

BULLETIN 353

POST-JUDGMENT INTEREST

The Bureau has received many property and casualty form filings with post-judgment interest provisions that do not comply with Maine law. The purpose of this Bulletin is to advise insurers that in Maine, the payment of post-judgment interest is considered an independent legal obligation of the insurer, not a policy benefit. Therefore, the Bureau of Insurance will not approve policy forms purporting to make post-judgment interest subject to policy limits.

The Maine statute governing post-judgment interest is 14 M.R.S.A. § 1602-C, which provides, in relevant part, that post-judgment interest is allowed in all civil and small claims actions at either the contractual or statutory rate. Post-judgment interest accrues when judgment is entered and through any appeal.

Some insurers have argued that the Superintendent has no authority to require that policies delivered or issued for delivery in Maine treat post-judgment interest as a supplemental coverage, because Section 1602-C does not explicitly mention insurance. However, the Maine Supreme Judicial Court, sitting as the Law Court, has ruled that the amount of the insured loss is established at the time judgment is entered, and the insurer is responsible for all post-judgment interest that accrues on that amount.

In *Moholland v. Empire Fire and Marine Ins. Co.*, 2000 ME 26, 746 A.2d 362 (Me. 2000), the Law Court addressed whether post-judgment interest is an element of “compensatory damages.” If so, it would be subject to applicable policy limits, but the Court explained that post-judgment interest does not compensate for the underlying loss. It compensates for the delay in payment, and is not an element of damages for two reasons. First, it follows litigation and judgment, which has established the loss. Second, it is a means of ensuring that the defendant does not reduce the value of the judgment or erode the court’s authority to assess the judgment by delaying payment.

Therefore, the Law Court held in *Moholland* that an insurer must pay post-judgment interest without regard to the policy’s limits. Nothing in the decision limits its scope to any specific line of coverage. Insurers writing property and casualty policies in Maine should either expressly state that post-judgment interest is supplemental to policy limits or that their policies will pay such interest as provided by Maine law.

February 11, 2009

Mila Kofman
Superintendent of Insurance

NOTE: This bulletin is intended solely for informational purposes. It is not intended to set forth legal rights, duties or privileges nor is it intended to provide legal advice. Readers should consult applicable statutes and regulations and contact the Bureau of Insurance if additional information is needed.