

IN THE SUPREME COURT OF OHIO

LEONARD MAYNARD, ) Case No: 2007-1069  
 )  
Plaintiff-Appellee, ) On Appeal from the Marion County  
 ) Court of Appeals, Third Appellate District  
v. )  
 ) Court of Appeals  
EATON CORPORATION, ) Case No. 9-06-33  
 )  
Defendant-Appellant. )

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APPELLANT'S REPLY BRIEF

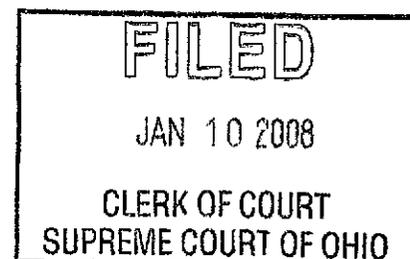
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## ARGUMENT

The Appellant has argued and continues to argue that Revised Code 1343.03, as amended on June 2, 2004, prospectively applies to pending cases by adjusting the post-judgment interest rate after its effective date. *See* Appellant's Br. at 7-9. The Appellee has not even attempted to refute this proposition. Instead, the Appellee contends that the amendment did not apply to this case because the case was pending on appeal when the amendment went into effect. *See* Appellee's Br. at 6-9. The Appellee also argues past the certified conflict question to propose that the rate change remained static rather than annually adjusted. *See id.* at 9-12. Neither argument is sufficient to refute the fact that Revised Code 1343.03, as amended on June 2, 2004, adjusted the post-judgment interest rate in pending cases.

### **I. THE CASE REMAINED PENDING ON APPEAL**

The Appellee argues that the case did not remain pending while on appeal simply by citing Black's Law Dictionary, Sixth Edition, and noting that, because the General Assembly explicitly has included "appeals" in other statutes, its failure to do so for the statutory interest rate is dispositive. *See* Appellee's Br. at 7. This Court, however, already has settled the issue, ironically doing so by relying upon Black's Law Dictionary to interpret a statute that did not explicitly mention appeals.

In *Van Fossen v. Babcock & Wilcox Co.* (1988), 36 Ohio St.3d 100, 103, 522 N.E.2d 489, the court was faced with an amended worker's compensation statute that applied immediately to cases "pending in any court."<sup>1</sup> The court paid no attention to the "any court" language of the

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<sup>1</sup> The Appellee wisely avoids mention of *Van Fossen* in his Brief, perhaps for the obvious reason that the case decidedly is contrary to his argument. The Amicus Curiae Brief in Support of the Appellee attempts to distinguish *Van Fossen* but in a misguided fashion. The Amicus Brief mostly does so by differentiating three cases from other jurisdictions to which the *Van Fossen* Court cited. *See* Amicus Br. at 10-11 (discussing *Midkiff v. Colton* (C.A.4 1917), 242 F. 373,

statute but instead focused exclusively on what “pending” means. It held that “[d]uring a direct appeal as of right to a court of appeals, . . . the cause is ‘pending’ until entry of final judgment by the *appellate court*. . . .” *Id.* at 104 n.3 (emphasis added). In so holding, the court found support in Black’s Law Dictionary, Fifth Edition, due to the acknowledgement that a case is pending if it is “unsettled” or “undetermined.” *Id.* at 103. Section 3(B)(3), Article IV of the Ohio Constitution, which states that “[j]udgments of the courts of appeals are final,” ensures that a case remains unsettled or undetermined while on appeal because the constitutional provision vests “authority in the courts of appeals to enter final judgments.” *Id.* (Appx. 1.)

Over a decade after the *Van Fossen* decision, this Court remained consistent in its view that a case remains pending even after the trial court enters its final judgment. In *In re Judicial Campaign Complaint Against Burick* (1999), 705 N.E.2d 422, 427, the court once again had to define the scope of “pending,” this time to ascertain whether a judicial candidate’s statements regarding an opponent’s sentencing impermissibly were made while the case was pending. The trial judge had entered her judgment entry but a notice of appeal had not yet been filed when the candidate’s statements were made. *Id.* at 426. The court held that the case was pending during this post-judgment, pre-appeal time period because the term “pending” includes “actions which a lower tribunal has finally adjudicated, but from which an appeal has not yet been taken.” *Id.* at 426 (quoting *John Ken Alzheimer’s Cfr. v. Ohio Cert. of Need Review Bd.* (1989), 65 Ohio App.3d 134, 138, 583 N.E.2d 337).

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381; *Ex parte Craig* (C.A.2 1921), 274 F. 177, 187; *Nichols v. Pierce* (C.A.D.C. 1984), 740 F.2d 1249, 1256). The court only cited to those cases as additional support after having quoted Black’s Law Dictionary, Fifth Edition, and citing Ballentine’s Law Dictionary, Third Edition. 36 Ohio St.3d at 103 n.1. The cases merely provided complementary definitions of “pending,” not factual support. After establishing that “pending” means “unsettled” and “undetermined,” the *Van Fossen* Court applied this meaning to cases on appeal based upon Ohio precedent. *See infra* p. 3.

The *Van Fossen* and *Burick* Courts concluded that a case remains pending after a trial court's judgment if an appeal is filed. Both courts did so by upholding Ohio *stare decisis* from the Nineteenth Century and the turn of the Twentieth Century. In 1828, the Supreme Court of Ohio held that "[i]f an appeal be taken . . . it is, in its progress, through these various tribunals, the same suit pending and undetermined. . . ." *Heirs of Ludlow v. Kidd's Ex'rs* (1828), 3 Ohio 541, 548. The concept of "pending" throughout the Nineteenth Century also included appeals, because "[t]hat which can be vacated and superseded is not final, as between parties having the power to set it aside." *Bode v. Welch* (1875), 29 Ohio St. 19, 22. A final judgment by the trial court was immaterial in the context of whether a case was pending because the trial court's judgment was "final only with reference to the power of the court" but "[w]ith reference to the rights of the parties it was not final[.]" *Id.*

Into the Twentieth Century, the scope of "pending" continued to "embrace all cases, proceedings and matters initiated in the territorial courts, and in which at the time of the actual transformation of the territorial judicial system into the state and national system there should be yet any vitality, force or virtue." *Hupp v. Hock-Hocking Oil & Natural Gas Co.* (1913), 88 Ohio St. 61, 70 (quoting *United States v. Taylor* (D.Wash. 1890), 44 F. 2, 4). A case on appeal retained vitality because it could be reversed. *Id.* "Pending" consequently means that the case is not yet finally resolved as to the parties, which encompasses appeals that can result in a reversal of the judgment.

Ohio is not alone in its long and continued view that "pending" includes cases on appeal: A "nearly unanimous rule establishes in definitional terms that the pending status for litigation to continue through appeal is a rule applied equally to both civil and criminal litigation." *Schuler v.*

*State* (Wyo. 1989), 771 P.2d 1217, 1237.<sup>2</sup> See also *Snyder v. Buck* (1950), 340 U.S. 15, 20, 71 S.Ct. 93, 95 L.Ed. 15 (“[A]n action is . . . pending . . . though an appeal is being sought.”). This widely-accepted authority takes the view that “pending,” by definition, is a lack of finality, and a case on appeal is not yet final. The General Assembly needed no further words to establish that the amended statute applied to cases on appeal: Clear evidence of retroactivity “is expressed by words such as . . . ‘applies to pending cases.’” *Scibelli v. Pannunzio*, 7th Dist. No. 05 MA 150, 2006-Ohio-5652, at ¶148 (citing *Van Fossen*, 36 Ohio St.3d at 106).

The procedural history of this case shows that it has lacked finality even after the trial court entered its judgment entry on April 2, 2003. Of particular relevance is the fact that the Appellee did not even move for post-judgment interest until April 1, 2005, which was twenty-four months after the judgment entry, and nine months after Revised Code 1343.03 was amended. (Supp. 8-11.) The Appellee did not appeal denial of post-judgment interest until June 28, 2006, which was well past the effective date of the amended statute. (Supp. 6-7.) According to the Appellee’s unsupported reasoning, all of this occurred when the case no longer

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<sup>2</sup> Such states that consider “pending” to encompass cases on appeal include: **California**, see *Collins v. Ramish* (Cal. 1920), 182 Cal. 360, 366, 188 P. 550; **Colorado**, see *People ex rel. Grenfell v. Dist. Court of Second Judicial Dist.* (Colo. 1931), 89 Colo. 78, 83-84, 299 P. 1; **Florida**, see *State ex rel. Andreu v. Canfield* (Fla. 1898), 40 Fla. 36, 51, 23 So. 591; **Georgia**, see *Bowers v. Keller* (Ga. 1938), 185 Ga. 435, 438, 195 S.E. 447; **Iowa**, see *In re Estate of Lee* (Iowa 1949), 240 Iowa 691, 694-95, 37 N.W.2d 296; **Louisiana**, see *Kozlowski v. State* (La. Ct. App. 1988), 534 So.2d 1260, 1274; **Massachusetts**, see *Berlandi v. Commonwealth* (Mass. 1943), 314 Mass. 424, 431, 50 N.E.2d 210; **Minnesota**, see *Halloran v. Blue & White Liberty Cab Co.* (Minn. 1958), 253 Minn. 436, 444, 92 N.W.2d 794; **Montana**, see *Reickhoff v. Consol. Gas Co.* (Mont. 1950), 123 Mont. 555, 563, 217 P.2d 1076; **Nevada**, see *Braddock v. Braddock* (Nev. 1975), 91 Nev. 735, 743, 542 P.2d 1060; **New Jersey**, see *State v. Molnar* (N.J. 1980), 81 N.J. 475, 487, 410 A.2d 37; **New York**, see *Application of Natanson* (N.Y. App. Div. 1950), 276 A.D. 745, 749, 98 N.Y.S.2d 155; **Pennsylvania**, see *Driscoll v. McAlister Bros.* (Pa. 1928), 294 Pa. 169, 173, 144 A. 89; **South Dakota**, see *In re Egan* (S.D. 1909), 24 S.D. 301, 327, 123 N.W. 478; **Washington**, see *Marine Power & Equip. Co. v. Wash. State Human Rights Comm’n Hearing Tribunal* (Wash. Ct. App. 1985), 39 Wn.App. 609, 620, 694 P.2d 697; **Wisconsin**, see *Larson v. Fetherston* (Wis. 1969), 44 Wis. 2d 712, 718, 172 N.W.2d 20.

was pending. Such a view cannot withstand the fact that “pending” is the opposite of finality and includes cases on appeal because, pursuant to the Ohio Constitution, appellate courts can enter final judgments that reverse the trial court’s judgment, a fact that the Appellee has used to his benefit to be awarded attorney fees. (Appellant’s Br., Appx. 12-18.)

The Appellee’s contention that this case is not pending is without merit – the legislature should not be required to insert surplusage into the statute, not when the meaning of “pending” has been abundantly clear for centuries throughout the country. The Court instead should draw its attention to whether the amended statute is prospective or retroactive, and, if the latter, whether the General Assembly expressly made it retroactive and whether it affects a vested substantive right or is a procedure or a remedy.

**II. DIVISION (B) OF REVISED CODE 1343.03 IS NOT AT ODDS WITH SECTION 3 OF HOUSE BILL 212 AND SPEAKS TO HOW THE AMENDED STATUTE IS APPLIED, NOT TO WHETHER IT IS RETROACTIVE**

The Appellant maintains that the amended statute is applied prospectively, *see* Appellant’s Br. at 7-9, which the Appellee has not attempted to refute. If retroactivity analysis nonetheless is deemed necessary, the Appellant has shown that (1) the legislature expressly made the amendment retroactive, and (2) the statute is procedural or remedial, *i.e.*, it does not affect a vested substantive right. *See* Appellant’s Br. at 9 (citing *Bielat v. Bielat* (2000), 87 Ohio St.3d 350, 357-61, 2000-Ohio-451, 721 N.E.2d 28). The Appellee has limited his counterargument to the former prerequisite for retroactivity – he has not argued against the fact that the post-judgment interest rate is procedural and remedial and does not affect a vested substantive right. As a result, the Appellant’s positions that the amended statute is applied prospectively and, alternatively, that the amended statute affects a procedure or a remedy but not a vested substantive right are unchallenged.

Turning toward the contested issue of whether the General Assembly expressly made the amended statute retroactive, the Appellee admits that the legislature sought to do so: “In this case the General Assembly has created a statutory scheme at odds with itself in *an attempt to make it retroactive.*” Appellee’s Br. at 12 (emphasis added). The Appellee claims this is a “unique situation” in which the uncodified section is irreconcilable with the codified section. *Id.* at 11. The Appellee, however, misconstrues the statutory scheme.

The uncodified section, to which the Appellee points as being the so-called “attempt” to make the statute retroactive, expressly states that the amendment “applies to actions pending on the effective date of this act.” Section 3, 2003 H.B. 212. (Appellant’s Br., Appx. 2.) This is a clear and unequivocal expression of retroactivity. *See* Appellant’s Br. at 9 n.5 (citing *Scibelli*, 2006-Ohio-5652, at ¶148). The analysis of whether the interest rate was adjusted should next turn to the second-prong, that is, whether the post-judgment interest rate is a procedure or a remedy versus a vested substantive right. *See Bielat*, 87 Ohio St.3d at 357-61.<sup>3</sup>

The Appellee instead attempts to inject confusion into the issue of retroactivity by citing Division (B) of Revised Code 1343.03, which states that post-judgment interest “shall be at the rate determined pursuant to section 5703.47 of the Revised Code that is in effect on the date the

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<sup>3</sup> The Appellee would unilaterally impose an additional precondition to whether a statute may be applied retroactively. The Supreme Court of Ohio has crafted the test as (1) whether the legislature expressed retroactivity, and (2) whether the statute affected a procedure or a remedy, not a vested substantive right. *See Bielat*, 87 Ohio St.3d at 357-61. The Appellee does not contest either prong of the test. Instead, he would add that implementation of an amended statute must be self-evident and unequivocal, not open to judicial review. This is not the law as it stands. *See* R.C. 1.52(B) (“If amendments to the same statute are enacted at the same or different sessions of the legislature, one amendment without reference to another, the amendments are to be harmonized, if possible, so that effect may be given to each.”) (Appx. 2.); *Humphrys v. Winous Co.* (1956), 165 Ohio St. 45, 133 N.E.2d 780, at paragraph one of the syllabus (“Where there are contradictory provisions in statutes and both are susceptible of a reasonable construction which will not nullify either, it is the duty of the court to give such construction thereto.”). Nor is this the situation in this case. *See infra* pp. 8-10.

judgment, decree, or order is rendered. That rate shall remain in effect until the judgment, decree, or order is satisfied.” (Appellant’s Br., Appx. 1.) The Appellee thus confuses *whether* the amended statute may be applied retroactively with *how* the amended statute is to be applied. Whether there is retroactivity is answered by Section 3 of House Bill 212; *how* it is implemented may be answered by Division (B) of Revised Code 1343.03.<sup>4</sup>

The certified conflict question before the Court is limited to whether the amended statute adjusted the post-judgment interest rate for pending cases. The answer is in the affirmative if the legislature expressly made it retroactive and it does not impair a vested substantive right. How the adjustment is implemented is a corollary issue already raised by the Appellant. *See* Appellant’s Br. at 16 (“A corollary issue that the Court should answer, after answering the certified question in the affirmative, is how the rate procedurally adjusted on June 2, 2004.”). The Appellant readily admits that this issue is unresolved but that its resolution, while provident, has no negative bearing on the certified conflict question, regardless of the outcome. The Court,

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<sup>4</sup> Division (B) of Revised Code 1343.03 states in pertinent part:

[Interest] shall be computed from the date the judgment, decree, or order is rendered to the date on which the money is paid and shall be at the rate determined pursuant to section 5703.47 of the Revised Code that is in effect on the date the judgment, decree, or order is rendered. That rate shall remain in effect until the judgment, decree, or order is satisfied.

Section 3 of House Bill 212 states in pertinent part:

In the calculation of interest due under section 1343.03 of the Revised Code, in actions pending on the effective date of this act, the interest rate provided for in section 1343.03 of the Revised Code prior to the amendment of that section by this act shall apply up to the effective date of this act, and the interest rate provided for in section 1343.03 of the Revised Code as amended by this act shall apply on and after that effective date.

(Appellant’s Br., Appx. 1-2.)

however, should not permit the Appellee to prove that the amended statute is not retroactive by no more than highlighting a side issue that is unresolved.

If the Court decides to resolve this corollary issue as well, the uncodified section is clear that the old ten percent interest rate remained until June 1, 2004, *see* Section 3, 2003 H.B. 212, but two options present themselves for the interest rate afterward: (1) the adjusted rate remained static as of June 2, 2004 (“static option”), or (2) it continued to vary on an annual basis (“variable option”). Both options have merit, the Appellant having chosen the variable option when it paid the Appellee, but the viability of either option evinces the fact that the codified and uncodified sections are not irreconcilable.

Under the static option, the interest rate for pending cases would remain the same from June 2, 2004, until satisfied. Primary support for this option lies with the apparent language of the statute: The post-judgment interest rate “shall remain in effect until the judgment, decree, or order is satisfied.” R.C. 1343.03(B). (Appellant’s Br., Appx. 1.) Rules of statutory construction mandate that the codified and uncodified sections be read together. *See State v. Moaning* (1996), 76 Ohio St.3d 126, 128, 1996-Ohio-413, 666 N.E.2d 1115 (“It is a well-settled rule of statutory interpretation that statutory provisions be construed together and the Revised Code be read as an interrelated body of law.”). Division (B) of Revised Code 1343.03 arguably sets a static rate, but Section 3 of House Bill 212 adjusted the rate on June 2, 2004. Reading the two sections together, the static option would adjust post-judgment interest to the rate in effect in 2004, which was four percent, and remain at that adjusted rate until satisfaction irrespective of subsequent annual rate changes. (Appellant’s Br., Appx. 4.)

In a conflict case, *City of Hilliard v. First Industrial, L.P.* (2005), 165 Ohio App.3d 335, 2005-Ohio-6469, 846 N.E.2d 559, the court favored the static option. The defendant owed

interest from February 26, 2002. *Id.* at 351. The court answered the certified conflict question in the affirmative, holding that “[s]ince this interest award spans a period in which the statutory rate has changed, the first rate will apply until the statutory change; then, the second rate will apply.” *Id.* In deciding the corollary issue of how the interest rate change occurred, the court “modif[ied] the interest award to reflect interest at the rate of ten percent from February 26, 2002 until June 2, 2004 and four percent from June 2, 2004 until plaintiff pays the damages award.” *Id.* at 352. *See also William P. Bringham Co., L.P.A. v. Williams*, 10th Dist. No. 06AP-178, 2007-Ohio-3327, at ¶30 (“[T]en percent interest should be calculated on the amount due until June 2, 2004, and the statutory rate thereafter, which was four percent in 2004.”).

Under the variable option, the interest rate would fluctuate yearly as the tax commissioner announced new rates pursuant to Revised Code 5703.47. This option does not ignore the language of Division (B) of Revised Code 1343.03: It admits that “[t]hat rate,” which is to remain “in effect,” continues to be governed by Revised Code 5703.47 during the pendency of the judgment debt, not by some other means of calculation. “That rate” may vary annually according to the tax commissioner but, pursuant to Division (B), it remains the means by which post-judgment interest in effect is calculated. Otherwise, without this language, there would be ambiguity as to whether another means for interest rate calculation would govern at a later date.

The need for the addition of the final sentence of Division (B) – “[t]hat rate shall remain in effect until the judgment, decree, or order is satisfied” – is better understood when considering that the prior version of the statute had no such language. (Appellant’s Br., Appx. 1.) The prior version of Division (B) stated that the interest rate “shall be computed from the date the judgment, decree, or order is rendered to the date on which the money is paid.” (Appx. 3-5.) Division (A), prior to the 2004 amendment, had “the rate of ten percent per annum, and no

more[.]” (Appx. 3-5.) Divisions (A) and (B) were not explicitly linked. The amended statute clarified that Revised Code 5703.47 is the sole means by which post-judgment interest is calculated. The amended statute unequivocally ties together the divisions whereas the prior iteration of the statute had not done so.

Thus, Revised Code 5703.47 is a codification of case law that acknowledges the time value of money. *See* Amicus Curiae Brief in Support of Appellant at 10-11. Courts before 2004 have varied statutory interest due to adjustments of the rate. *See, e.g., Prepakt Concrete Co. v. Koski Constr. Co.* (1989), 60 Ohio App.3d 28, 31, 573 N.E.2d 209 (calculating that “interest should run at six percent from August 31, 1974, the date the debt became due, to July 29, 1980, at eight percent from July 30, 1980 to July 4, 1982, and at ten percent from July 5, 1982”). More recently, in *Hausser & Taylor, LLP v. Accelerated Systems Integration, Inc.*, 8th Dist. No. 86547, 2006-Ohio-1582, the other conflict case, the court interpreted Revised Code 1343.03, as amended, and first held that “[b]ecause this case was pending at the time of the amendment to the statute, the amended R.C. 1343.03 governs[.]” *Id.* at ¶12. After answering that the amended statute adjusted the post-judgment interest rate in pending cases, the court opted for a variable rate that adjusted to 4% in 2004 and 5% in 2005. *Id.*

The foregoing cases recognize that the value of money constantly is in flux. Revised Code 5703.47 represents a delegation from the legislature to the tax commissioner in order for him or her to adjust the time value of money, *i.e.*, the statutory interest rate, on an annual basis:

For purposes of any section of the Revised Code requiring interest to be computed at the rate per annum required by this section, the rate determined by the commissioner under this section, rounded to the nearest whole number per cent, plus three per cent shall be the interest rate per annum used in making the computation for interest that accrues during the following calendar year.

R.C. 5703.47(B). (Appellant's Br., Appx. 3.) The variable option upholds this delegation and ensures that neither party can realize a windfall. Before the 2004 amendment, a party could reap a windfall as the value of money shifted. The static option also would permit a party to stall paying post-judgment interest if future economic conditions appeared more favorable than those that existed when judgment was entered. The variable option prevents this outcome.

To be clear, the Appellant maintains that how the statutory interest rate adjusted on June 2, 2004, can have no negative bearing on whether the amended statute may be applied retroactively. Moreover, the codified and uncoded sections cannot be at odds because "Division (B) . . . does not apply . . . if a different period for computing interest on it is specified by law[.]" R.C. 1343.03(D). (Appellant's Br., Appx. 2.) Section 3 of House Bill 212 thus trumps Division (B) if there is any inconsistency. The Court accordingly can choose either option to answer the corollary issue of how the interest rate adjusted while still answering the certified conflict question in the affirmative. Indeed, all the foregoing courts, no matter if they chose the static or variable options, first decided that the amended statute adjusted the post-judgment interest rate in pending cases.

### CONCLUSION

The Court should reverse the Third Appellate District's decision because Revised Code 1343.03, as amended on June 2, 2004, adjusted the ten percent rate of post-judgment interest calculated on a final judgment that was entered prior to the date of the amendment but not paid in full and pending appeal. Such an adjustment is prospective, procedural and remedial, and does not impair a vested substantive right. The Appellee does not even attempt to refute these facts in his Brief. The General Assembly's unequivocal expression that the amendment applied to "pending" cases should be accorded its common usage, which is that it applies to cases pending

on appeal – this issue only is relevant if the amended statute is retroactive, not prospective. Finally, how the interest rate adjusted on June 2, 2004, does not dictate the certified conflict question. Resolution of this corollary issue will better settle the law, and the fact that it is in contention is a tacit acknowledgement that the amended statute did adjust the interest rate. The Appellee, in fact, admitted that the General Assembly sought to render the statute retroactive. The Court thus should answer the certified conflict question in the affirmative and, if it so chooses, decide how the adjustment procedurally occurred.

Respectfully Submitted,

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Matthew L. Snyder

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EATON CORPORATION

**CERTIFICATE OF SERVICE**

A copy of Appellant's Reply Brief was sent by ordinary U.S. Mail to counsel for appellee, Laren E. Knoll, Kennedy, Reeve & Knoll, 98 Hamilton Park, Columbus, Ohio 43221 on January 10, 2008.

  
Matthew L. Snyder

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APPENDIX

LEXSTAT OHIO CONSTITUTION 4 § 3

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\*\*\* CURRENT THROUGH LEGISLATION PASSED BY THE 127TH OHIO GENERAL ASSEMBLY AND FILED  
WITH THE SECRETARY OF STATE THROUGH DECEMBER 18, 2007 \*\*\*

\*\*\* ANNOTATIONS CURRENT THROUGH OCTOBER 1, 2007 \*\*\*

\*\*\* OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH DECEMBER 13, 2007 \*\*\*

CONSTITUTION OF THE STATE OF OHIO  
ARTICLE IV. JUDICIAL

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*Oh. Const. Art. IV, § 3 (2007)*

§ 3. Court of appeals

(A) The state shall be divided by law into compact appellate districts in each of which there shall be a court of appeals consisting of three judges. Laws may be passed increasing the number of judges in any district wherein the volume of business may require such additional judge or judges. In districts having additional judges, three judges shall participate in the hearing and disposition of each case. The court shall hold sessions in each county of the district as the necessity arises. The county commissioners of each county shall provide a proper and convenient place for the court of appeals to hold court.

(B) (1) The courts of appeals shall have original jurisdiction in the following:

- (a) Quo warranto;
- (b) Mandamus;
- (c) Habeas corpus;
- (d) Prohibition;
- (e) Procedendo;
- (f) In any cause on review as may be necessary to its complete determination.

(2) Courts of appeals shall have such jurisdiction as may be provided by law to review and affirm, modify, or reverse judgments or final orders of the courts of record inferior to the court of appeals within the district, except that courts of appeals shall not have jurisdiction to review on direct appeal a judgment that imposes a sentence of death. Courts of appeals shall have such appellate jurisdiction as may be provided by law to review and affirm, modify, or reverse final orders or actions of administrative officers or agencies.

(3) A majority of the judges hearing the cause shall be necessary to render a judgment. Judgments of the courts of appeals are final except as provided in section 2(B) (2) of this article. No judgment resulting from a trial by jury shall be reversed on the weight of the evidence except by the concurrence of all three judges hearing the cause.

(4) Whenever the judges of a court of appeals find that a judgment upon which they have agreed is in conflict with a judgment pronounced upon the same question by any other court of appeals of the state, the judges shall certify the record of the case to the supreme court for review and final determination.

(C) Laws may be passed providing for the reporting of cases in the courts of appeals.

LEXSTAT ORC 1.52

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OHIO REVISED CODE GENERAL PROVISIONS  
CHAPTER 1. DEFINITIONS; RULES OF CONSTRUCTION  
CONSTRUCTION

**Go to the Ohio Code Archive Directory**

*ORC Ann. 1.52 (2007)*

§ 1.52. Irreconcilable statutes or amendments

(A) If statutes enacted at the same or different sessions of the legislature are irreconcilable, the statute latest in date of enactment prevails.

(B) If amendments to the same statute are enacted at the same or different sessions of the legislature, one amendment without reference to another, the amendments are to be harmonized, if possible, so that effect may be given to each. If the amendments are substantively irreconcilable, the latest in date of enactment prevails. The fact that a later amendment restates language deleted by an earlier amendment, or fails to include language inserted by an earlier amendment, does not of itself make the amendments irreconcilable. Amendments are irreconcilable only when changes made by each cannot reasonably be put into simultaneous operation.

**HISTORY:**

134 v H 607. Eff 1-3-72.

LEXSEE 2003 OHIO HB 212

OHIO ADVANCE LEGISLATIVE SERVICE

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OHIO 125TH GENERAL ASSEMBLY – 2003-04 REGULAR SESSION

HOUSE BILL NO. 212

*2003 Ohio HB 212*

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**BILL TRACKING SUMMARY FOR THIS DOCUMENT**

**SYNOPSIS:** AN ACT To amend sections 1343.03, 2325.18, and 5703.47 and to enact sections 319.19, 1901.313, 1907.202, 2303.25, and 2323.57 of the Revised Code to change the rate of interest on money due under certain contracts and on judgments, to provide trial courts notification of the rate of interest, to specify that the rate of interest is that in effect on the date of the judgment in a civil action and remains in effect until the judgment is satisfied, to change the computation of the period for which prejudgment interest is due in certain civil actions, to preclude prejudgment interest on future damages, to require that the finder of fact in certain tort actions in which future damages are claimed specify the amount of past and future damages awarded, to modify the period of limitations for revivor of judgments, and to preclude the accrual of interest from the date a judgment becomes dormant to the date the judgment is revived.

**NOTICE:** [A> UPPERCASE TEXT WITHIN THESE SYMBOLS IS ADDED <A]  
[D> Text within these symbols is deleted <D]

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To view the next section, type .np\* TRANSMIT.  
To view a specific section, transmit p\* and the section number. e.g. p\*1

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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

[\*1] Section 1. That sections 1343.03, 2325.18, and 5703.47 be amended and sections 319.19, 1901.313, 1907.202, 2303.25, and 2323.57 of the Revised Code be enacted to read as follows:

[A> SEC. 319.19. WITHIN TEN DAYS AFTER RECEIVING THE NOTIFICATION FROM THE TAX COMMISSIONER UNDER SECTION 5703.47 OF THE REVISED CODE OF THE INTEREST RATE PER ANNUM DETERMINED UNDER THAT SECTION, THE AUDITOR SHALL NOTIFY IN WRITING THE CLERK OF THE COURT OF COMMON PLEAS AND THE CLERK OF EACH MUNICIPAL COURT AND COUNTY COURT IN THE COUNTY OF THAT INTEREST RATE. <A]

Sec. 1343.03. (A) In cases other than those provided for in sections 1343.01 and 1343.02 of the Revised Code, when money becomes due and payable upon any bond, bill, note, or other instrument of writing, upon any book account, upon any settlement between parties, upon all verbal contracts entered into, and upon all judgments, decrees, and orders of any judicial tribunal for the payment of money arising out of tortious conduct or a contract or other transaction, the creditor is entitled to interest at the rate [D> of ten per cent <D] per annum [D> , and no more <D] [A> DETERMINED PURSUANT TO SECTION 5703.47 OF THE REVISED CODE <A] , unless a written contract provides a different rate of interest in relation to the money that becomes due and payable, in which case the creditor is entitled to interest at the rate provided in that contract. [A> NOTIFICATION OF THE INTEREST RATE PER ANNUM SHALL

BE PROVIDED PURSUANT TO SECTIONS 319.19, 1901.313, 1907.202, 2303.25, AND 5703.47 OF THE REVISED CODE. <A>

(B) Except as provided in divisions (C) and (D) of this section [A> AND SUBJECT TO SECTION 2325.18 OF THE REVISED CODE <A] , interest on a judgment, decree, or order for the payment of money rendered in a civil action based on tortious conduct [A> OR A CONTRACT OR OTHER TRANSACTION <A] , including, but not limited to a civil action based on tortious conduct [A> OR A CONTRACT OR OTHER TRANSACTION <A] that has been settled by agreement of the parties, shall be computed from the date the judgment, decree, or order is rendered to the date on which the money is paid [A> AND SHALL BE AT THE RATE DETERMINED PURSUANT TO SECTION 5703.47 OF THE REVISED CODE THAT IS IN EFFECT ON THE DATE THE JUDGMENT, DECREE, OR ORDER IS RENDERED. THAT RATE SHALL REMAIN IN EFFECT UNTIL THE JUDGMENT, DECREE, OR ORDER IS SATISFIED <A] .

(C) [D> Interest on a judgment, decree, or order for the payment of money rendered in a civil action based on tortious conduct and not settled by agreement of the parties, shall be computed from the date the cause of action accrued to the date on which the money is paid if <D] [A> (1) IF <A] , upon motion of any party to [D> the <D] [A> A CIVIL <A] action [A> THAT IS BASED ON TORTIOUS CONDUCT, THAT HAS NOT BEEN SETTLED BY AGREEMENT OF THE PARTIES, AND IN WHICH THE COURT HAS RENDERED A JUDGMENT, DECREE, OR ORDER FOR THE PAYMENT OF MONEY <A] , the court determines at a hearing held subsequent to the verdict or decision in the action that the party required to pay the money failed to make a good faith effort to settle the case and that the party to whom the money is to be paid did not fail to make a good faith effort to settle the case [A> , INTEREST ON THE JUDGMENT, DECREE, OR ORDER SHALL BE COMPUTED AS FOLLOWS: <A]

[A> (A) IN AN ACTION IN WHICH THE PARTY REQUIRED TO PAY THE MONEY HAS ADMITTED LIABILITY IN A PLEADING, FROM THE DATE THE CAUSE OF ACTION ACCRUED TO THE DATE ON WHICH THE ORDER, JUDGMENT, OR DECREE WAS RENDERED; <A]

[A> (B) IN AN ACTION IN WHICH THE PARTY REQUIRED TO PAY THE MONEY ENGAGED IN THE CONDUCT RESULTING IN LIABILITY WITH THE DELIBERATE PURPOSE OF CAUSING HARM TO THE PARTY TO WHOM THE MONEY IS TO BE PAID, FROM THE DATE THE CAUSE OF ACTION ACCRUED TO THE DATE ON WHICH THE ORDER, JUDGMENT, OR DECREE WAS RENDERED; <A]

[A> (C) IN ALL OTHER ACTIONS, FOR THE LONGER OF THE FOLLOWING PERIODS: <A]

[A> (I) FROM THE DATE ON WHICH THE PARTY TO WHOM THE MONEY IS TO BE PAID GAVE THE FIRST NOTICE DESCRIBED IN DIVISION (C)(1)(C)(I) OF THIS SECTION TO THE DATE ON WHICH THE JUDGMENT, ORDER, OR DECREE WAS RENDERED. THE PERIOD DESCRIBED IN DIVISION (C)(1)(C)(I) OF THIS SECTION SHALL APPLY ONLY IF THE PARTY TO WHOM THE MONEY IS TO BE PAID MADE A REASONABLE ATTEMPT TO DETERMINE IF THE PARTY REQUIRED TO PAY HAD INSURANCE COVERAGE FOR LIABILITY FOR THE TORTIOUS CONDUCT AND GAVE TO THE PARTY REQUIRED TO PAY AND TO ANY IDENTIFIED INSURER, AS NEARLY SIMULTANEOUSLY AS PRACTICABLE, WRITTEN NOTICE IN PERSON OR BY CERTIFIED MAIL THAT THE CAUSE OF ACTION HAD ACCRUED. <A]

[A> (II) FROM THE DATE ON WHICH THE PARTY TO WHOM THE MONEY IS TO BE PAID FILED THE PLEADING ON WHICH THE JUDGMENT, DECREE, OR ORDER WAS BASED TO THE DATE ON WHICH THE JUDGMENT, DECREE, OR ORDER WAS RENDERED. <A]

[A> (2) NO COURT SHALL AWARD INTEREST UNDER DIVISION (C)(1) OF THIS SECTION ON FUTURE DAMAGES, AS DEFINED IN SECTION 2323.56 OF THE REVISED CODE, THAT ARE FOUND BY THE TRIER OF FACT <A] .

(D) [D> Divisions <D] [A> DIVISION <A] (B) [A> OF THIS SECTION DOES NOT APPLY TO A JUDGMENT, DECREE, OR ORDER RENDERED IN A CIVIL ACTION BASED ON TORTIOUS CONDUCT OR A CONTRACT OR OTHER TRANSACTION, <A] and [A> DIVISION <A] (C) of this section [D> do <D] [A> DOES <A] not apply to a judgment, decree, or order rendered in a civil action based on tortious conduct [A> , <A] if a different period for computing interest on it is specified by law, or if it is rendered in an action against the state in the court of claims, or in an action under Chapter 4123. of the Revised Code.

[A> SEC. 1901.313. UPON RECEIVING THE NOTIFICATION OF THE INTEREST RATE PER ANNUM FROM THE COUNTY AUDITOR PURSUANT TO SECTION 319.19 OF THE REVISED CODE, THE CLERK OF

A MUNICIPAL COURT SHALL POST OR CAUSE TO BE POSTED NOTICE OF THAT INTEREST RATE PER ANNUM IN A CONSPICUOUS AND PUBLIC LOCATION IN OR NEAR THE OFFICE OF THE CLERK OF THE COURT IN THE COURTHOUSE OR BUILDING IN WHICH THE MUNICIPAL COURT IS LOCATED. <A>

[A> SEC. 1907.202. UPON RECEIVING THE NOTIFICATION OF THE INTEREST RATE PER ANNUM FROM THE COUNTY AUDITOR PURSUANT TO SECTION 319.19 OF THE REVISED CODE, THE CLERK OF A COUNTY COURT SHALL POST OR CAUSE TO BE POSTED NOTICE OF THAT INTEREST RATE PER ANNUM IN A CONSPICUOUS AND PUBLIC LOCATION IN OR NEAR THE OFFICE OF THE CLERK OF THE COURT IN THE COURTHOUSE OR BUILDING IN WHICH THE COUNTY COURT IS LOCATED. <A>

[A> SEC. 2303.25. UPON RECEIVING THE NOTIFICATION OF THE INTEREST RATE PER ANNUM FROM THE COUNTY AUDITOR PURSUANT TO SECTION 319.19 OF THE REVISED CODE, THE CLERK OF THE COURT OF COMMON PLEAS SHALL POST OR CAUSE TO BE POSTED NOTICE OF THAT INTEREST RATE PER ANNUM IN A CONSPICUOUS AND PUBLIC LOCATION IN OR NEAR THE OFFICE OF THE CLERK OF THE COURT IN THE COURTHOUSE OR BUILDING IN WHICH THE COURT OF COMMON PLEAS IS LOCATED. <A>

[A> SEC. 2323.57. IN ANY TORT ACTION TO WHICH SECTION 2323.55 OR 2323.56 OF THE REVISED CODE DOES NOT APPLY, IF A PLAINTIFF MAKES A GOOD FAITH CLAIM AGAINST A DEFENDANT FOR FUTURE DAMAGES, THE TRIER OF FACT SHALL RETURN A GENERAL VERDICT AND, IF THAT VERDICT IS IN FAVOR OF THE PLAINTIFF, ANSWERS TO INTERROGATORIES OR FINDINGS OF FACT THAT SPECIFY BOTH OF THE FOLLOWING: <A>

[A> (A) THE PAST DAMAGES RECOVERABLE BY THAT PLAINTIFF; <A>

[A> (B) THE FUTURE DAMAGES RECOVERABLE BY THAT PLAINTIFF. <A>

Sec. 2325.18. [A> (A) <A> An action to revive a judgment can only be brought within [D> twenty-one <D] [A> TEN <A] years from the time it became dormant, unless the party entitled to bring [D> such <D] [A> THAT <A] action, at the time the judgment became dormant, was within the age of minority, of unsound mind, or imprisoned, in which cases the action may be brought within [D> fifteen <D] [A> TEN <A] years after [D> such <D] [A> THE <A] disability is removed.

[A> (B) FOR THE PURPOSE OF CALCULATING INTEREST DUE ON A REVIVED JUDGMENT, INTEREST SHALL NOT ACCRUE AND SHALL NOT BE COMPUTED FROM THE DATE THE JUDGMENT BECAME DORMANT TO THE DATE THE JUDGMENT IS REVIVED. <A>

Sec. 5703.47. (A) As used in this section, "federal short-term rate" means the rate of the average market yield on outstanding marketable obligations of the United States with remaining periods to maturity of three years or less, as determined under section 1274 of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1274, for July of the current year.

(B) On the fifteenth day of October of each year, the tax commissioner shall determine the federal short-term rate. For purposes of any section of the Revised Code requiring interest to be computed at the rate per annum required by this section, the rate determined by the commissioner under this section, rounded to the nearest whole number per cent, plus three per cent shall be the interest rate per annum used in making the computation for interest that accrues during the following calendar year.

[A> (C) WITHIN TEN DAYS AFTER THE INTEREST RATE PER ANNUM IS DETERMINED UNDER THIS SECTION, THE TAX COMMISSIONER SHALL NOTIFY THE AUDITOR OF EACH COUNTY IN WRITING OF THAT RATE OF INTEREST. <A>

[\*2] Section 2. That existing sections 1343.03, 2325.18, and 5703.47 of the Revised Code are hereby repealed.

[\*3] Section 3. The interest rate provided for in division (A) of section 1343.03 of the Revised Code, as amended by this act, applies to actions pending on the effective date of this act. In the calculation of interest due under section 1343.03 of the Revised Code, in actions pending on the effective date of this act, the interest rate provided for in section 1343.03 of the Revised Code prior to the amendment of that section by this act shall apply up to the effective date of this act, and the interest rate provided for in section 1343.03 of the Revised Code as amended by this act shall apply on and after that effective date.