Marquette Law Review

Volume 52
Issue 3 *Fall 1969*

Article 5

1969

Insurance: Interest Payments Under the Supplementary Payments Provision of the Standard Liability Policy

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NOTES

Insurance: Interest Payments Under the Supplementary Payments Provision of the Standard Automobile Liability Policy: To the average car owner, automobile insurance coverage is measurable only in terms of the limits of liability set out in the declarations. Often overlooked are the benefits accruing under the supplementary payments section of the Standard Family Automobile Policy.[1] Supplementary payments are of particular importance when a judgment exceeds the limits of the insurer's liability to pay, since they are designed to cover the various expenses incurred in the defense of an insured regardless of the degree or amount of liability. Hence, these payments are to be paid "in addition to the applicable limits of liability."[2] This note will analyze one of the problems involved with supplementary payments: the payment of interest.

Amount Upon Which Interest is Allowed

The supplementary payments section appears to be clear and unambiguous as to the amount on which an insurer will be required to pay interest:

> [A]nd all interest on the entire amount of any judgment therein which accrues after entry of judgment and before the company has paid, tendered or deposited in court that part of the judgment which does not exceed the limit of the company's liability thereon . . . .[3]

This language was adopted in 1956 after a number of courts had refused to allow interest on the *entire* amount of the judgment. The wording of the former Standard Family Automobile Policy, previously issued by the National Bureau of Casualty Underwriters had required the insurer to pay "all interest accruing after entry of judgment until the company has paid."[4] A few courts have concluded that "all interest" does not include any interest on a judgment in excess of the particular policy limits involved. Five states—California,[5] Colorado,[6] New York,[7] Oklahoma,[8] and South Carolina[9]—have adopted this approach, which

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[1] For an annotated copy of the 1967 Standard Family Automobile Liability Policy, *see* N. Risjord and J. Austin, Automobile Liability Insurance Cases, Standard Provisions and Appendix (Supp. 1967) [hereinafter cited as N. Risjord and J. Austin].

[2] *Id.* at 258.

[3] N. Risjord and J. Austin, *supra* note 1.

[4] *Id.* at 18.

[5] Sampson v. Century Indem. Co., 8 Cal. 2d 476, 66 P.2d 434 (1937).

[6] Hawkeye Security Ins. Co. v. Indemnity Ins. Co., 260 F.2d 361 (10th Cir. 1958).

[7] Lehner v. County of Erie, 53 Misc. 2d 710, 279 N.Y.S.2d 581 (Sup. Ct. 1967); Devlin v. New York Mut. Cas. Taxicab Ins. Ass'n, 210 N.Y.S.2d 57 (Sup. Ct. 1957); United States Fidelity & Guar. Co. v. Hotkins, 170 N.Y.S.2d 441 (Sup. Ct. 1957).

[8] Herzog v. Fidelity & Cas. Co., 257 F.2d 840 (10th Cir. 1958).

[9] Crook v. State Farm Mut. Auto. Ins. Co., 235 S.C. 452, 112 S.E.2d 241 (1960).

is clearly the minority view.[10] These courts have justified their position on the grounds that: (1) the clause is unambiguous and clear; (2) the liability of the insurer for interest on the portion of the judgment in excess of the policy limit amounts to vicarious liability; and (3) the insured has had, during any delay, the use of the money in excess of the policy limits.

In construing the pre-1956 policy language, most courts have held that the insurance company is required to pay interest which accrues on the entire amount after entry of judgment, irrespective of the policy limits.[11] This result has been reached on the grounds that: (1) the clause is ambiguous and therefore must be construed against the insurer; (2) the company could have qualified the word "judgment," had it desired to do so; and (3) the insurer controls the litigation, and by delaying payment it may influence the accumulation of interest.[12] In addition, the intent of the underwriters to include interest on the entire amount of the judgment, under the pre-1956 policy, was made clear in a directive issued by the National Bureau of Casualty Underwriters in conjunction with the implementation of the 1956 policy revision.

> Several court cases have held that an insurer's obligation to pay interest extends only to that part of the judgment for which the insurer is liable. The respective rating committees have agreed that this is contrary to the intent. As a result, the wording with respect to payment of interest in the new Family Automobile Policy has been restated, in order that it be entirely clear that all interest on the entire amount of the judgment, which accrues after entry of judgment, is payable by the insurer until the insurer has paid or tendered or deposited in court that part of the judgment which does not exceed the limit of the insurer's liability thereon.[13]

[10] In only three states—California, New York, and South Carolina—have the courts taken the position that the amount on which interest accrues is established by the policy's limits of liability. It should also be noted that a similar result was reached by the Louisiana Fourth Circuit in James v. State, 154 So. 2d 497 (La. App. 1963). However, this decision was contrary to a prior holding of the Louisiana Supreme Court in Lowery v. Zorn, 184 La. 1054, 168 So. 297 (1936). *See also* Doty v. Central Mut. Ins. Co., 186 So. 2d 328 (La. App. 1966), in which the decision in James v. State is questioned.

[11] Underwood v. Buzby, 236 F.2d 937 (3d Cir. 1956); Maryland Cas. Co. v. Wilkerson, 210 F.2d 245 (4th Cir. 1954); United Services Auto. Ass'n v. Russom, 241 F.2d 296 (5th Cir. 1957); River Valley Cartage Co. v. Hawkeye Security Ins. Co., 17 Ill. 2d 242, 161 N.E.2d 101 (1959). *See generally* Ramsey, *Interest on Judgment Under Liability Insurance Policies,* 1957 INS. L. J. 407 (July); Annot., 76 A.L.R.2d 983.

[12] "This would appear to be the only fair result, inasmuch as the insurer has control of the litigation and can make its election to appeal irrespective of the insured's desires in the matter. It seems fair to compel the insurer to pay interest which accrues pending an appeal, even though the judgment is in excess of the policy limits, for the reason that the insured might desire to pay the excess judgment and thus prevent the running of interest but the insurer's control of the litigation would prevent him from doing so." 8 APPLEMAN, INSURANCE LAW AND PRACTICE § 4899, at 364.

[13] Letter of National Bureau of Casualty Underwriters dated December 5, 1956, Circular No. 1311 (Auto. Division), and Circular No. 990 (General Liability

The new policy provision which grants interest on the "entire judgment" leaves no room for ambiguity. This is illustrated in *Peterson v. Western Casualty & Surety Company*,[14] where the court stated:

> In cases where the policy provision is not as clear as the instant one, the decisions are in conflict on whether an insurer is liable for interest on the amount of a judgment above the policy limit. The problem is taken care of quite plainly in our case by this provision in the policy . . . ." "all interest on the entire amount of the judgment . . . ." The reason for the inclusion of such a provision seems to be a recognition of the fact that delay in the payment of the judgment is chargeable to the insurance company since it controls the litigation.[15]

The problem of whether interest should be allowed on the entire amount of the judgment would appear to be solved by the language of the policy. However, the issue may occasionally arise, since not all automobile insurance companies are members of the National Bureau of Casualty Underwriters. Thus, some policies may not contain the clarifying provisions quoted above.[16]

Wisconsin has not had a judicial opinion on the interest section of the Standard Family Automobile Policy.[17] Because of the widespread use of the National Bureau Standard Policy, it does not appear likely that the Wisconsin court will ever have to pass on the wording of the pre-1956 provision. However, should such a case arise, there is little question that interest would be allowed on the entire amount of the judgment. This is not only the clear intent of the underwriters, but is consistent with the concept of supplementary payment—i.e., the payment of all costs of defense..

The Time From Which Interest Accumulates

Because interest was not recognized at common law, all interest on judgments and decrees is based upon statutory authority.[18] States vary as to when interest is allowed to accrue. Some allow interest to run from the date of the filing of the complaint,[19] and others allow interest from the date of the verdict.[20] Virginia allows the jury to establish

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Division), reprinted in part in R. Long, The Law of Liability Insurance § 9.01 (1969).

[14] 19 Utah 2d 26, 425 P.2d 769 (1967).

[15] *Id.* at 31, 425 P.2d at 772.

[16] *See* N. Risjord and J. Austin, *supra* note 4.

[17] In Nichols v. United States Fidelity & Guar. Co., 13 Wis. 2d 491, 109 N.W.2d 131 (1961), the Wisconsin Supreme Court reviewed the arguments on both sides of the issue but did not indicate any preference.

[18] 30 Am. Jur. *Interest* § 4 (1958).

[19] Colo. Rev. Stat. Ann. § 41-2-1 (1963); La. Rev. Stat. § 4203 (1950); Mass. Ann. Laws ch. 231, § 6B (1966); Mich. Stat. Ann. § 27A.6013 (1962); N.H. Rev. Stat. Ann. § 514 1-b (1955); R.I. Gen. Laws Ann. § 9-21-10 (Supp. 1967). Note, however, that these statutes relate to personal injury actions, and the result may differ in a wrongful death action.

[20] Ill. Rev. Stat. ch. 74, § 3 (1967); Iowa Code Ann. § 625.21 (1962); Kan.

the date when interest begins to accrue.[21] The remaining states allow interest from the date judgment is entered.

The wording of the Standard Family Automobile Policy appears clear as to when interest will accrue: "all interest . . . which accrues after entry of judgment and before the company has paid or tendered."[22] Nonetheless, in states which allow interest prior to judgment, an issue is raised as to whether the insurer will have to pay *all* interest which accrues—even though the limits of liability have been exceeded by the judgment. For example, in a state which allows interest from the date of the filing of the complaint, is an insurer liable for interest from the date of the filing of the complaint or from the date of judgment? Assuming that an insured had a judgment rendered against him for $30,000 and that his policy limits were $10,000, and assuming, also, that the case is litigated in a state which allows interest to accrue from the date the compaint is filed and that the insurer tenders $10,000 on the date the judgment is entered, a question is presented as to whether the insurer will be liable for the interest which accrued prior to the entry of judgment or whether the language of the policy will control. The answer as to which will control, policy or statute, is found in the experience of those states where interest is allowed prior to the entry of judgment. In those jurisdictions, there is a clear conflict between the statutes and the standard automobile policy as to when interest will begin to accrue. States which allow interest from the date of the filing of the complaint and from the date of the verdict will be considered.[23]

Interest From the Date of the Complaint

There are five states which allow interest from the date of the complaint[24] or from the date of the judicial demand.[25] No cases were found in which Massachusetts, Michigan, or Rhode Island dealt with this specific issue. New Hampshire and Louisiana have considered the

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STAT. ANN. § 60-258(a) (1967); ME. REV. STAT. ANN. tit 14, § 1602 (1964); MD. ANN. CODE Rule 642 (1957); MINN. STAT. ANN. § 549.09 (1945); MONT. REV. CODES ANN. § 93-8622 (1947); N.Y. GEN. CORP. LAW, § 5002 (McKinney Supp. 1966); N. C. GEN. STAT. § 24-5 (1965); PA. STAT. tit. 12, § 781 (1953); S.C. CODE ANN. § 10-1605 (1962); S.D. CODE § 33.1815 (Supp. 1960); TENN. CODE ANN. § 47-14-110 (1964); UTAH CODE ANN. Rule 54(e) (1953); W. VA. CODE ANN. § 56-6-31 (1961); WIS. STAT. § 271.04 (1967).

[21] VA. CODE ANN. § 8-233 (1950).

[22] *See* N. RISJORD AND J. AUSTIN, *supra* note 1.

[23] The issue is of importance to states such as Wisconsin, where legislation has been introduced to increase the time from which interest will be allowed to accrue against a judgment ["271.04 (9) JUDGMENTS AGAINST TORTFEASORS. When a judgment is recovered in any tort action interest shall be allowed the recovering party at the prevailing legal rate per year on the judgment amount from the date of the commencement of the action."—introduced January 21, 1969, as Senate Bill No. 23]. Wisconsin now allows interest from the date of verdict. WIS. STAT. § 271.04 (1967).

[24] *See* note 19 *supra.*

[25] LA. REV. STAT. § 4203 (1950).

question and in these two states any interest which accrues prior to the entry of judgment, when the total judgment is in excess of the face value of the policy, must be paid by the insured.

In the New Hampshire case of *LaPlant v. Aetna Casualty and Surety Company*[26] writs were filed on May 23, 1962, and judgment was entered on May 4, 1965. The issue was whether the defendant insurer was liable for interest on the amount of the verdict ($49,756.72) from the date the writs were filed until the date of judgment. The value of the interest between these two dates was $7,957.50, and the total judgment was $58,520.40. The court held that the insurer was liable for interest prior to the date of judgment only to the extent that the policy limits of $50,000 were not exceeded:

> The tort defendant's liability to the tort plaintiff includes interest from the date of the writ to the date of judgment. But the undertaking of the insurer obligates it to pay only so much interest accruing from the date of writ to the date of judgment as when added to the amount of the policy equals the limit of the policy.[27]

The insurer was liable for the face amount of the judgment, plus $243.28 in interest from the date of the writ to the time of judgment, or an amount up to $50,000.00. The difference ($7,957.50, minus $243.28) had to be borne by the insured.[28] Thus, despite policy language to the contrary, the insurer was liable for interest prior to judgment. However, the policy controlled and the insurer was not liable for interest prior to judgment when that amount, together with the verdict, exceeded the policy limits.

A result similar to that in *LaPlant* was reached in *Doty v. Central Mutual Insurance Company*.[29] The verdict ($25,000) was in excess of the policy limits ($10,000), and the issue was who would have to pay the legal interest from the date of judicial demand until the date of judgment: the insured or the insurer. The court held that the supplementary payments provision allowed interest only from the date of judgment:

> The company's agreement to pay this supplementary interest cannot, within the clear policy intent, be extended to cover legal interest upon the excess awarded from the date of judicial demand as well as from the rendition of the judgment. This agreement, providing for supplementary interest upon the excess for the purpose of avoiding prejudice to the insured person through appellate delay, is not in our opinion, in contravention of the

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[26] 107 N.H. 189, 219 A.2d 283 (1966).
[27] *Id* at 192, 219 A.2d at 285.
[28] *See also* Wilson v. Wilson, 108 N.H. 341, 235 A.2d 520 (1967).
[29] 186 So. 2d 328 (La. App. 1966).

> Louisiana statute providing for legal interest from the date of judicial demand upon tort judgment.[30]

The insurer was liable only for the legal interest from the date of judgment. However, the Louisiana Appeals Court, like the court in *LaPlant,* indicated that the insurer would be liable for interest before judgment whenever the total of verdict and interest did not exceed the policy limits. In such a case, limiting the insurer's liability for interest to that following judgment would reduce the protection of the insured from the principal amount of coverage to the principal amount *less* interest. Thus, in effect, the policy would be using the statute to limit the insurer's liability to an amount less than the principal amount insured—and this result was in contravention of Louisiana law. However, this same reasoning did not apply when the judgment was in excess of the policy limits. The court pointed out that the insurer's supplementary agreement was to pay legal interest "in addition" to the principal limits of liability from the date of judgment only—not from the date of judicial demand. Thus, the court chose not to hold the insurer liable for an amount greater than that allowed by the policy.

Interest From the Date of the Verdict

Jurisdictions allowing interest from the date of the verdict, and those which have considered the question of whether the insurer will be liable for interest accruing prior to entry of judgment, have held that the language of the policy controls.[31] Nevertheless, the case of *Hafer v. Schaur*[32] illustrates the presence of a real controversy as to when an insurer becomes liable for interest payments. In *Hafer,* the plaintiff obtained a verdict of $100,000 against the insured and two others on March 26, 1964. The plaintiff then brought a garnishment action against the defendant-insurer. The insurer, Erie Insurance Exchange, tendered the policy limits of $20,000, but the offer was refused. Erie then tendered the policy limit, plus interest on one-half the entire amount of the verdict, plus one-half of the costs (a total of $21,669.16), but this was also refused. Erie then paid the amount into the court on November 12, 1964. On April 13, 1965, the court entered judgment for the plaintiff, who then brought an attachment proceeding against Erie.

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[30] *Id.* at 336. *See also* Pittman v. Fowler, 191 So. 2d 172 (La. App. 1966). Colorado reached a similar result in Phoenix Assurance Co. of N.Y. v. Ocean Accident & Guar. Corp., 145 Colo. 26, 357 P.2d 642 (1960), but did so with no discussion of the problems involved. No cases were found in which Massachusetts, Michigan, or Rhode Island dealt with this specific issue.

[31] Cavery v. Kist, 243 Iowa 98, 11 N.W.2d 23 (1943); Lehner v. County of Erie, 53 Misc. 2d 720, 279 N.Y.S.2d 581 (Sup. Ct. 1967); Hafer v. Schaur, 429 Pa. 289, 239 A.2d 785 (1968); Crook v. State Farm Mut. Auto. Ins. Co., 235 S.C. 452, Tennessee Farmers Mut. Ins. Co. v. Cherry, 213 Tenn. 391, 374 S.W.2d 371 (1964); Peterson v. Western Cas. & Sur. Co., 19 Utah 2d 26, 425 P.2d 769 (1967).

[32] 429 Pa. 289, 239 A.2d 785 (1968).

The trial court found that Erie owed $20,000, plus interest on the entire amount of the judgment from the time of verdict[33] (March 26, 1964) to the date of judgment (April 13, 1965). However, on appeal, the Pennsylvania Supreme Court held that the insurer was liable only on the interest after judgment:

> The policy in question makes Erie liable for interest on the entire amount of any *judgment* which accrues after entry thereof. It does not make Erie liable for interest on the entire amount of the judgment. There being no ambiguity between verdict and judgment, we are without authority in either law or logic to judicially vary the clear and precise terms of the written contract. Our court is bound to give legal effect to the intent of the parties as manifested by the unambiguous, unequivocal language in the contract of insurance.[34]

The court added that an insurance carrier which acts in bad faith and precludes the entry of judgment on a verdict will be held accountable for any interest accruing on the verdict, notwithstanding the fact that such amount exceeds the liability limits of the policy.

In *Hafer,* Justice Roberts wrote a dissenting opinion in which Justices Musmanno and Eagen joined. There were three basic grounds upon which the dissent was based.

First, Justice Roberts claimed that the majority "ignores the weight of authority in other jurisdictions."[35] However, this statement is itself contrary to the authority cited above.[36] In making this assertion, Justice Roberts relied upon cases which were concerned with the *amount* upon which an insurer would have to pay interest. These same cases did not answer the question of *when* that interest would start to accrue. In failing to make this distinction, Justice Roberts cited cases which in fact held with the majority opinion—for example, *Doty v. Central Mutual Insurance Company.*[37]

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[33] PA. STAT. tit. 12, § 781 (1953).

[34] 429 Pa. at 291, 239 A.2d at 788 (emphasis added). The comment to this case, in 4 N. RISJORD AND J. AUSTIN, Case No. 4748, concurs with the majority opinion: "We agree with the majority. Where interest on a verdict is added to make up the judgment, the insurer is liable for the amount of the judgment up to its applicable policy limits and for interest on the entire judgment until its policy limit has been applied to the judgment."

[35] 429 Pa. at 292, 239 A.2d at 789.

[36] *See* notes 26-31 *supra.*

[37] 186 So. 2d 328 (La. App. 1966). *See* note 29 *supra.* Justice Roberts in his dissent also quoted Underwood v. Buzby, 136 F. Supp. 957 (E.D. Pa. 1955), at length. What Justice Roberts relied upon was the following statement by Judge Cleary in that case: "Giving the words selected by the insurer their plain meaning, I feel there is no ambiguity and the insurer is liable for interest on the full amount of the verdict to the date of the payment by the insurer into the Registry of this Court." However, Judge Cleary was adjudicating the *amount* on which interest could accrue, not *when* interest would begin to run. The result was that the terms "judgment" and "verdict" were used interchangeably: "Very little restrictive language would have been required to limit the liability of the insured to interest only upon that portion of the judgment covered by its policy if that were the intention of the insurer.

Secondly, the dissent argued that since the insurer has control of the litigation, the insured should not be liable for the expense incurred in delaying the entry of judgment. This argument is perhaps best enunciated in *River Valley Cartage Company v. Hawkeye Security Insurance Company.*[38] In this case, the court considered whether interest should be allowed on the entire amount of the judgment. However, the same rationale applies when considering the time at which interest should begin to accrue.

> Under the terms of the policy the insurer has complete control of any litigation from which it might incur liability. The insured cannot settle with plaintiff without releasing the insurer from its obligation. Any delay that may cause the accumulation of interest is thus the responsibility of the insurer. And until it discharges its obligations under the policy it should bear the entire expense of this delay.[39]

However, it is not completely true that the insurer has "complete control of any litigation." In fact, in most cases it will be the plaintiff who has the control of the speed with which the case will be adjudicated. Although the insurer, as to the insured, controls the litigation, the insurer cannot control how soon after verdict a judgment will be entered by the plaintiff.

Finally, Justice Roberts implied that an insured expected complete coverage as to the costs of defense and that this should include all interest cost. Thus, for purposes of the policy, verdict and judgment mean the same thing. This argument was expressly put forth in *Skinnter v. Capers,*[40] a case cited by Justice Roberts. The court in *Skinnter* stated:

> The layman purchases insurance and expects to receive complete coverage. It is the rare policyholder that reads his policy. Even if he studied the policy he would not anticipate this problem. Judgment and verdict would not be distinguished by the insured. The date of the entry of the judgment would be unimportant to the policyholder. His interest is not in the technical language of the policy. Rather it is in the practical matters of coverage and premium.[41]

The equities are with the insured when there is ambiguous language in the policy. However, as pointed out by the majority in *Hafer v. Schaur,* there is no ambiguity concerning the terms "judgment" and "verdict." Thus, a court cannot construe this particular portion of the

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The obligation of the company to pay interest on the full amount of the verdict gives realistic protection to the insured." 136 F. Supp. 957, 959 (E.D. Pa. 1957).

[38] 17 Ill. 2d 242, 161 N.E.2d 101 (1959).

[39] *Id.* at 245, 161 N.E.2d at 103.

[40] 37 Pa. D & C.2d 782 (C.P. Butler Cty. 1964).

[41] *Id.* at 786.

policy against the insurance company. Nor can a court interpret a policy simply on the basis of what an insured, who did not read or understand the policy, thought he was buying. An insurance company cannot be bound by such a subjective standard. If an insured's "expectations" were the test of coverage, no insurance company could determine what it was selling.[42]

Wisconsin

Accumulation of large amounts of interest between verdict and judgment is possible under WIS. STAT. § 271.04(4) (1967).[43] This was illustrated in *Moldenhauer v. Faschingbauer*,[44] where interest between verdict and judgment amounted to $2,299.44.

Wisconsin has not taken a definite position on the issue of when interest is allowed to accrue under the Standard Automobile Liability Policy. However, in *Nichols v. United States Fidelity & Guaranty Company*,[45] the Wisconsin Supreme Court indicated that the policy language would control should such a case come before the court:

> Whether the entire amount of interest on the verdict would be allowed against the insurer when the amount of recovery exceeds policy limits seems to us on principle to *depend on the language of the policy*. We have found no cases dealing with the subject of interest on the verdict to the date of the judgment.[46]

Tender of Interest

The Standard Automobile Liability Policy provides that no interest will accrue against the insurer once the company "has paid or tendered or deposited in court that part of the judgment which does not exceed the limit of the company's liability thereon." There has been litigation over the exact requirements necessary to fulfill this clause and to terminate the accrual of interest against an insurer. *River Valley Cartage*[48] is a leading case defining the requirements of tender. In this case, the plaintiff obtained a judgment for $175,000 which was entered

[42] The dissent also argued that the insurance company admitted liability on appeal for all interest upon the entire amount of the verdict. The majority opinion did not mention this fact, and it would appear that the insurance company, in writing its brief, also failed to distinguish between the amount upon which, and the date at which, interest would accrue.

[43] "When the judgment is for the recovery of money, interest at the legal rate from the time of verdict, decision or report until judgment is entered shall be computed by the clerk and added to the costs." WIS. STAT. § 271.04(4) (1967).

[44] 33 Wis. 2d 617, 148 N.W.2d 112 (1967). The issue in this case was whether a plaintiff, who exercised his option to accept a reduced amount of damages in lieu of a new trial, was entitled to interest from the date of the verdict. The defendant was found to be 100% negligent and a verdict totaling $43,012 was awarded. The trial court set the verdict aside and ordered a new trial on all issues in the interest of justice. On appeal, the court held that the jury's finding of negligence should have been sustained. Thus, the plaintiff was allowed the interest from the time of the original verdict.

[45] 13 Wis. 2d 491, 109 N.W.2d 131 (1961).

[46] *Id.* at 501, 109 N.W.2d at 137 (emphasis added).

[47] *See* note 23 *supra*.

[48] 17 Ill. 2d 242, 161 N.E.2d 101 (1959).

against the insured on May 13, 1955. The insurer's limit of liability was $50,000, and the tender requirements were identical to those stated above. On July 3, 1956, the insurer tendered the administrator of the deceased plaintiff $50,000, and claimed that it was liable for interest only on the sum of $50,000. This tender was rejected, and proceedings were commenced against the insurer as garnishee. On appeal, the court held that the insurer was liable for interest on the entire judgment, and the tender of an amount less than that did not terminate the insurer's continuing obligation to pay interest on the entire judgment.

> Since the insurer conceded that it was liable for some interest and costs at the time of the alleged tender, although it disputed the exact amount, it should have been clear to the insurer that it did not make a legally valid tender. While it is true that interest is a separate and distinct obligation from the judgment, the provision in the policy only makes sense if the word judgment is read to include interest. Otherwise, the insurer could, by offering a sum that in most instances the judgment creditor would have to refuse in order to preserve his full rights, free itself from the impact of the provision which is the incentive for speedily discharging its entire obligation.[49]

In addition to the above proposition, tender is generally considered to include not only a readiness and ability to perform, but actual production of the thing to be delivered.[50] Nor can tender be less than unconditional.[51] And, the fact that an amount less than the full total due and owing was mistakenly tendered will not stop the accrual of interest.[52]

CONCLUSION

It is clear that under the current policy provisions an insurance company is not liable for interest which accrues between the verdict and the entry of judgment, once the policy limits are exceeded. Courts are virtually unanimous in this result. Nevertheless, the question ultimately raised is whether an insurance company should be compelled by legislation to pay this interest. The answer to this question is within the province of a legislative body and no effort will be made to go into the problem in this note. However, it is clear that legislation of the kind mentioned earlier,[47] which simply lengthens the time interest runs, will not ordinarily increase insurance coverage under the supplementary payments section of the Standard Automobile Liability Policy.

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[49] *Id.* at 247, 161 N.E.2d at 104.
[50] Mayron's Bike Shop, Inc. v. Arrow Stores, Inc., 149 Conn. 149, 176 A.2d 574 (1961).
[51] Baucom v. Great Am. Ins. Co., 370 S.W.2d 863 (Tex. Civ. App. 1963).
[52] "An insurer's mistake in tendering an amount less than the sum due is the misfortune of the tender, the tender having no legal significance if refused, and the position of the parties remains the same as though no tender had been made." 86 C.J.S. *Tender* § 7 (1955). *See also* R. LONG, THE LAW OF LIABILITY INSURANCE § 9.02 (1969).