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COLORADO LEGAL UPDATE

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### Court of Appeals Limits Lower Post-Judgment Interest Rate on Tort Appeals

January 17, 2013

On January 17, 2013, a unanimous Colorado Court of Appeals clarified a technical provision of the judgment interest on appeal statute, COLO. REV. STAT. § 13-21-101, which outlines rates for post-judgment interest in personal injury tort cases. This provision has significant impact on the loser of a tort trial.

Generally, the statute requires the trial court to add post-judgment interest to a jury's award of damages at a rate of nine percent per annum which, compounded annually. Under a statutory exception, if the judgment debtor appeals the money judgment, then the interest will be calculated at a market determined rate. Currently, that rate is 3% and represents a significant savings in post-trial costs over the prevailing statutory rate.

The Court addressed the applicability of this exception when the judgment *creditor*, rather than the judgment *debtor*, appeals the judgment. The judgment creditor in this case appealed from the trial court's grant of new trial after it had obtained a favorable judgment from jury, and sought to have the favorable judgment restored. Favorable judgment was restored and post-judgment interest at the statutory rate of nine percent was awarded.

Relying on the argument that an appeal of any kind by any party would trigger the lower market rate interest provision, Wal-Mart did not take up any cross-appeal of its own. When the Court of Appeals reinstated the plaintiff-favorable judgment, Wal-Mart argued that, because *someone* appealed the tort verdict, the statutory rate granted should have been the lower market rate of 3% pursuant to the rule's exception.

The court found that the exception does not apply because the language only refers to appeals taken by judgment debtors, and is silent as to appeals only taken by judgment *creditors*. Because Wal-Mart did not cross-appeal on its own, it lost the benefit of the lesser post-judgment interest provision.

In holding the exception only applies to judgment debtors, the Court clarified that excluding judgment creditors from §13-21-101 ensures that they properly receive the time value of their money judgments. Accordingly, if an appeal is brought by a judgment creditor, the post-judgment interest rate will not be reduced to the market rate unless a cross-appeal is brought by the judgment debtor. The lesson to be learned: if you've lost a tort trial and someone else appeals, save a lot of money by appealing as well.

The case is *Averyt v. Wal-Mart*, Colorado Court of Appeals Case No. 12CA0644, Opinion dated January 17, 2013. A full copy of the opinion [can be found here](#).