

Attorneys Fail to Collect Unpaid Interest

By **Laura Ernde**
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Attorneys who represent injured workers lost a bid Tuesday to recover decades of unpaid interest associated with their attorney fee awards.

The 2nd District Court of Appeal ruled that six class action lawsuits filed by workers' compensation attorneys in pursuit of those interest payments had been properly dismissed by a Los Angeles County Superior Court judge.

But the lawyers have not given up hope of receiving the unpaid interest, one of the lead plaintiffs said.

"We don't see this as a defeat," said Kenton Koszdin of Van Nuys. "We're not deterred and it's not over."

The defendants in the case — the State Compensation Insurance Fund, along with five workers' compensation insurance carriers — routinely pay interest to injured workers who win awards.

But for decades, the defendants failed to pay interest to the attorneys who represent injured workers, the lawsuits claim. Although the amount of interest in any one

case is small, the cumulative effect is substantial. An exact figure has not been calculated.

Los Angeles County Superior Court Judge Carl West dismissed the cases in December 2008, finding the court lacked subject matter jurisdiction over the claims because the Workers' Compensation Appeals Board never ordered payment of interest on attorney fees.

The appellate court agreed in a published opinion Tuesday. *Koszdin v. State Compensation Insurance Fund*, 2010 DJDAR 10451.

Justice Laurie D. Zelon acknowledged that the attorneys are entitled to seek interest on their attorney fee awards, but said the superior court doesn't have the power to intervene.

"If the superior court were to enter a judgment for interest that appears nowhere in the WCAB awards, as appellants are seeking through these civil suits, the court would be exceeding the express jurisdictional limitations set forth in the Workers' Compensation Act," Zelon wrote, Justices Dennis M. Perluss and Frank Y. Jackson concurring.

Zelon suggested that the attorneys seek a legislative remedy

instead.

Koszdin's attorney, Nick Kazandjieff of Kazandjieff & Traney in Sherman Oaks, said the ruling came as a surprise to him since interest is automatically included in the board's attorney fee award under Labor Code section 5800.

Jeffrey I. Ehrlich of The Ehrlich Law Firm in Claremont, who was brought into the case for the appeal, said the plaintiffs are considering asking the California Supreme Court to review Tuesday's decision.

David M. Axelrad of Horvitz & Levy in Encino represented the defendants on appeal. He was out of the country and unavailable for comment Tuesday.

Partner Barry Levy said the firm didn't have permission to talk about the case yet from all six clients, "but I can assure you everyone is happy and pleased."

As evidence of the potentially large amount of money at stake, the defendants hired a slew of lawyers to help fend off the class action. The firms included Shepard, Mullin, Richter & Hampton, DLA Piper and Sedgwick, Detert, Moran & Arnold.

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