



Recovery of Interest Charges

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INTRODUCTION



- Why personal injury claimants often must borrow money
- The law on recovery of interest charges (see comprehensive paper by John Rossos)
- What to do to increase the prospect of recovery of interest charges

WHY INCUR INTEREST CHARGES

- Personal injury claimants are unfortunately often forced into borrowing money to:
 - Cover necessary treatment expenses
 - Cover living expenses (in the face of lost income)
 - Cover disbursements where their lawyer is not
- Changes and reductions in available accident benefits and the deterioration in the availability of credit have substantially increased the need for borrowing from non-traditional sources
- The 'duty to mitigate' encourages claimants to consider all solutions

THE LAW ON RECOVERY OF INTEREST CHARGES



- Case law supports the following:
 - Where a client (rather than the lawyer) pays for disbursements and incurs interest, the client can successfully recovery their interest charges
 - Where a benefit is wrongly denied, interest is recoverable in the accident benefit context from the date of denial onward even where the expense wasn't incurred
- The case law does not directly address the recovery of interest charges to cover treatment

STRATEGIES TO MAXIMIZE RECOVERY OF INTEREST



- Reasonable and Necessary Expenses-borrowed funds should be used to cover only reasonable and necessary expenses
- Notify Defendants-before borrowing funds, notify defence counsel:
 - The reasons why the client needs to borrow funds
 - Supporting evidence demonstrating the need and cost
 - The magnitude of the funds required and how the funds would be used
 - The anticipated interest charges that will be incurred
 - Propose they make an advance payment instead of accepting the loan
- Disclosure—send the final loan documents to defence counsel
- Spending—document how the loan was in fact used

TREATMENT FINANCING



- BridgePoint has established treatment financing programmes that allow counsel to leverage third party financing by putting an insurer on notice that if it fails to pay for the treatment related expense it will pay for any financing costs incurred from its denial: – the programme works as follows:
 1. Assessment is prepared justifying the expenditure;
 2. A plan or budget is prepared to establish the cost of the treatment plan;
 3. A term sheet is provided to demonstrate the pre-approval of financing and the cost over different time intervals;
 4. The financing is structured such that funds are tied to the treatment related expenditure and not commingled or used for other personal needs
- Anecdotally, personal injury counsel has advised that this strategy has often led to a more expedited process for resolving claims and the higher exposure for interest expense has resulted in more favourable outcomes

CONCLUSION

- Interest Charges will likely be recoverable where steps are taken to notify defence counsel of the potential claim and where the funds are clearly needed

Thank You

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