Legislature to appropriate funds to satisfy the judgment. See *C & M Constr. Co., Inc. v. Commonwealth*, 396 Mass. 390, 391, 486 N.E.2d 54, 55 (1985) (setting forth the question presented). The postjudgment interest C & M sought to recover was for the time period between the judgment (there was no appeal in the contract case) and payment. *Id.* Chapman sought interest from the date of judgment to the date of judgment after rescript. See *Chapman II*, 423 Mass. at

jected this argument and stated “the distinction is without significance.”⁵⁵ Liability for postjudgment interest is noncontractual even if the underlying claim is based on contract, therefore no common law waiver of sovereign immunity exists for a claim to interest.⁵⁶ Further, the Legislature did not intend to create a statutory waiver of sovereign immunity for postjudgment interest in contract actions.⁵⁷

Chapman II represents Massachusetts law on the issue of the Commonwealth's liability for postjudgment interest in contract actions.⁵⁸ The common law waiver of sovereign immunity that exists at the time the government enters into a contract does not encompass liability for postjudgment interest.⁵⁹ The general laws do not provide

585, 670 N.E.2d at 168 (explaining the clerk refused to include postjudgment interest in the execution and Chapman filed a motion for interest).

⁵⁵ *Chapman II*, 423 Mass. at 587, 670 N.E.2d at 169.

⁵⁶ *See id.* (highlighting no statutory authority for postjudgment interest exists).

⁵⁷ *See id.* (quoting the reasoning in *Falmouth Hosp. v. Commissioner of Pub. Welfare*, 23 Mass. App. Ct. 545, 548 n.6, 503 N.E.2d 1322, 1324 (1987)). The Legislature intended chapter 235, section 8 not apply to the Commonwealth, as evidenced by the inclusion of postjudgment interest in the eminent domain statutes. *See Chapman II*, 423 Mass. at 587, 670 N.E.2d at 169 (quoting *C & M Constr. Co., Inc. v. Commonwealth*, 396 Mass. 390, 393, 486 N.E.2d 54, 56 (1985)).

⁵⁸ *See Judge Rotenberg Educ. Ctr., Inc. v. Commissioner of the Dep't of Mental Retardation*, 424 Mass. 430, 469, 677 N.E.2d 127, 153 (1997) (relying on *Chapman II* to deny postjudgment costs against the Commonwealth); *Chapman v. University of Mass. Med. Ctr.*, 423 Mass. 584, 586, 670 N.E.2d 166, 168 (1996) (holding Commonwealth not liable for postjudgment interest in contract actions). Although the Commonwealth is not liable for postjudgment interest absent statutory authority, the government may extend the scope of its consent to suit by expressly agreeing to pay postjudgment interest as a term in a contract. *See Monadnock Display Fireworks, Inc. v. Andover*, 388 Mass. 153, 156-57, 445 N.E.2d 1053, 1056 (1983) (stating a contract creates duties that do not otherwise exist).

⁵⁹ *See Chapman v. University of Mass. Med. Ctr.*, 423 Mass. 584, 588, 670 N.E.2d 166, 169 (1996) (concluding a claim for postjudgment interest is noncontractual and must be authorized by statute).

the necessary waiver to expressly hold the Commonwealth liable in a contract action.⁶⁰ Although the reasoning in *C & M Construction Co., Inc.* left the door open for Chapman's claim to the extent that C & M's claim was truly a separate action for postjudgment interest, the Supreme Judicial Court in *Chapman II* closed and bolted the door shut.⁶¹

III. STATUTES AND RULES

Interest on judgments is governed by statute.⁶² Private parties to a contract may negotiate a rate of interest in the event of nonpayment, but interest owed in a dispute reduced to judgment is governed by the legislature.⁶³ A government's liability for interest on a judgment in a contract action requires: 1) a statute authorizing interest in contract actions; and 2) a statutory or common law waiver of sovereign immunity with respect to interest.⁶⁴ The court in *Chapman II* held the general interest statutes that apply to judgments in favor of private parties do not apply to the Commonwealth because no waiver of sovereign immunity exists.⁶⁵ The court expressly and implicitly relied on

⁶⁰ See *C & M Constr. Co., Inc. v. Commonwealth*, 396 Mass. 390, 392, 486 N.E.2d 54, 56 (highlighting only one Massachusetts statute expressly authorizes postjudgment interest against the Commonwealth).

⁶¹ See *Chapman II*, 423 Mass. at 587, 670 N.E.2d at 169 (stating it is irrelevant whether a claim for postjudgment interest is brought as a motion or as a separate action).

⁶² See *Date of Verdict or Date of Entry of Judgment Thereof as Beginning of Interest Period on Judgment*, 1 A.L.R. 479 § 1 (1948) (pointing to common law principle that judgments do not accrue interest absent statutory regulation).

⁶³ See *Morley v. Lake Shore & Mich. S. Ry. Co.*, 146 U.S. 162, 168 (1892) (concluding the United States Constitution mandates a plaintiff's right to interest be prescribed by the state legislature).

⁶⁴ See generally *Date of Verdict or Date of Entry of Judgment Thereof as Beginning of Interest Period on Judgment*, 1 A.L.R. 479 §§ 1, 2 (1948) (declaring states differ on the question of whether general interest statutes apply to governmental units absent a statute or a contract).

⁶⁵ See *Chapman v. University of Mass. Med. Ctr.*, 423 Mass. 584, 586, 670 N.E.2d 166, 168 (1996) (agreeing with the superior court's reasoning).

existing Massachusetts interest statutes and the relationships between these statutes.⁶⁶

A. Chapter 235, § 8

Massachusetts General Laws chapter 235, section 8 establishes when postjudgment interest begins to accrue and the rate of interest.⁶⁷ The statute provides in pertinent part that “[e]very judgment for the payment of money shall bear interest from the day of its entry.”⁶⁸ Postjudgment interest accrual begins at entry of “judgment” and ceases at the time of payment.⁶⁹ A “judgment” includes a decree and

⁶⁶ See *id.* at 587-88, 670 N.E.2d at 169 (discussing the relevant statutory scheme).

⁶⁷ See MASS. GEN. LAWS ch. 235, § 8 (1986) (providing for both prejudgment and postjudgment interest). The statute states in full:

When judgment is rendered upon an award of county commissioners, a committee or referees, or upon the report of an auditor or master, or upon the verdict of a jury or the finding of a justice, interest shall be computed upon the amount of the award, report, verdict or finding from the time when made to the time the judgment is entered [prejudgment interest]. Every judgment for the payment of money shall bear interest from the day of its entry at the same rate per annum as provided for prejudgment interest in such award, report, verdict or finding. The warrant or execution issued on a judgment for the payment of money shall specify the day upon which judgment is entered, and shall require the collection or satisfaction thereof with interest from the day of its entry.

Id.

⁶⁸ MASS. GEN. LAWS ch. 235, § 8 (1986).

⁶⁹ See *id.* (stating the warrant or execution shall require satisfaction of the judgment with interest from the day of entry); see also MASS. R. CIV. P. 54(f) (1998) (requiring every judgment bears interest until the date of payment). Rule 54(f) requires the clerk of the court to compute the interest for two distinct time periods: 1) up to the date of entry of judgment; and 2) from the date of entry of judgment to the date of execution ordering payment. MASS. R. CIV. P. 54(f) (1998). A judgment debtor is also liable for interest during a third time period,

is separate from the award, report, verdict or finding.⁷⁰ Massachusetts General Laws chapter 235, section 8, provides that “judgment is rendered [after issuance of] an award of county commissioners, a committee or referees, or upon the report of an auditor or master, or upon the verdict of a jury or the finding of a justice.”⁷¹ A “judgment,” therefore, *follows* a jury verdict or a master’s report and is a separate act or decree.⁷² Chapter 235, section 8 entitles a party to interest on a judgment regardless of the type of action.⁷³

B. Rule 54

Massachusetts Rule of Civil Procedure 54 clarifies the procedure outlined in chapter 235, section 8 that prescribes interest to a successful plaintiff.⁷⁴ The rule defines “judgment” and “final judgment”

from the date of execution to the date of payment. MASS. GEN. LAWS ch. 235, § 8 (1986); MASS. R. CIV. P. 54(f) (1998).

Rule 54(f) does not direct the clerk to compute interest for the latter time period because the clerk cannot know the date of payment at the time the execution is issued. MASS. R. CIV. P. 54(f) (1998). The absence of this formality, however, does not excuse the judgment debtor’s liability for interest up until the date of payment. *See* MASS. R. CIV. P. 54(f) (1998) (stating “every judgment for the payment of money shall bear interest up to the date of payment of said judgment”).

⁷⁰ *See* MASS. R. CIV. P. 54(a) (1998) (describing the terms “judgment” and “final judgment”). A “judgment” or “final judgment” includes judgments entered upon, among other things, verdicts of a jury, or special or general verdicts. MASS. R. CIV. P. 54(a)(2) (1998).

⁷¹ MASS. GEN. LAWS ch. 235, § 8 (1986).

⁷² *See* MASS. R. CIV. P. 54(a) (1998) (setting forth instances when the clerk may enter judgment without direction of the court and where court approval of the form of judgment is required).

⁷³ *See* MASS. GEN. LAWS ch. 235, § 8 (1994) (dictating the award of interest on judgments).

⁷⁴ *See* MASS. R. CIV. P. 54 (1998) (defining “judgment” and directing the clerk to compute interest). Rule 54(f) states in full:

Every judgment for the payment of money shall bear interest up to the date of payment of said judgment. Interest accrued up to the date of

to “mean the act of the *trial court* finally adjudicating the rights of the parties affected by the judgment.”⁷⁵ This definition has a significant impact on the rights of the parties to a suit if one of the parties is not liable for postjudgment interest.⁷⁶ Rule 54(f) directs the clerk to compute the amount of postjudgment interest and include this amount on the certificate of payment or execution.⁷⁷ Rule 54(f) also designates the separate time periods for prejudgment and postjudgment interest.⁷⁸

entry of a judgment shall be computed by the clerk according to law. Unless otherwise ordered by the court, interest from the date of entry of a judgment to the date of execution or order directing the payment of said judgment shall also be computed by the clerk, and the amount of such interest shall be stated on the execution or order.

Id.

⁷⁵ MASS. R. CIV. P. 54(a) (1998) (emphasis added). Prior to 1973 amendments, “judgment” meant the final adjudicating act where appellate review had been exhausted. Reporter’s Notes, MASS. R. CIV. P. 54 (1998). Prior to the amendments, a case decided by the Supreme Judicial Court went to “judgment” and postjudgment interest would accrue from the date of the Supreme Judicial Court’s “judgment” to the date of payment. *Id.* In accordance with the 1973 amendments, “judgment” was issued by the trial court, notwithstanding an appeal. *Id.* This sets the postjudgment interest period as the period between the judgment by the *trial* court and payment. MASS. R. CIV. P. 54(a) (1998). Redefining “judgment” significantly extends the “postjudgment” period. See MASS. GEN. LAWS ch. 235, § 8 (1986) (stating “the warrant or execution issued on a judgment . . . shall require the . . . satisfaction thereof with interest *from the day of its [the judgment’s] entry*); see also *Stokosa v. Waltuch*, 378 Mass. 617, 619-20, 393 N.E.2d 350, 351 (1979) (noting under the 1973 definition the time period between judgment and payment could be years, while under the prior definition, the time period was much shorter).

⁷⁶ See *Stokosa*, 378 Mass. at 619-20, 393 N.E.2d at 351 (discussing the practical effect of the 1973 amendment to Rule 54).

⁷⁷ See MASS. R. CIV. P. 54(f) (1998).

⁷⁸ See MASS. R. CIV. P. 54(f) (1998) (designating the time periods without direct reference to the terms “prejudgment” and “postjudgment”). The 1986 Reporter’s Notes state “[t]he initial entry of judgment by the trial court should be the sum of the verdict and interest on that verdict to the time of said entry [prejudgment interest]. Postjudgment interest should be computed on that total.”

C. Chapter 231, § 6C

Massachusetts General Laws chapter 231, section 6C provides in a contract action, “upon a verdict, finding or order for judgment for pecuniary damages, interest shall be added by the clerk of the court to the amount of damages . . . from the date of breach or demand.”⁷⁹ The function of section 6C is to provide interest to a successful litigant from the date of breach or filing of the action to the verdict, finding or order.⁸⁰ Section 6C expressly addresses the method of calculating interest in actions against the Commonwealth from the time of breach or filing of the action to the verdict, finding or order.⁸¹ The express reference to the Commonwealth in section 6C is not a statutory waiver of sovereign immunity, but rather a recognition of the common law waiver that exists when the Commonwealth enters into a contract.⁸²

D. An Example Calculation of Postjudgment Interest

The facts of *Chapman II* illustrate the relationships between the Massachusetts interest statutes applicable in contract actions.⁸³

Reporter’s Notes, MASS. R. CIV. P. 54(f) (1986) (citing *Charles D. Bonanno Linen Service, Inc. v. McCarthy*, 550 F. Supp. 231, 248 (D. Mass. 1982); *Boston Edison v. Tritsch*, 370 Mass. 260, 266, 346 N.E.2d 901, 905 (1976)).

⁷⁹ MASS. GEN. LAWS ch. 231, § 6C (West Supp. 1999).

⁸⁰ See MASS. GEN. LAWS ch. 231, § 6C (West Supp. 1999) (requiring the clerk to add interest to damages at a specified rate). The clerk must compute interest from the date of breach if known. *Id.* If the date of breach is not known, the clerk computes interest from the date of commencement of the action. *Id.*

⁸¹ See MASS. GEN. LAWS ch. 231, § 6C (West Supp. 1999) (requiring the clerk to calculate interest at the contract rate, if established, or pursuant to the method described in chapter 231, section 6I).

⁸² See *Sargeant v. Commissioner of Pub. Welfare*, 383 Mass. 808, 814, 822, 423 N.E.2d 755, 760, 764 (1981) (explaining the Commonwealth is treated in the same manner as a private person in a contract action and therefore liable for interest under chapter 231, section 6C).

⁸³ See *Chapman v. University of Mass. Med. Ctr.*, 423 Mass. 584, 584, 670 N.E.2d 166, 167 (1996) (explaining the facts).

Chapman filed her contract claim on July 20, 1990.⁸⁴ For purposes of this example, the judge's finding for damages was issued on January 3, 1992, in favor of Chapman for \$243,144.25.⁸⁵ The trial court entered judgment on January 10, 1992.⁸⁶ On direct appeal, the Supreme Judicial Court entered an amended judgment after rescript on April 19, 1994 in favor of Chapman for damages of \$243,144.25.⁸⁷

The interest statutes applicable in contract actions provide for interest during three time periods.⁸⁸ Chapter 231, section 6C requires the clerk to add interest to damages from the date of the commencement of the action, July 20, 1990, to the date of the trial court's findings, January 3, 1992.⁸⁹ In accordance with the rate specified in chapter 231, section 6C, Chapman's interest accrues on \$243,144.25 in damages from July 20, 1990 to January 3, 1992, or an amount equal to approximately \$42,000.00.⁹⁰ Section 6C *requires* the clerk

⁸⁴ *Id.*

⁸⁵ *See id.* (omitting the date of the court's findings). Chapman waived her right to a jury trial but the decision by the court in *Chapman II* does not indicate the date the court issued its findings. *Id.* Note also that for purposes of calculation, a verdict, finding or order for judgment for pecuniary damages are treated the same. *See* MASS. GEN. LAWS ch. 231, § 6C (West Supp. 1999) (providing interest is added by the clerk "upon a verdict, finding or order for judgment for pecuniary damages").

⁸⁶ *See Chapman II*, 423 Mass. at 584, 670 N.E.2d at 167 (explaining the facts).

⁸⁷ *Id.* at 585, 670 N.E.2d at 168.

⁸⁸ *See generally* MASS. GEN. LAWS ch. 231, § 6C (West Supp. 1999) (providing for interest from commencement of action to date of verdict or finding); MASS. GEN. LAWS ch. 235, § 8 (1986) (providing for prejudgment and postjudgment interest).

⁸⁹ *See* MASS. GEN. LAWS ch. 231, § 6C (West Supp. 1999) (stating that "upon a . . . finding, . . . interest shall be added by the clerk . . . to the amount of damages . . . from the date of the breach or demand").

⁹⁰ *See* MASS. GEN. LAWS ch. 231, § 6C (West Supp. 1999) (delineating the interest rate as the contract rate if specified or 12% per year). The court in *Chapman II* presented an interest figure of \$42,995.48 and this included interest from the date of commencement of the action to the date of judgment. *See* *Chapman v. University of Mass. Med. Ctr.*, 423 Mass. 584, 584-85, 670 N.E.2d

to include interest from the date of breach or the date of commencement of the action to the finding or verdict.⁹¹

The first provision of chapter 235, section 8 authorizes interest from the time of the finding of the trial court, January 3, 1992, to the entry of judgment on January 10, 1992.⁹² Interest is calculated based on the amount of the finding plus interest accrued pursuant to chapter 231, section 6C, or \$285,144.25 (\$243,144.25 + \$42,000.00).⁹³ The interest that accrues from January 3, 1992 to January 10, 1992 at 12% per year on \$285,144.25 is approximately \$900.00.⁹⁴ The interest that accrues during the period between the finding or verdict and entry of judgment shall be referred to as “prejudgment” interest for the remainder of this note and is governed by chapter 235, section 8.⁹⁵

The court enters judgment upon the finding for \$286,044.25.⁹⁶ The second provision of chapter 235, section 8, authorizes interest

166, 167-68 (1996) (describing the nature of Chapman's action). This figure reflects the interest calculated pursuant to both chapter 231, section 6C and chapter 235, section 8, because interest is calculated up to entry of judgment. *Id.*

⁹¹ See MASS. GEN. LAWS ch. 231, § 6C (West Supp. 1999) (stating “interest shall be added by the clerk of the court”).

⁹² See MASS. GEN. LAWS ch. 235, § 8 (1986) (providing interest is computed upon the finding from the time made to the time of judgment).

⁹³ See *R.H. White Realty Co., Inc. v. Boston Redev. Auth.*, 371 Mass. 452, 454, 358 N.E.2d 440, 441 (1976) (clarifying the procedure for adding interest to a verdict). The Supreme Judicial Court stated that chapter 235, section 8 was necessary for the *calculation* of interest because other interest statutes only “provided for the addition of interest to the amount of a verdict.” *R.H. White Realty Co., Inc.*, 371 Mass. at 454, 358 N.E.2d at 441. The interest from the date of breach, or date of commencement of the action, is added to the verdict and this amount accrues interest to the date of judgment. See *id.* (quoting *Nugent v. Boston Consol. Gas Co.*, 238 Mass. 221, 238, 130 N.E. 488, 494 (1921)).

⁹⁴ See MASS. GEN. LAWS ch. 235, § 8 (1986) (providing for payment of prejudgment interest).

⁹⁵ See *id.* (providing interest from the verdict or finding to the entry of judgment, although not designated as “prejudgment” interest).

⁹⁶ See 1986 Reporter's Notes, MASS. R. CIV. P. 54(f) (1998) (stating judgment by the trial court should include the sum of the verdict and interest on

from the date of entry of judgment, January 10, 1992, to the date of payment.⁹⁷ For purposes of this illustration, the date of payment is May 1, 1994, a date after the date of entry of judgment after rescript.⁹⁸ The court issues a writ of execution to enforce the payment of the judgment after rescript.⁹⁹ Chapter 235, section 8 requires the execution to specify the date of entry of judgment and that the judgment debtor pay interest from the date of entry until satisfaction of the judgment.¹⁰⁰ The interest that accrues from the date of entry of judgment to the date of payment is postjudgment interest.¹⁰¹ Disregarding the holding in *Chapman II* for purposes of this illustration, UMMC is liable for postjudgment interest on \$286,044.25, from the date of judgment, January 10, 1992, to May 1, 1994, the date of payment.¹⁰²

the verdict to the time of entry of judgment). The amount entered on the judgment includes the sum of a) the amount of the finding (\$243,144.25); plus b) interest from the date of commencement of the action to the finding in accordance with chapter 231, section 6C (\$42,000.00); plus c) interest that accrues on the amount of (a) plus (b) (\$285,144.25), from the date of the finding to the entry of judgment, in accordance with chapter 235, section 8 (\$900.00).

⁹⁷ See MASS. GEN. LAWS ch. 235, § 8 (1986) (requiring payment of interest from the date of entry of judgment until satisfaction of the judgment).

⁹⁸ See MASS. R. CIV. P. 54 (1998) (stating court enters judgment after the verdict or finding).

⁹⁹ See MASS. R. CIV. P. 69 (1998) (setting forth that a writ of execution is required to enforce a judgment for the payment of money unless directed otherwise by the court). Note in *Chapman II*, the clerk of the court refused to issue an execution that included postjudgment interest from the date of entry of judgment to the date of judgment after rescript. See *Chapman v. University of Mass. Med. Ctr.*, 423 Mass. 584, 585, 670 N.E.2d 166, 168 (1996) (noting the clerk's refusal prompted Chapman's motion for the additional interest).

¹⁰⁰ See MASS. GEN. LAWS ch. 235, § 8 (1986).

¹⁰¹ See *Chapman v. University of Mass. Med. Ctr.*, 423 Mass. 584, 585, 670 N.E.2d 166, 168 (1996) (explaining clerk's refusal to include postjudgment interest in writ of execution).

¹⁰² See 1986 Reporter's Notes, MASS. R. CIV. P. 54(f) (1998) (stating postjudgment interest is calculated on the sum of the finding and interest on the finding to the time of entry of the finding).

A private party must pay the interest that accrues during this twenty-nine month period.¹⁰³ Applying the holding in *Chapman II*, however, UMMC as a government entity is not liable for postjudgment interest.¹⁰⁴

IV. TORT ACTIONS

The Massachusetts Tort Claims Act ("MTCA") governs the issue of postjudgment interest against the Commonwealth in tort actions.¹⁰⁵ The MTCA provides for the rights of a private party in an action against the Commonwealth but limits the state's liability.¹⁰⁶ Prior to 1978, private parties could not bring a tort action against public entities without the Commonwealth's consent.¹⁰⁷ A general rule of law exists "that the Commonwealth 'cannot be impleaded in its own courts except with its consent, and, when that consent is granted, it can be impleaded only in the manner and to the extent expressed . . . [by] statute.'"¹⁰⁸ The doctrine of sovereign immunity protects the Commonwealth from suit therefore the government's consent is necessary.¹⁰⁹

¹⁰³ See MASS. GEN. LAWS ch. 235, § 8 (1986) (requiring payment of prejudgment and postjudgment interest).

¹⁰⁴ See *Chapman II*, 423 Mass. at 586, 670 N.E.2d at 168 (holding Commonwealth not accountable for postjudgment interest).

¹⁰⁵ See MASS. GEN. LAWS ch. 258, §§ 1-12 (1985) (setting forth the MTCA); *Onofrio v. Department of Mental Health*, 411 Mass. 657, 657, 584 N.E.2d 619, 619 (1992) (deciding whether postjudgment interest is recoverable under the MTCA).

¹⁰⁶ See MASS. GEN. LAWS ch. 258, § 2 (1985) (limiting damages to \$100,000 and precluding recovery of punitive damages and prejudgment interest).

¹⁰⁷ See Jonathan P. Feltner & Mary M. Logalbo, *Claims Against Governmental Defendants: Chapter 258 Entities, the MBTA and Other Public Bodies*, MASS. CONT. L. EDUC. 5-1 (Motor Vehicle Torts) (1996) (describing evolution of government tort exposure).

¹⁰⁸ See *General Elec. Co. v. Commonwealth*, 329 Mass. 661, 664, 110 N.E.2d 101, 102 (1953) (quoting *Glickman v. Commonwealth*, 244 Mass. 148, 149-50, 138 N.E. 252, 253 (1923)).

¹⁰⁹ See *Onofrio*, 411 Mass. at 658, 584 N.E.2d at 620 (holding sovereign immunity prevents recovery of postjudgment interest in tort actions).

A. Sovereign Immunity

The doctrine of sovereign immunity in the United States has its roots in English common law and was justified by “[t]he inherent nature of sovereignty” with the protection of the king as its primary purpose.¹¹⁰ The concept, however, came under disfavor with the judiciary and the public.¹¹¹ In *Morash & Sons, Inc. v. Commonwealth*,¹¹² the Supreme Judicial Court concluded the doctrine of sovereign immunity was “logically indefensible” and noted that some jurisdictions have completely abolished the concept.¹¹³

¹¹⁰ *Employees of the Dep't of Pub. Health & Welfare, Mo. v. Department of Pub. Health & Welfare, Mo.*, 411 U.S. 279, 288 (1973) (Marshall, J., concurring) (quoting *Great No. Life Ins. Co. v. Read*, 322 U.S. 47, 51 (1944)).

¹¹¹ *See Morash & Sons, Inc. v. Commonwealth*, 363 Mass. 612, 618, 296 N.E.2d 461, 465 (1973) (discussing the origins of the doctrine of sovereign immunity). The Court recognized the continued existence of the concept of sovereign immunity but noted that “[s]cholarly treatises have suggested that the doctrine is an anachronism in American law, but despite its tautological justification, the doctrine continues to enjoy current vitality.” *Id.*

¹¹² 363 Mass. 612, 296 N.E.2d 461 (1973).

¹¹³ *See Morash & Sons, Inc.*, 363 Mass. at 618, 296 N.E.2d at 465 (discussing the erosion of the concept of sovereign immunity in all jurisdictions through statutory or judge made exceptions). The judiciary has the authority to abrogate the doctrine of sovereign immunity without the consent or approval of the Legislature because the concept is judicially created. *See Whitney v. Worcester*, 373 Mass. 208, 212, 366 N.E.2d 1210, 1213 (1977) (stating “we have no doubt as to our power to abrogate the doctrine of governmental immunity”). Legislative action, however, will almost always follow judicial action regarding governmental immunity, therefore the court prefers the Legislature reach finality. *See id.* at 210, 366 N.E.2d at 1212 (recognizing the overlapping legislative and judicial powers regarding immunity and the Legislature “will have the final word”).

Note the court in *Whitney* decided a question of municipal immunity and not state immunity. *See id.* at 210, 366 N.E.2d at 1212 (announcing its intention to abrogate the doctrine of municipal immunity in the first appropriate case). At common law, municipalities, unlike state entities, were subject to liability for tort actions involving commercial functions. *See Bolster v. Lawrence*, 225 Mass. 387, 390, 114 N.E. 722, 724 (1939) (stating municipal liability may exist if the

In 1977, the Supreme Judicial Court demanded the Legislature abrogate the doctrine of sovereign immunity in tort actions.¹¹⁴ The court stated the doctrine of sovereign immunity is a “convoluted scheme of rules and exceptions which have developed over the years [and is] unjust and indefensible as a matter of logic and sound public policy.”¹¹⁵ The court observed that no legislation existed that addressed its concerns regarding the abrogation of the concept.¹¹⁶ As a result of the Legislature's inaction, the court stated its intention to abrogate the doctrine of sovereign immunity in the next appropriate case unless the Legislature took action.¹¹⁷ The Legislature acted

tortious act included an element of corporate benefit or pecuniary profit such as operating a public bath house or swimming pool). The differences between municipal and state immunity do not affect the analysis of this note because the MTCA eliminates the distinction between government activities and commercial activities. See Joseph W. Glannon, *The Massachusetts Tort Claims Act: Analysis and Update*, 75 MASS. L. REV. 52, 58 (1990) (discussing the MTCA's affect on common law principles of immunity).

¹¹⁴ See *Whitney v. Worcester*, 373 Mass. 208, 210, 366 N.E.2d 1210, 1212 (1977) (highlighting the Legislature's inability to abrogate the doctrine of sovereign immunity for the four years since *Morash & Sons, Inc.* was decided).

¹¹⁵ *Whitney*, 373 Mass. at 209, 366 N.E.2d at 1211.

¹¹⁶ See *id.* at 210, 366 N.E.2d at 1212 (noting the Legislature's inability to reate a "workable solution").

¹¹⁷ See *id.* at 210, 366 N.E.2d at 1212 (discussing the court's intention to act definitively and swiftly). The court stated:

[W]e state our intention to abrogate the doctrine of municipal immunity in the first appropriate case decided by this court after the conclusion of the next (1978) session of the Legislature, provided that the Legislature at that time has not itself acted definitively as to the doctrine. Thereafter, when appropriate cases concerning State and county immunity are presented, it is our intention to take similar action to abrogate immunity.

Id. at 210, 366 N.E.2d at 1210.

At the time *Whitney* was decided, only five states in the nation retained the common law protection of sovereign immunity at the state and local levels in tort actions. See *Whitney*, 373 Mass. at 212, 366 N.E.2d at 1213 (summarizing the

quickly and passed the Massachusetts Tort Claims Act.¹¹⁸ The MTCA provides a limited statutory waiver of sovereign immunity but does not encompass a waiver for the payment of postjudgment interest.¹¹⁹

B. Massachusetts Tort Claims Act

The Supreme Judicial Court settled the question of postjudgment interest in tort actions in a 1992 decision interpreting the MTCA.¹²⁰ The MTCA expressly provides that public employers are not liable for prejudgment interest, but contains no language regarding liability for postjudgment interest.¹²¹ The plaintiff in *Onofrio v. Department of Mental Health*¹²² argued that by expressly barring recovery of prejudgment interest, the Legislature's silence regarding postjudgment interest implied that no bar existed for recovery of interest after judgment.¹²³ The court agreed that Onofrio's argument might succeed if the MTCA were not a statute waiving sovereign immunity.¹²⁴

viability of the concept of sovereign immunity in the fifty states). The court recognized its power to change the law in Massachusetts, particularly since "the time for change [was] long overdue." *Id.*

¹¹⁸ See MASS. GEN. LAWS ch. 258, §§ 1-12 (1978) (providing limited liability against the Commonwealth).

¹¹⁹ See *Onofrio v. Department of Mental Health*, 411 Mass. 657, 658, 584 N.E.2d 619, 620 (1992) (holding MTCA does not provide a limited statutory waiver of sovereign immunity for postjudgment interest).

¹²⁰ See *Onofrio*, 411 Mass. at 658, 584 N.E.2d at 620 (holding government entities are not liable for postjudgment interest in tort actions).

¹²¹ See MASS. GEN. LAWS ch. 258, § 2 (1978) (stating public employers "shall not be liable for interest prior to judgment").

¹²² 411 Mass. 657, 584 N.E.2d 619 (1992).

¹²³ See *id.* at 659, 584 N.E.2d at 620 (rejecting Onofrio's argument that the court should apply "expressio unius est exclusio alterius" as a rule of statutory construction in these circumstances).

¹²⁴ See *id.* at 659, 584 N.E.2d at 620 (noting the rules of construction regarding statutes waiving sovereign immunity require special analysis).

Statutes governing waivers of sovereign immunity are strictly construed and the rules of statutory construction are stringent.¹²⁵ Massachusetts courts require complete or partial waivers of sovereign immunity be expressed in a provision of a statute or by necessary implication from a statute.¹²⁶ Although the Supreme Judicial Court has expressed disdain for the doctrine of sovereign immunity, the court preserves the viability of the concept in instances where the Legislature has not expressly and clearly waived its application.¹²⁷

The Legislature recognized a right of action for tort claims but did not include within a private party's rights the authorization to recover postjudgment interest.¹²⁸ At common law, sovereign immunity

¹²⁵ See *id.* at 659, 584 N.E.2d at 620 (quoting *Ware v. Commonwealth*, 409 Mass. 89, 91, 564 N.E.2d 998, 999 (1991); *C & M Constr. Co., Inc. v. Commonwealth*, 396 Mass. 390, 392, 486 N.E.2d 54, 56 (1985) (emphasizing the rules of statutory construction regarding waivers of sovereign immunity are well established); *Woodbridge v. Worcester State Hosp.*, 384 Mass. 38, 42, 423 N.E.2d 782, 784 (1981) (determining whether statute designating certain rights for patients obtaining care from the Department of Health requires the Commonwealth to pay damages for a denial of those rights).

¹²⁶ See *Onofrio*, 411 Mass. at 659, 584 N.E.2d at 620 (explaining the reasons for a narrow construction of statutory waivers of sovereign immunity); *Ware v. Commonwealth*, 409 Mass. 89, 91, 564 N.E.2d 998, 999 (1991) (recognizing chapter 258 does not expressly preclude recovery of costs against the Commonwealth, however rules of statutory construction require an express waiver of sovereign immunity); *C & M Constr. Co., Inc. v. Commonwealth*, 396 Mass. 390, 392-93, 486 N.E.2d 54, 56 (1985) (stating no statutory authority for payment of postjudgment interest exists in chapter 235 or chapter 258).

¹²⁷ See *Chapman v. University of Mass. Med. Ctr.*, 423 Mass. 584, 586, 670 N.E.2d 166, 168 (1996) (holding Commonwealth not liable for postjudgment interest because no express statutory waiver exists); *Broadhurst v. Director of the Div. of Employment Sec.*, 373 Mass. 720, 723-24, 369 N.E.2d 1018, 1021 (1977) (stating Commonwealth not liable for costs of litigation because no statutory waiver exists); *Morash & Sons, Inc. v. Commonwealth*, 363 Mass. 612, 619, 296 N.E.2d 461, 465-66 (1973) (stating the doctrine of governmental immunity is "logically indefensible").

¹²⁸ See MASS. GEN. LAWS ch. 258, § 2 (1985) (excluding recovery of prejudgment interest but remaining silent regarding postjudgment interest).

protects the Commonwealth from tort liability.¹²⁹ The MTCA provides a limited waiver of sovereign immunity and defines the scope of the government's consent to suit in tort.¹³⁰ A private party litigant instituting a tort claim against the Commonwealth must look to the *statute*, the MTCA, to determine his rights because the common law principle of immunity protects the government from tort claims.¹³¹ In Massachusetts, a private party may not recover postjudgment interest in a tort action against the Commonwealth because such a claim for interest is beyond the scope of the limited waiver of sovereign immunity.¹³²

V. EMINENT DOMAIN ACTIONS

The issue of postjudgment interest against the Commonwealth in eminent domain actions is governed by chapter 79 of the Massachusetts General Laws.¹³³ Chapter 79 delineates the rights of a private

¹²⁹ See *Morash & Sons, Inc. v. Commonwealth*, 363 Mass. 612, 621, 296 N.E.2d 461, 467 (1973) (criticizing the rule that the Commonwealth is protected by immunity and stating that government liability is the exception to the rule).

¹³⁰ See Jonathan P. Feltner & Mary M. Logalbo, *Claims Against Governmental Defendants: Chapter 258 Entities, the MBTA and Other Public Bodies*, MASS. CONT. L. EDUC. 5-1 (Motor Vehicle Torts) (1996) (explaining the MTCA does not provide a complete waiver of immunity and limits the government's liability).

¹³¹ See *Onofrio v. Department of Mental Health*, 411 Mass. 657, 659, 584 N.E.2d 619, 620 (1992) (explaining waivers of immunity must be expressed in a statute); *Ware v. Commonwealth*, 409 Mass. 89, 90, 564 N.E.2d 998, 998 (1991) (stating awarding costs to a private party must be based on affirmative authority).

¹³² See *Onofrio*, 411 Mass. at 659, 584 N.E.2d at 620 (finding no provision in the MTCA permitting postjudgment interest expressly or by implication).

¹³³ See MASS. GEN. LAWS ch. 79, § 37 (1993) (outlining procedures for awarding interest on damages in eminent domain actions). Section 37 states in pertinent part:

A judgment, whether against the commonwealth or any other body politic or corporate, shall bear interest at the rate of ten per cent per annum from the date of the entry of such judgment to an including the last day of the month prior to the month in which such judgment is

party when the government seizes land by eminent domain.¹³⁴ Sovereign immunity does not protect the Commonwealth from an eminent domain action because the Fifth Amendment of the United States Constitution requires that a private party be given just compensation for a taking.¹³⁵ At common law, however, interest on a taking was not an absolute right.¹³⁶ Similar to a common law tort action, the Commonwealth is not liable for interest unless a waiver of immunity exists.¹³⁷ Chapter 79 provides a limited waiver of immunity and expressly authorizes postjudgment interest against the Commonwealth in eminent domain actions.¹³⁸

A. *Historical Paradigm*

Chapter 79 authorizes recovery of interest from the time of the taking to the time of satisfaction of the judgment.¹³⁹ Chapter 79, however, did not always contemplate the state would be liable for postjudgment interest.¹⁴⁰ In *General Electric Co. v. Common-*

satisfied, except that a judgment against the commonwealth shall not bear interest if it is satisfied within thirty days of such entry.

Id.

¹³⁴ See MASS. GEN. LAWS ch. 79, §§ 1-45 (1993) (setting forth the rights and obligations of the parties in an eminent domain action).

¹³⁵ See U.S. CONST. amend. V (requiring just compensation for a taking). The Fifth Amendment states, "nor shall private property be taken for public use, without just compensation." *Id.*

¹³⁶ See *Norcross v. Cambridge*, 166 Mass. 508, 512, 44 N.E. 615, 616 (1896) (finding interest on damages at common law was not allowed).

¹³⁷ See *General Elec. Co. v. Commonwealth*, 329 Mass. 661, 664, 110 N.E.2d 101, 102 (1953) (explaining the Commonwealth can only be impleaded in its courts to the extent it consents to suit).

¹³⁸ See MASS. GEN. LAWS ch. 79, § 37 (1993) (authorizing interest from the date of judgment to satisfaction of judgment).

¹³⁹ See MASS. GEN. LAWS ch. 79, § 37 (1993) (stating a judgment against the Commonwealth or other body politic bears interest until satisfied).

¹⁴⁰ See *General Elec. Co.*, 329 Mass. at 663, 110 N.E.2d at 102 (holding chapter 79 does not require the Commonwealth to pay postjudgment interest).

wealth,¹⁴¹ General Electric claimed interest for a taking for the period between the judgment and payment of the judgment.¹⁴² The court denied interest based on qualification language contained in chapter 79, section 37.¹⁴³ At the time of the decision, section 37 stated that damages bore interest from the time of judgment until paid, “except as herein otherwise provided.”¹⁴⁴ This qualification language led the court to examine other statutory provisions relating to damages to determine if an exception for interest existed for the Commonwealth.¹⁴⁵

The court concluded that application of section 37 required the use of chapter 258, section 3.¹⁴⁶ Section 3 did not address the issue

¹⁴¹ 329 Mass. 661, 110 N.E.2d 101 (1953).

¹⁴² *See General Elec. Co.*, 329 Mass. at 662, 110 N.E.2d at 102 (explaining General Electric did not cause the delay in payment).

¹⁴³ *See id.* at 663, 110 N.E.2d at 102 (maintaining the qualification language in section 37 prohibits recovery of postjudgment interest).

¹⁴⁴ MASS. GEN. LAWS ch. 79, § 37 (1953). Section 37, as it read in 1953, stated in pertinent part, “[d]amages under this chapter shall bear interest at the rate of four per cent per annum from the date as of which they are assessed until paid, *except as herein otherwise provided.*” *Id.* (emphasis added).

¹⁴⁵ *See General Elec. Co. v. Commonwealth*, 329 Mass. 661, 663, 110 N.E.2d 101, 102 (1953) (reading section 37 in conjunction with other damages statutes).

¹⁴⁶ *See id.* (maintaining the qualification language of section 37 required the court to examine other statutes). The qualification language led the court to first examine other provisions in chapter 79 regarding damages and the court concluded that section 22 applied. *See id.* (demonstrating section 22 applied because the provision addressed the issue of damages against the Commonwealth). Section 22 states “[j]udgment shall be entered and execution issue as in actions at law; and when the commonwealth is liable for the damages the amount found due shall be certified and paid under *section three of chapter two hundred and fifty eight.*” MASS. GEN. LAWS ch. 79, § 22 (1953) (emphasis added).

Section 22 directed the court to examine chapter 258, section 3, found at 1932 Mass. Acts ch. 180. *See General Elec. Co.*, 329 Mass. at 663, 110 N.E.2d at 102 (quoting the relevant statutory authority). At the time of judgment, chapter 258, section 3 stated:

of interest and only provided for *costs*.¹⁴⁷ The court concluded that the exclusion of interest from section 3 fell directly within the qualification language of section 37, "except as herein otherwise provided."¹⁴⁸ Chapter 79, section 22 and chapter 258, section 3 were necessary for the application of chapter 79, section 37 and these statutes did not expressly authorize postjudgment interest against the Commonwealth.¹⁴⁹ The court concluded absent express statutory authorization, the Commonwealth need not pay postjudgment interest in an eminent domain action.¹⁵⁰

B. The Legislature Takes Action

The common law protection of sovereign immunity relied on in *General Electric Co. v. Commonwealth* regarding postjudgment interest in eminent domain actions has been waived through legislative

If the final decision is in favor of the petitioner, the chief justice of the superior court shall certify the amount found due, with the legal costs, to the comptroller who shall notify the governor, and the governor shall draw his warrant for such amount on the state treasurer, who shall pay the same from any appropriations made for the purpose by the general court.

1932 Mass. Acts ch. 180, § 41. Note that "chapter 258" discussed in *General Electric Co.* is not the Massachusetts Tort Claims Act which was passed in 1978. See generally MASS. GEN. LAWS ch. 258, §§ 1-12 (1978) (setting forth the Massachusetts Tort Claims Act).

¹⁴⁷ See 1932 Mass. Acts ch. 180, § 41 (stating the superior court shall include costs when calculating the amount found due).

¹⁴⁸ See *General Elec. Co. v. Commonwealth*, 329 Mass. 661, 663, 110 N.E.2d 101, 102 (1953) (finding the absence of an interest provision in section 22 or section 3 dispositive on the issue of interest under section 79).

¹⁴⁹ See *id.* at 664, 110 N.E.2d at 102 (applying general principles and rules of statutory construction).

¹⁵⁰ See *id.* (noting the Commonwealth may only be impleaded in its courts to the extent the government consents).

action.¹⁵¹ The Legislature amended chapter 79, sections 22 and 37, and added section 3A to chapter 258 in 1964.¹⁵² The amendments, functioning together, provided express statutory authorization for postjudgment interest against the Commonwealth in eminent domain actions.¹⁵³ Today, authorization for postjudgment interest against the

¹⁵¹ See generally *Woodworth v. Commonwealth*, 353 Mass. 229, 230, 230 N.E.2d 814, 815 (1967) (recognizing chapter 79 mandates judgments against the Commonwealth carry interest until paid).

¹⁵² See *id.* (noting the change in the law regarding postjudgment interest since *General Elec. Co. v. Commonwealth*).

The Legislature eventually repealed section 3A of chapter 258 in 1978 and amended section 22 of chapter 79 in 1981 making section 37 the exclusive authority for postjudgment interest against the Commonwealth in eminent domain actions. See 1982 Mass. Acts ch. 634, § 8 (deleting language referring to chapter 258, section 3A); 1978 Mass. Acts ch. 512, § 15 (repealing section 3A). qualification language found in chapter 79, section 37. See 1964 Mass. Acts ch. 548, § 2 (striking the phrase “except as herein otherwise provided”).

The 1964 amendment to section 22 stated damages against the Commonwealth “shall be certified and paid under *section 3A* of chapter two hundred and fifty-eight.” 1964 Mass. Acts ch. 548, § 1 (emphasis added).

Section 3A of chapter 258 required interest against the Commonwealth be determined in accordance with section 37 of chapter 79. See 1964 Mass. Acts ch. 548, § 4 (requiring payment of interest as authorized by section 37). Section 3A read in pertinent part:

The governor shall draw his warrant for such amount on the state treasurer, who shall pay the same, with such interest as is authorized by the *third sentence of section thirty-seven of chapter seventy-nine*, from any appropriation made for the purpose by the general court.

Id.

The third sentence of section 37 read:

A judgment, whether against the commonwealth or any other body politic or corporate, shall bear interest at the rate of six per cent per annum from the date of the entry of such judgment to and including the last day of the month prior to the month in which satisfaction thereof is paid.

Commonwealth is found exclusively in section 37.¹⁵⁴ Section 37 provides a *statutory* waiver of sovereign immunity regarding postjudgment interest in eminent domain actions.¹⁵⁵

C. Constitutional Issues

The Commonwealth's liability for postjudgment interest in eminent domain actions has also been justified on constitutional grounds.¹⁵⁶ In *Woodworth v. Commonwealth*,¹⁵⁷ the court recognized the federal and Massachusetts constitutions require compensation for property taken by eminent domain and decided whether compensation includes interest when the property owner does not receive

1964 Mass. Acts. Ch. 548, § 2.

¹⁵⁴ See MASS. GEN. LAWS ch. 79, § 37 (1993) (stating a judgment against the Commonwealth bears interest until satisfied); *C & M Constr. Co., Inc. v. Commonwealth*, 396 Mass. 390, 392, 486 N.E.2d 54, 56 (1985) (asserting section 37 is the only statute expressly authorizing postjudgment interest against the Commonwealth). Section 37 states in pertinent part:

A judgment, whether against the commonwealth or any other body politic or corporate, shall bear interest at the rate calculated pursuant to the provisions of this section from the date of entry of such judgment to and including the last day of the month prior to the month in which such judgment is satisfied.

MASS. GEN. LAWS ch. 79, § 37 (1993).

Although section 22 references section 37, section 22 does not expressly authorize postjudgment interest. See MASS. GEN. LAWS ch. 79, § 22 (1993) (stating the treasurer shall satisfy a judgment and include interest *authorized* by section 37).

¹⁵⁵ See *C & M Constr. Co., Inc.*, 396 Mass. at 392, 486 N.E.2d at 56 (recognizing section 37 unilaterally authorizes postjudgment interest in eminent domain actions).

¹⁵⁶ See *Woodworth v. Commonwealth*, 353 Mass. 229, 231, 230 N.E.2d 814, 816 (1967) (holding just compensation for a taking requires payment of interest).

¹⁵⁷ 353 Mass. 229, 230 N.E.2d 814 (1967).

payment at the time of the taking.¹⁵⁸ Woodworth argued that failure to pay interest violated the Fifth Amendment of the United States Constitution and Article 10 of the Massachusetts Declaration of Rights.¹⁵⁹ The court agreed and asserted that just and reasonable compensation for a taking required *full* compensation.¹⁶⁰ The court concluded that full compensation for a public taking includes interest even if the property owner fails to make a specific demand for interest.¹⁶¹ The court asserted future questions regarding postjudgment

¹⁵⁸ See *Woodworth*, 353 Mass. at 231-32, 230 N.E.2d at 816 (stating the government is required to pay consideration for a public taking). Woodworth could not rely on the statutes authorizing postjudgment interest because Woodworth's judgment was entered prior to the effective date of the statutory amendments. See *id.* at 231, 230 N.E.2d at 815 (observing the statutes do not authorize postjudgment interest because the statutes were not in effect at the time of judgment).

¹⁵⁹ See *Woodworth*, 353 Mass. at 231, 230 N.E.2d at 815-816 (noting the question presented to the court). Note the property owner in *General Electric Co.* did not recover postjudgment interest, but the owner did not raise constitutional arguments. See *Woodworth*, 353 Mass. at 231, 230 N.E.2d at 816 (explaining the *General Elec. Co.* case holds that the Commonwealth is not liable for postjudgment interest); *General Elec. Co. v. Commonwealth*, 329 Mass. 661, 663, 110 N.E.2d 101, 102 (1953) (noting General Electric's erroneous reliance on section 37 of chapter 79).

The Fifth Amendment states in pertinent part, "nor shall private property be taken for public use, without *just compensation*." U.S. CONST. amend. V (emphasis added).

Article 10 of the Massachusetts Declaration of Rights states: "[W]henever the public exigencies require that the property of any individual should be appropriated to public uses, he shall receive a *reasonable compensation* therefor." MASS. GEN. LAWS CONST. Pt. 1, Art. 10 (emphasis added).

¹⁶⁰ See *Woodworth*, 353 Mass. at 231, 230 N.E.2d at 816 (stating an award of damages without interest in an eminent domain action is not just).

¹⁶¹ See *Woodworth v. Commonwealth*, 353 Mass. 229, 232, 230 N.E.2d 814, 816 (1967) (quoting *Jacobs v. United States*, 290 U.S. 13, 16-17 (1933)). In *Jacobs*, the United States Supreme Court stated:

The amount recoverable was just compensation, not inadequate compensation. The concept of just compensation is comprehensive, and

interest should be determined pursuant to the existing statutory authority, but the Commonwealth could not escape its constitutional obligations to pay just and reasonable compensation.¹⁶²

The government must pay just and reasonable compensation when it takes an individual's land for public use.¹⁶³ Compensation cannot be "just" if interest up until the date of payment is denied.¹⁶⁴ Although the federal and Massachusetts constitutions function to provide a property owner with postjudgment interest, Massachusetts courts look to and rely on the statutory interest provisions of chapter 79.¹⁶⁵ Section 37 of chapter 79 provides a *statutory* waiver of sovereign immunity regarding postjudgment interest in eminent domain ac-

includes all elements, "and no specific command to include interest is necessary when interest or its equivalent is a part of such compensation." The owner is not limited to the value of the property at the time of the taking; "he is entitled to such addition as will produce the equivalent of that value paid contemporaneously with the taking." Interest at a proper rate "is a good measure by which to ascertain the amount so to be added" . . . [T]he right to just compensation could not be taken away by statute or be qualified by the omission of a provision for interest where such an allowance was appropriate in order to make the compensation adequate.

Jacobs v. United States, 290 U.S. 13, 16-17 (1933) (quoting Seaboard Air Line R.R. Co. v. United States, 261 U.S. 299, 306 (1923)).

¹⁶² See *Woodworth*, 353 Mass. at 233, 230 N.E.2d at 817 (reversing the lower court and finding the Commonwealth liable for postjudgment interest on constitutional grounds).

¹⁶³ See U.S. CONST. amend. V (requiring just compensation for a taking); MASS. GEN. LAWS CONST. Pt. 1, Art. 10 (requiring reasonable compensation for a taking).

¹⁶⁴ See *Seaboard Air Line R. Co. v. United States*, 261 U.S. 299, 306 (1923) (stating property owner entitled to just compensation, not inadequate compensation).

¹⁶⁵ See MASS. GEN. LAWS ch. 79, § 37 (1993) (stating Commonwealth liable for interest until payment); *Woodworth v. Commonwealth*, 353 Mass. 229, 233, 230 N.E.2d 814, 817 (1967) (stating future questions regarding postjudgment interest in eminent domain actions be governed by statute).

tions.¹⁶⁶ The Legislature clearly defined the scope of the Commonwealth's consent to suit in eminent domain actions by expressly authorizing recovery of interest.¹⁶⁷ In Massachusetts, a property owner may recover postjudgment interest in an eminent domain action because such a claim for interest is within the scope of the Commonwealth's waiver of sovereign immunity.¹⁶⁸

VI. ANALYSIS

The Commonwealth of Massachusetts is not liable for postjudgment interest in a contract action.¹⁶⁹ The court in *Chapman II* relied almost exclusively on its prior decision in *C & M Construction Co., Inc. v. Commonwealth*.¹⁷⁰ The court's reliance on *C & M Construction Co., Inc.* does not sufficiently support the result in *Chapman II* because 1) the facts of *C & M Construction Co., Inc.* differ significantly from the facts of *Chapman II*; and 2) the court did not adequately address the application of the doctrine of sovereign immunity in contract actions.¹⁷¹

¹⁶⁶ See *C & M Constr. Co., Inc. v. Commonwealth*, 396 Mass. 390, 392, 486 N.E.2d 54, 56 (1985) (recognizing a property owner is not entitled to postjudgment interest absent statutory authorization).

¹⁶⁷ See MASS. GEN. LAWS ch. 79, § 37 (1993) (providing express authorization for postjudgment interest); *McArthur Bros. Co. v. Commonwealth*, 197 Mass. 137, 138, 83 N.E. 334, 334 (1908) (stating consent to suit and the scope of the consent may only be expressed by the Legislature).

¹⁶⁸ See MASS. GEN. LAWS ch. 79, § 37 (1993) (providing a statutory waiver of sovereign immunity regarding postjudgment interest).

¹⁶⁹ See *Chapman v. University of Mass. Med. Ctr.*, 423 Mass. 584, 586, 670 N.E.2d 166, 168 (1996) (holding the Commonwealth is not liable for postjudgment interest in a contract action).

¹⁷⁰ See *id.* at 586-87, 670 N.E.2d at 169 (relying on the reasoning in *C & M Constr. Co., Inc. v. Commonwealth*, 396 Mass. 390, 486 N.E.2d 54 (1985)).

¹⁷¹ See *infra* notes 172-231 and accompanying text.

A. *The Contract Becomes a Noncontract*

The court in *Chapman II* concludes Chapman's claim for post-judgment interest is noncontractual.¹⁷² A claim against the Commonwealth not based on contract cannot stand absent an express statutory waiver.¹⁷³ Chapman's claim is noncontractual because the court in *C & M Construction Co., Inc.* concluded C & M's claim for postjudgment interest was noncontractual.¹⁷⁴ The circumstances of Chapman's claim significantly differ from C & M's claim but the court in *Chapman II* did not address why the two claims should be treated the same.¹⁷⁵

C & M claimed interest for the time period required by the Legislature to appropriate funds to satisfy the judgment.¹⁷⁶ Chapman claimed interest from the date of judgment to the date of judgment after rescript.¹⁷⁷ C & M's contract action ended at the time judgment

¹⁷² See *Chapman v. University of Mass. Med. Ctr.*, 423 Mass. 584, 588, 670 N.E.2d 166, 169 (1996) (declaring claims for postjudgment interest are noncontractual).

¹⁷³ See *C & M Constr. Co., Inc.*, 396 Mass. at 392, 486 N.E.2d at 56 (seeking an alternate source for the waiver).

¹⁷⁴ See *Chapman II*, 423 Mass. at 587, 670 N.E.2d at 169 (stating *C & M Constr. Co., Inc.* controls Chapman's case).

¹⁷⁵ See *Chapman II*, 423 Mass. at 587, 670 N.E.2d at 169 (asserting the distinction between the two claims is irrelevant).

¹⁷⁶ See *C & M Constr. Co., Inc.*, 396 Mass. at 391, 486 N.E.2d at 55 (stating the issue presented to the court). Judgment was entered for C & M on July 3, 1975 but C & M did not receive payment until July 16, 1976. See *id.* at 390-91, 486 N.E.2d at 55 (explaining the procedural history). The Commonwealth did not appeal the judgment, therefore payment occurred more than one year after judgment due to the delay in the Legislature to appropriate the funds. *Id.*

¹⁷⁷ See *Chapman II*, 423 Mass. at 585, 670 N.E.2d at 168 (explaining the clerk refused to issue an execution including postjudgment interest). The amended judgment after rescript awarded postjudgment interest from the date of judgment to the date of judgment after rescript. *Id.* Upon the clerk's refusal to

entered in the trial court because the Commonwealth did not appeal.¹⁷⁸ Final resolution of Chapman's contract claim did not occur until the Supreme Judicial Court issued its decision in *Chapman I*.¹⁷⁹ C & M filed a separate lawsuit claiming postjudgment interest.¹⁸⁰ Chapman filed a *motion* for postjudgment interest.¹⁸¹ The court in *Chapman II* concluded the reasoning in *C & M Construction Co., Inc.* controlled, however the reasoning in *C & M Construction Co., Inc.* does not comport with the facts in *Chapman II*.¹⁸²

The Commonwealth waives the protections of sovereign immunity in a contract action when it enters into a contract.¹⁸³ In *C & M Construction Co., Inc.*, the plaintiff argued the action for postjudgment interest was a continuation of the underlying contract claim and therefore the scope of the Commonwealth's common law waiver of sovereign immunity included liability for postjudgment interest.¹⁸⁴

issue an execution including postjudgment interest, Chapman moved for interest to the date of execution. *Id.*

¹⁷⁸ See *C & M Constr. Co., Inc.*, 396 Mass. at 390-91, 486 N.E.2d at 55 (presenting the facts). C & M's contract action ended when the Commonwealth's time to file an appeal expired. See MASS. R. CIV. P. 4 (1985). Neither the Commonwealth, C & M or the court make this distinction and therefore this note similarly concludes that the contract action ended upon entry of judgment. See *C & M Constr. Co., Inc.*, 396 Mass. at 391, 486 N.E.2d at 55 (noting C & M claimed interest from the date of judgment).

¹⁷⁹ See *Chapman v. University of Mass. Med. Ctr.*, 417 Mass. 104, 106, 628 N.E.2d 8, 10 (1994) (deciding Chapman's contract action).

¹⁸⁰ See *C & M Constr. Co., Inc.*, 396 Mass. at 390, 486 N.E.2d at 55 (stating C & M's judgment was issued in a prior action).

¹⁸¹ See *Chapman II*, 423 Mass. at 585, 670 N.E.2d at 168 (explaining the procedural history).

¹⁸² See *Chapman II*, 423 Mass. at 587, 670 N.E.2d at 169 (relying solely on the reasoning in *C & M Constr. Co., Inc.*).

¹⁸³ See *Monadnock Display Fireworks, Inc. v. Andover*, 388 Mass. 153, 156-57, 445 N.E.2d 1053, 1056 (1983) (recognizing a municipal government owes a duty to a private party when it enters into a contract).

¹⁸⁴ See *C & M Constr. Co., Inc. v. Commonwealth*, 396 Mass. 390, 391, 486 N.E.2d 54, 55 (1985) (summarizing plaintiff's argument).

The court disagreed and found C & M's action for postjudgment interest was noncontractual.¹⁸⁵

The court provided no additional support for its conclusion but it was unnecessary to look any further than the facts to determine C & M's claim for postjudgment interest was noncontractual.¹⁸⁶ The contract claim ended upon the trial court's judgment and C & M filed a separate action for interest.¹⁸⁷ C & M's second lawsuit was not founded on contract because the trial court's judgment represented the final disposition of the rights of the parties under the contract.¹⁸⁸

The court in *Chapman II* concluded a claim for postjudgment interest is noncontractual but disregarded the factual differences between Chapman's claim and C & M's claim.¹⁸⁹ The court reasoned the *nature* of postjudgment interest is noncontractual even if the underlying claim is based on contract.¹⁹⁰ The holding in *Chapman II* that the Commonwealth is not liable for postjudgment interest in contract actions rests solely on the premise that a claim for postjudgment interest is noncontractual.¹⁹¹ The court established the law in Massachusetts but did not set forth any definitive case or statute regarding the noncontractual nature of postjudgment interest.¹⁹²

¹⁸⁵ See *id.* at 391-92, 486 N.E.2d at 55 (disposing of C & M's argument by concluding the claim for interest was not contractual).

¹⁸⁶ See *id.* at 392, 486 N.E.2d at 56 (stating C & M's action for interest is not based on the contract). The court cited chapter 235, section 8 as authority that postjudgment interest is not part of the underlying contract claim. *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ See *id.* at 391-92, 486 N.E.2d at 55-56 (stating C & M's claim for postjudgment interest was a separate action).

¹⁸⁹ See *Chapman v. University of Mass. Med. Ctr.*, 423 Mass. 584, 587, 670 N.E.2d 166, 169 (1996) (stating the distinction was "without significance").

¹⁹⁰ See *id.* at 587-88, 670 N.E.2d at 169 (quoting *Falmouth Hosp. v. Commissioner of Pub. Welfare*, 23 Mass. App. Ct. 545, 548 n.6, 503 N.E.2d 1322, 1324 (1987)).

¹⁹¹ See *id.* at 588, 670 N.E.2d at 169 (concluding a claim for postjudgment interest must be authorized statutorily).

¹⁹² *Id.* at 587-88, 670 N.E.2d at 169 (discussing the nature of postjudgment interest). The court did cite an appeals court decision discussing the nature of

The inherent nature of sovereignty dictates that C & M not recover postjudgment interest for the time it takes the Legislature to appropriate the funds to satisfy the judgment.¹⁹³ Chapman claimed interest because Chapman's judgment was not payable while the Commonwealth pursued final resolution of the contract claim through the appellate process for over two years.¹⁹⁴ Chapman was not enti-

postjudgment interest. *See id.* (quoting *Falmouth Hosp. v. Commissioner of Pub. Welfare*, 23 Mass. App. Ct. 545, 548 n.6, 503 N.E.2d 1322, 1324 (1987)). The quoted text from *Falmouth Hosp.* discusses the court's holding in *C & M Constr. Co., Inc. Id.*

¹⁹³ *See Morash & Sons, Inc. v. Commonwealth*, 363 Mass. 612, 618, 296 N.E.2d 461, 465 (1973) (discussing the origins of the doctrine of sovereign immunity). *See also* MASS. GEN. LAWS ch. 79, § 37 (1993) (limiting the Commonwealth's liability for postjudgment interest up to thirty days for the time it takes the Commonwealth to satisfy the judgment). Section 37 states "a judgment against the commonwealth shall not bear interest if it is satisfied within thirty days of such entry." *Id.*

It took the Commonwealth over one year to satisfy C & M's judgment and the delay was primarily due to the time it took the Legislature to appropriate funds. *C & M Constr. Co., Inc. v. Commonwealth*, 396 Mass. 390, 391, 486 N.E.2d 54, 55 (1985).

¹⁹⁴ *See Chapman v. University of Mass. Med. Ctr.*, 423 Mass. 584, 585, 670 N.E.2d 166, 168 (1996) (discussing the calculations necessary to determine the final amount owed to Chapman).

The court did acknowledge the distinction between an action involving an appeal and an action due to unreasonable delay in payment when it addressed Chapman's argument regarding unlawful detention of funds. *Id.* at 588, 670 N.E.2d at 169-70 (relying on the distinction to find that funds were not unlawfully detained). Interest may be allowed against the Commonwealth for the wrongful detention of money if the Commonwealth has not done all that the law has required it to do. *See Perkins Sch. for the Blind v. Rate Setting Comm'n*, 383 Mass. 825, 831, 423 N.E.2d 765, 770 (1981) (setting forth the standard of analysis for the wrongful detention of money). Chapman argued the Commonwealth's unsuccessful appeal delayed payment for an unreasonable amount of time resulting in an unlawful detention of funds. *See Chapman II*, 423 Mass. at 588, 670 N.E.2d at 169 (addressing Chapman's argument). Chapman referred to two prior decisions where postjudgment interest was awarded for wrongful detention of money but in each instance no appeal on the underlying

tled to interest for the time it took the Legislature to appropriate the funds.¹⁹⁵ The nature of Chapman's claim for postjudgment interest in these circumstances is contractual and the Commonwealth should pay interest as any other private citizen would while the Commonwealth pursued an appeal.¹⁹⁶ The court in *Chapman II* expanded the scope of the holding in *C & M Construction Co., Inc.* by concluding the contract action ends upon entry of judgment by the trial court, notwithstanding an appeal, but provided no additional support consistent with the facts in *Chapman II*.¹⁹⁷

claim was made. See *id.*; *Perkins Sch. for the Blind*, 383 Mass. at 834, 423 N.E.2d at 771 (permitting interest against the Commonwealth due to unreasonable delay in payment and due to no fault of the plaintiff); *Massachusetts Gen. Hosp. v. Commissioner of Pub. Welfare*, 359 Mass. 206, 209, 268 N.E.2d 654, 656-57 (1971) (concluding an unreasonable detention of money gives rise to interest).

The court in *Chapman II* reasoned, unlike *Perkins School for the Blind* and *Massachusetts General Hospital*, the Commonwealth made a legitimate appeal and therefore did not unreasonably delay payment. See *Chapman II*, 423 Mass. at 588, 670 N.E.2d at 169-70 (rejecting plaintiff's argument). Similar to *Perkins School for the Blind* and *Massachusetts General Hospital*, the government in *C & M Constr. Co., Inc.* did not appeal the underlying claim, yet C & M's argument for wrongful detention of money due to unreasonable delay failed. See *C & M Constr. Co., Inc. v. Commonwealth*, 396 Mass. 390, 394, 486 N.E.2d 54, 57 (1985) (concluding C & M's reliance on *Perkins Sch. for the Blind* was "misplaced").

¹⁹⁵ See *C & M Constr. Co., Inc.*, 396 Mass. at 390, 486 N.E.2d at 55 (holding the Commonwealth not liable for interest during the time it takes the Legislature to appropriate funds to satisfy the judgment).

¹⁹⁶ See MASS. GEN. LAWS ch. 235, § 8 (1986) (requiring interest from the date of entry of judgment to the date of payment).

¹⁹⁷ See *Chapman v. University of Mass. Med. Ctr.*, 423 Mass. 584, 587, 670 N.E.2d 166, 169 (1996) (stating the facts distinguishing *C & M Constr. Co., Inc.* are irrelevant to its holding). The phrase "judgment of the trial court," although redundant, is used for explanatory purposes. See MASS. R. CIV. P. 54(a) (1998) (defining "judgment" and "final judgment" as the final act of the trial court).

B. Sovereign Immunity

The court in *Chapman II* relied on the doctrine of sovereign immunity and rules of statutory construction to reach its holding but these same concepts also support Chapman's argument that a claim for postjudgment interest is contractual in nature.¹⁹⁸ The Commonwealth may only be impleaded in its courts with its consent.¹⁹⁹ When such consent is given the Commonwealth may only be impleaded in the manner and to the extent expressly given.²⁰⁰ The contractual relationships among the parties defines the scope of the Commonwealth's consent to suit in a contract action.²⁰¹ The court in *Chapman II* concluded the Commonwealth's consent to suit, the common law waiver of sovereign immunity created when the Commonwealth entered into the contract, did not attach to Chapman's claim for inter-

¹⁹⁸ See *Chapman II*, 423 Mass. at 586-87, 670 N.E.2d at 169 (maintaining statutes applicable to private parties are not necessarily applicable to the Commonwealth).

¹⁹⁹ See *Broadhurst v. Director of Div. of Employment Sec.*, 373 Mass. 720, 722-23, 369 N.E.2d 1018, 1020 (1977) (quoting *General Elec. Co. v. Commonwealth*, 329 Mass. 661, 664, 110 N.E.2d 101, 102 (1953)); *McArthur Bros. v. Commonwealth*, 197 Mass. 137, 138, 83 N.E. 334, 334 (1940) (declaring consent to suit may only be granted by the Legislature); *Nash v. Commonwealth*, 174 Mass. 335, 338, 54 N.E. 865, 866 (1899) (stating Commonwealth's consent to suit must be "clearly manifested by [an] act of [the] legislature"); *but see Morash & Sons, Inc. v. Commonwealth*, 363 Mass. 612, 619, 296 N.E.2d 461, 465 (1973) (asserting sovereign immunity is a judicially created doctrine therefore legislative consent to suit is not necessary).

²⁰⁰ See *McArthur Bros. Co.*, 197 Mass. at 138, 83 N.E. at 334 (stating consent limited to the exact terms expressed).

²⁰¹ See *Monadnock Display Fireworks, Inc. v. Andover*, 388 Mass. 153, 156-57, 445 N.E.2d 1053, 1056 (1983) (reasoning sovereign immunity does not bar a claim arising from contract); *R. Zoppo Co. v. Commonwealth*, 353 Mass. 401, 404, 232 N.E.2d 346, 349 (1967) (stating "the law applicable to public contracts is the same as that applicable to private contracts"); *Boston Molasses Co. v. Commonwealth*, 193 Mass. 387, 389, 79 N.E. 827, 827 (1907) (explaining the Commonwealth is treated as a private person when it enters into a contract).

est.²⁰² The court determined the nature of postjudgment interest is noncontractual therefore the Commonwealth's liability for interest must be expressed in a statute.²⁰³

The general postjudgment interest statute does not expressly authorize interest against the Commonwealth.²⁰⁴ The court in *Chapman II* concluded the absence of an express authorization for postjudgment interest in chapter 235, section 8 precluded Chapman's recovery.²⁰⁵ The court relied on the reasoning in *C & M Construction Co., Inc.* that the statute awarding postjudgment interest in eminent domain cases indicated the Legislature's intent that chapter 235, section 8 not apply to the Commonwealth.²⁰⁶

The scope of the waiver of sovereign immunity in a contract action differs from the scope of the waiver in tort and eminent domain actions.²⁰⁷ The scope of the Commonwealth's consent to suit in tort actions is statutory and is found in the Massachusetts Tort Claims

²⁰² See *Chapman v. University of Mass. Med. Ctr.*, 423 Mass. 584, 588, 670 N.E.2d 166, 169 (1996) (reiterating Chapman's claim for interest is noncontractual).

²⁰³ See *id.* (quoting *Falmouth Hosp. v. Commissioner of Pub. Welfare*, 23 Mass. App. Ct. 545, 548 n.6, 503 N.E.2d 1322, 1324 (1987)).

²⁰⁴ See MASS. GEN. LAWS ch. 235, § 8 (1986) (making no specific reference to the Commonwealth or any other government entity).

²⁰⁵ See *Chapman II*, 423 Mass. at 588, 670 N.E.2d at 169 (stressing no statutory authority exists for awarding postjudgment interest).

²⁰⁶ See *id.* at 586-87, 670 N.E.2d at 169 (quoting *C & M Constr. Co., Inc. v. Commonwealth*, 396 Mass. 390, 393, 486 N.E.2d 54, 56 (1985)). The eminent domain postjudgment interest statute would have been unnecessary if the Legislature intended chapter 235, section 8 to authorize postjudgment interest against the Commonwealth in all instances. *Id.*

²⁰⁷ See *Monadnock Display Fireworks, Inc. v. Andover*, 388 Mass. 153, 156-57, 445 N.E.2d 1053, 1056 (1983) (pointing to the common law waiver of sovereign immunity that exists in contract actions); MASS. GEN. LAWS ch. 79, §§ 1-45 (1993) (setting forth the rights and obligations of the parties in an eminent domain action); MASS. GEN. LAWS ch. 258, §§ 1-12 (1985) (setting forth the rights and obligations of the parties in a tort action).

Act.²⁰⁸ The scope of the Commonwealth's consent to suit in eminent domain actions is also statutory and is found in chapter 79 of the general laws.²⁰⁹ The MTCA and chapter 79 provide comprehensive statutory schemes that delineate the rights and obligations of the private parties and government entities involved in tort and eminent domain actions.²¹⁰ The MTCA does not *expressly* authorize recovery of postjudgment interest and this limits the Commonwealth's consent to suit regarding postjudgment interest.²¹¹ Chapter 79 expressly authorizes recovery of postjudgment interest in eminent domain actions.²¹²

The "rules of construction governing statutory waivers of sovereign immunity are stringent" and the courts must look to the express language of the statutes to determine the rights and obligations of the parties.²¹³ Unlike the waiver of sovereign immunity in tort and emi-

²⁰⁸ See MASS. GEN. LAWS ch. 258, §§ 1-12 (1985) (setting forth the scope of the Commonwealth's consent to suit in tort actions).

²⁰⁹ See MASS. GEN. LAWS ch. 79, §§ 1-45 (1993) (setting forth the scope of the Commonwealth's consent to suit in eminent domain actions).

²¹⁰ See MASS. GEN. LAWS ch. 79, §§ 1-45 (1993); MASS. GEN. LAWS ch. 258, §§ 1-12 (1985).

²¹¹ See MASS. GEN. LAWS ch. 258, § 2 (1985) (stating Commonwealth not liable for prejudgment interest). The Supreme Judicial Court held the MTCA's silence regarding postjudgment interest requires an interpretation of the statute that the Commonwealth is not liable for postjudgment interest because waivers of sovereign immunity are strictly construed. See *Onofrio v. Department of Mental Health*, 411 Mass. 657, 659, 584 N.E.2d 619, 620 (1992) (discussing statutes governing waivers of sovereign immunity).

²¹² See MASS. GEN. LAWS ch. 79, § 37 (1993) (providing for interest until payment).

²¹³ See *Onofrio*, 411 Mass. at 659, 584 N.E.2d at 620 (quoting *Ware v. Commonwealth*, 409 Mass. 89, 91, 564 N.E.2d 998, 999 (1991)); *Broadhurst v. Director of Div. of Emp. Sec.*, 373 Mass. 720, 727, 369 N.E.2d 1018, 1022-23 (1977) (concluding Legislature's silence regarding interest in unemployment benefits statute evinces an intent that Commonwealth is not liable). The court in *Broadhurst* stated "[w]e think that the legislative silence as to interest in c. 151A, which otherwise contains a rather detailed consideration of proceedings and remedy, indicates a legislative intent that interest not be payable on

ment domain actions, the waiver of immunity in a contract action is not statutory.²¹⁴ Where the Legislature enacts a comprehensive statute regarding a particular subject it evinces an intent that such statute stand as the authority governing that subject.²¹⁵ No such statute governs contract actions.²¹⁶

The Commonwealth is treated as a private party when it enters into a contract.²¹⁷ The United States Supreme Court stated "[i]f the [government] comes down from its position of sovereignty, and enters the domain of commerce, it submits itself to the same laws that govern individuals there."²¹⁸ Unlike tort actions and eminent domain actions, no comprehensive statutory scheme exists in the general laws that governs contract actions against the Commonwealth.²¹⁹ A pri-

unemployment benefits." *Broadhurst*, 373 Mass. at 727, 369 N.E.2d at 1022-23 (emphasis added).

²¹⁴ See *Monadnock Display Fireworks, Inc. v. Andover*, 388 Mass. 153, 156-57, 445 N.E.2d 1053, 1056 (1983) (recognizing the common law waiver of sovereign immunity in contract actions).

²¹⁵ See *Lafayette Place Assoc. v. Boston Redev. Auth.*, 427 Mass. 509, 534, 694 N.E.2d 820, 836 (1998) (stating the authority for tort liability against a public entity is the MTCA, notwithstanding competing statutory provisions).

²¹⁶ See *Monadnock Display Fireworks, Inc.*, 388 Mass. at 156-57, 445 N.E.2d at 1056 (recognizing the waiver of immunity in contract actions is not statutory).

²¹⁷ See *Boston Molasses Co. v. Commonwealth*, 193 Mass. 387, 389, 79 N.E. 827, 827 (1907) (citing *Hall v. Wisconsin*, 103 U.S. 5, 11 (1880)).

²¹⁸ See *Cooke v. United States*, 91 U.S. 389, 398 (1875) (quoted in *R. Zoppo Co. v. Commonwealth*, 353 Mass. 401, 404, 232 N.E.2d 346, 349 (1967)).

²¹⁹ See MASS. GEN. LAWS ch. 79, § 1-45 (1993) (governing eminent domain actions against the Commonwealth); MASS. GEN. LAWS ch. 258, §§ 1-12 (1985) (governing tort actions against the Commonwealth); *Onofrio v. Department of Mental Health*, 411 Mass. 657, 659, 584 N.E.2d 619, 620 (1992) (stating the MTCA is a statute governing waiver of sovereign immunity); *Whitehouse v. Sherborn*, 11 Mass. App. Ct. 668, 673, 419 N.E.2d 293, 297 (1981) (stating chapter 79 is the sole remedy available in eminent domain actions).

In *Onofrio*, the court based its opinion on the statutory scheme that governed tort actions against the Commonwealth. See *Onofrio*, 411 Mass. at 660 n.4, 584 N.E.2d at 620 (explaining its decision rests on a distinct statutory

vate party litigant commencing a contract claim against the Commonwealth looks to the same statutes as if the litigant were bringing an action against a private party.²²⁰ Unlike tort actions and eminent

scheme). The court rejected the plaintiff's argument that the MTCA expressly prohibits recovery of prejudgment interest therefore its silence regarding postjudgment interest implies postjudgment interest is not barred. *Id.* at 659, 584 N.E.2d at 620 (recognizing the special analysis required to interpret statutes waiving sovereign immunity). The court's rejection of the argument supports the notion that plaintiffs must look *exclusively* to the MTCA to determine the scope of the waiver of immunity. *See* MASS. GEN. LAWS ch. 258, § 2 (1985) (barring recovery of prejudgment interest). The Legislature addressed the issue of prejudgment interest specifically in tort actions in chapter 231, section 6B and generally in chapter 235, section 8. *See* MASS. GEN. LAWS ch. 231, § 6B (West Supp. 1999) (providing the mechanics for calculation of prejudgment interest in tort actions and making no reference to the Commonwealth); MASS. GEN. LAWS ch. 235, § 8 (1986) (requiring payment of interest upon a report, verdict, or finding until entry of judgment).

Prior to enactment of the MTCA, sovereign immunity protected the Commonwealth from tort actions and similarly, from paying interest pursuant to chapter 231, section 6B or chapter 235, section 8. *See* *Morash & Sons, Inc. v. Commonwealth*, 363 Mass. 612, 623, 296 N.E.2d 461, 468 (1973) (proffering a comprehensive statute is necessary to waive sovereign immunity in tort actions to avoid indiscriminate and unjust results). Barring recovery of prejudgment interest in the MTCA was essentially unnecessary because the Commonwealth was already protected by sovereign immunity from liability for prejudgment interest under the general interest statutes. *Id.* The Legislature expressly precluded recovery of prejudgment interest indicating the MTCA was intended to be comprehensive. *Id.* This supports the notion the Legislature intended the MTCA to be the exclusive source designating the Commonwealth's consent to suit in tort actions. *See* MASS. GEN. LAWS ch. 258, §§ 1-12 (1985) (governing the scope of the Commonwealth's consent to suit).

²²⁰ *See* *Nash v. Commonwealth*, 174 Mass. 335, 339, 54 N.E. 865, 867 (1899) (holding statute gives superior court jurisdiction over claim "of the character which civilized governments have always recognized"); *People v. Stephens*, 71 N.Y. 527, 549 (1878) (quoted in *Boston Molasses Co. v. Commonwealth*, 193 Mass. 387, 389-90 (1907)). The court in *Stephens* stated:

The state, in all its contracts . . . with individuals, must be adjudged and abide by the rules which govern in determining the rights of private citizens contracting . . . with each other. There is not one law for the sovereign and another for the subject; but when the sovereign . . . contracts with individuals, . . . the rights and obligations of the contracting parties must be adjusted upon the same principles as if both contracting parties were private persons. Both stand upon equality before the law, and the sovereign is merged in the contractor, dealer and suitor.

Stephens, 71 N.Y. at 549. The scope of an action was such that the parties to the contract had equal rights and obligations “whenever the contract in any form [came] before the courts.” *Id.*

Massachusetts laws at one time limited contract actions against the Commonwealth. See 1882 Mass. Acts ch. 195, § 1 (providing the superior court with jurisdiction for certain contract claims against the Commonwealth); *Wesson v. Commonwealth*, 144 Mass. 60, 63, 10 N.E. 762, 766 (1887) (holding Commonwealth not liable for breach of a contract not involving payment of money). An 1882 statute stated the superior court had *jurisdiction* of “all claims against the commonwealth which are founded on contract *for the payment of money*.” 1882 Mass. Acts ch. 195, § 1 (emphasis added). The Supreme Judicial Court interpreted chapter 195 to preclude an action for damages against the state for breach of a contract that required an act other than the payment of money. See *Wesson*, 144 Mass. at 62, 10 N.E. at 765 (limiting the scope of the superior court's jurisdiction). Shortly after *Wesson*, the Legislature amended chapter 195, section 1, and gave the superior court “jurisdiction of all claims against the commonwealth, *whether at law or equity*.” See 1887 Mass. Acts ch. 246 (emphasis added).

In *Murdock Parlor Grate Co. v. Commonwealth*, the court interpreted the scope of amended chapter 195, section 1 and addressed whether the plaintiff may maintain a tort action against the state. See *Murdock Parlor Grate Co. v. Commonwealth*, 152 Mass. 28, 31, 24 N.E. 854, 855 (1890) (considering the Commonwealth's tort liability). The court held the language “whether at law or equity” did not enlarge the statute to include the requested remedy in tort. *Id.* The court analyzed which actions amended chapter 195 encompassed to determine those actions it excluded. *Id.* at 31, 24 N.E. at 855 (discussing the development of the statute). The court concluded the amendment indicated the Legislature's intent to modify the holding in *Wesson*. *Id.* As a result of the

domain actions, a private party does not rely on express statutory authority to bring a contract action against the Commonwealth because the waiver of sovereign immunity is not statutory.²²¹

The court's conclusion in *Chapman II* and *C & M Construction Co., Inc.* that authorizing postjudgment interest in eminent domain actions evinced a legislative intent that the general postjudgment interest statute, chapter 235, section 8, not be applied in contract actions does not completely address the issue of sovereign immunity.²²² The Supreme Judicial Court in 1956 recognized that statutes governing postjudgment interest in eminent domain actions consisted of an entirely separate body of law from the law governing postjudgment interest in contract actions.²²³ A private party bringing an eminent

amendment, a private party's contract action was no longer limited to an action founded on a contract for the payment of money. *See* 1887 Mass. Acts ch. 246 (amending chapter 195, section 1).

²²¹ *See* *Boston Molasses Co. v. Commonwealth*, 193 Mass. 387, 389, 79 N.E. 827, 826 (1907) (discussing the nature of sovereignty in a contract action). The court stated:

[I]n giving this lease the commonwealth was not acting in its political character as sovereign, but merely as the owner of property, about which it was making a contract. *As to this contract it put itself into the position of a private citizen, and the lease must be construed as if it were made between two individuals.*

Id. (emphasis added).

²²² *See* *Chapman v. University of Mass. Med. Ctr.*, 423 Mass. 584, 586-87, 670 N.E.2d 166, 169 (1996) (concluding chapter 235, section 8 does not authorize postjudgment interest against the Commonwealth); *C & M Constr. Co., Inc. v. Commonwealth*, 396 Mass. 390, 393, 486 N.E.2d 54, 56 (1985) (relying on rules of statutory construction to deny postjudgment interest).

²²³ *See* *C & R Constr. Co. v. Commonwealth*, 334 Mass. 232, 234, 135 N.E.2d 539, 540 (1956) (holding the Commonwealth liable for interest). In *C & R Construction Co.*, a contractor sought to recover the balance due from the Commonwealth for work it did on Logan International Airport. *Id.* at 232, 135 N.E.2d at 539. The contractor brought the action under chapter 258, and cited section one as authority that the state was liable for interest. *Id.* at 233, 135

domain action looks to chapter 79 to determine his rights and obligations and courts look to the eminent domain statutes to determine the Commonwealth's liability for postjudgment interest.²²⁴ A private party bringing a contract action against the Commonwealth, however, looks to the same statutes as any other private citizen would.²²⁵ It is unnecessary for the Legislature to expressly authorize postjudgment interest against the Commonwealth in the general postjudgment interest statute for the same reason it is unnecessary to expressly reference the Commonwealth in the statute governing the statute of limita-

N.E.2d at 540. In 1956, chapter 258, section one stated in pertinent part, "[t]he superior court, except as otherwise expressly provided, shall have jurisdiction of all claims at law or in equity against the commonwealth. Such claims may be enforced by petition stating clearly and concisely the nature of the claim and the damages demanded." MASS. GEN. LAWS ch. 258, § 1 (1956).

The court did not distinguish between prejudgment or postjudgment interest but made a broad finding that the state was liable for interest. *C & R Constr. Co.*, 334 Mass. at 234, 135 N.E.2d at 540. The court agreed with C & R's argument that "the Commonwealth is bound to pay interest on valid claims against it if, in similar circumstances, interest would be charged against a private person." *Id.* at 233, 135 N.E.2d at 540.

The court noted in dicta the case of *General Electric Co. v. Commonwealth* where the court held the Commonwealth was not liable for interest in an eminent domain action from the date of judgment until payment. *Id.* The court in *C & R Construction Co.* stated that *General Electric Co.*, involving an eminent domain action, was not an authority that the Commonwealth is not liable for interest in an action under chapter 258, section 1, a contract action. *Id.*

Note the statutory schemes relied on in *General Electric Co.* and *C & R Construction Co.* have been amended or repealed such that neither would be applicable today. See MASS. GEN. LAWS ch. 79, § 37 (1993) (providing express authorization for postjudgment interest); MASS. GEN. LAWS ch. 258, §§ 1-12 (1985) (setting forth the Massachusetts Tort Claims Act).

²²⁴ See *Whitehouse v. Sherborn*, 11 Mass. App. Ct. 668, 673 n.9, 419 N.E.2d 293, 297 (1981) (recognizing chapter 79 intended to update and consolidate the law in Massachusetts).

²²⁵ See *R. Zoppo Co. v. Commonwealth*, 353 Mass. 401, 404, 232 N.E.2d 346, 349 (1967) (recognizing the law is the same for public and private contracts).

tions.²²⁶ A contract claim against the Commonwealth is determined in the same manner and to the same extent as a contract claim against a private citizen.²²⁷

Just compensation requires payment of postjudgment interest.²²⁸ Although a private party litigant in a contract action against the Commonwealth does not have a constitutional or statutory right to just compensation, a private party does have a right to contract with the Commonwealth and rely on the laws to the same extent as if contracting with a private party.²²⁹ Payment of postjudgment interest, however, is noncontractual and a private party litigant must look to express waivers of sovereign immunity to recover postjudgment interest.²³⁰ The same laws do not apply to the Commonwealth in contract actions because no such express waiver exists.²³¹

VII. CONCLUSION

The Commonwealth of Massachusetts is not liable for postjudgment interest in contract actions. The holding in *Chapman v. University of Massachusetts Medical Center*²³² forecloses the possibility of recovering postjudgment interest unless the Commonwealth consents to such liability in the express terms of a contract. The antiquated doctrine of sovereign immunity protects the Commonwealth from li-

²²⁶ See MASS. GEN. LAWS ch. 260, § 2 (1996) (providing a 6 year statute of limitations in contract actions).

²²⁷ See *R. Zoppo Co.*, 353 Mass. at 404, 232 N.E.2d at 349 (citing *Chilton Club v. Commonwealth*, 323 Mass. 543, 545, 83 N.E.2d 265, 266 (1949)).

²²⁸ See *Woodworth v. Commonwealth*, 353 Mass. 229, 230, 230 N.E.2d 814, 816 (1967) (announcing the Massachusetts Constitution requires payment of interest in an eminent domain action).

²²⁹ See *R. Zoppo Co. v. Commonwealth*, 353 Mass. 401, 404, 232 N.E.2d 346, 349 (1967) (stating the "law applicable to public contracts is the same as that applicable to private contracts").

²³⁰ See *Chapman v. University of Mass. Med. Ctr.*, 423 Mass. 584, 586, 670 N.E.2d 166, 168 (1996) (holding the Commonwealth is not liable for postjudgment interest).

²³¹ *Id.*

²³² See 423 Mass. 584, 670 N.E.2d 166 (1996).

ability for postjudgment interest because no express statutory authorization exists. The Commonwealth has the luxury of appealing a trial court judgment in bliss because it may ignore the basic economic notion of the time value of money. A private party litigant, however, must defend the appeal with the unfortunate knowledge that a judgment today is not worth more than a judgment tomorrow.

A private party litigant may not recover postjudgment interest against the Commonwealth absent a waiver of sovereign immunity. A private party may not rely on the common law waiver that exists when the Commonwealth enters into a contract because the nature of postjudgment interest is noncontractual. In *Chapman II*, the Commonwealth appealed a contract claim and Chapman defended a contract claim. Chapman could not recover on the contract claim until the appeals process ended. Chapman recovered over \$200,000 for breach of contract. Chapman's contract claim did not end until the Supreme Judicial Court rendered its decision in *Chapman I* and the nature of postjudgment interest in these circumstances is contractual.

The waivers of sovereign immunity in eminent domain and tort actions are different in scope than the waiver in contract actions. Eminent domain and tort actions against the Commonwealth are governed by *statute*. A private party may recover postjudgment interest in an eminent domain action because chapter 79 expressly authorizes such recovery. A private party in a tort action may *not* recover postjudgment interest because the Massachusetts Tort Claims Act does not affirmatively authorize such recovery. In contract actions, the same laws applicable to private parties apply to the Commonwealth. Express statutory authority for postjudgment interest is unnecessary because the general interest statute, chapter 235, section 8, already applies. The trial court used the very same statute that awards postjudgment interest and awarded Chapman prejudgment interest from the date of the court's finding to the date of judgment.

The 1973 amendments to Rule 54 greatly expanded the postjudgment interest period to the detriment of the private party in a contract action against the Commonwealth. The Legislature has not acted since *Chapman II* to provide express statutory authority for postjudgment interest and this indicates the Legislature's agreement

with the court's result. The court may have reached the intended result, but it provided little authority to reassure private litigants it was the correct result. A private party should not be denied interest on a judgment while the government appeals that judgment but this is exactly the case in the Commonwealth of Massachusetts. It does not appear that the Legislature or the courts will take action to correct this wrong and overrule *Chapman II*.

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