

Tender of Written Settlement Offer Prerequisite for Recovering Prejudgment Interest

In *Gregory and Appel Insurance Agency v. Philadelphia Indemnity Insurance Co.*, 835 N.E. 2d 1053 (Ind. App. Ct. 2005), the Indiana Court of Appeals reaffirmed that Indiana's Prejudgment Interest Act abrogated common law principals authorizing an award of prejudgment interests in tort cases even where property damages are readily ascertainable. Philadelphia Insurance won a verdict against Gregory & Appel in excess of 2 million dollars and the trial court awarded prejudgment interest at 8% based on common law. Gregory & Appel argued that Philadelphia Insurance was not entitled to prejudgment interest because the company had not made a written settlement offer in accordance with the Prejudgment Interest Act. In response, Philadelphia Insurance argued that the Prejudgment Interest Act did not abrogate common law but rather provided a supplemental basis for awarding prejudgment interest to the prevailing party. The Court of Appeals rejected this argument, holding that the prejudgment interest statute "covers the entire subject of the conditions for awarding prejudgment interest in tort cases and is clearly designed as a substitute for the common law." Thus, the award of prejudgment interest was reversed.