

The Colorado Court of Appeals determined in *Safeco Insurance Company v. Westport Insurance Corporation*, --- P.3d ----, 2009 WL 1956718 (Colo.App.) an award of prejudgment interest is statutorily mandatory where money is wrongfully withheld.

Safeco paid its insured personal injury protection (PIP) benefits under the now repealed Colorado No-Fault Act and subsequently sought equitable contribution against Westport Insurance Corporation and Horace Mann Insurance Company. Safeco sought equitable contribution from these insurers because their insureds were also involved in a 2001 multi-vehicle car accident. While the remaining insurers were previously ordered to reimburse Safeco one-third each for the amount paid by Safeco, the remaining insurers argued they were required to pay pre-judgment interest under section 10-4-707(3) of the now repealed No-Fault Act.

While C.R.S. 5-12-102 does not define wrongful withholding the court determined a wrongful withholding occurred based on the Colorado legislature's intent to compensate an injured party for the time value of money. Contribution prevents unjust enrichment and an award of prejudgment interest is necessary to avoid unjust enrichment. Thus, an award of prejudgment interest is well-suited to cases brought in equity insofar as it deters further wrongful delay of payment.

The court's opinion further defines the principle of wrongful withholding in cases brought in equity. It also clarifies that an award of prejudgment interest in equitable action is not a decision to be made at the trial court's discretion. Under Colorado statutory law, an award of prejudgment interest is mandatory in such instances.

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