

## U.S. Court of Federal Claims Awards Federal Judges Back Pay, With Interest

Four years, eight judicial opinions, and a trip to the Supreme Court later, the CFC—on remand from the Federal Circuit’s decision finding liability—has finally ruled on what back pay the federal judges can recover. *Beer v. United States*, No. 09-37C, is one of several cases brought by federal judges seeking back pay under Article III of the Constitution for cost-of-living adjustments required by Article III and the Ethics Reform Act of 1989. The Ethics Reform Act severely restricted what income federal judges could earn from outside sources, such as speaking honoraria. But the Act also provided that federal judges would also receive a cost-of-living adjustment, commonly known as a COLA, every time regular federal employees received an adjustment. Yet Congress later denied funding for the judges’ COLA, not once, not twice, but six times—in 1995, 1996, 1997, 1999, 2007, and 2010. The six judges in *Beer* first filed suit in 2009.

The holding in *Beer* established that although judges can recover interest on COLAs blocked in the 1990s, when Congress affirmatively passed legislation barring the payments, they cannot for 2007 and 2010, when Congress simply did not authorize COLAs. In addition, the award of back pay does not need to be reduced to reflect higher insurance premiums for judges that participated in a federal insurance program (the premiums vary with the employee’s salary). The insurance was term insurance, and deducting the difference in premiums would be charging the judges for something they never received. Finally, the interest on the back-pay award must be calculated based on the before-tax amount of pay wrongfully withheld. After all, under IRS regs, the judges will have to pay income tax on the damages award in the year they receive it.

This case illustrates that the Just Compensation clause of the Fifth Amendment is not the only money-mandating provision of the Constitution over which the Court of Federal Claims has jurisdiction. Article III of the Constitution provides that federal judges will receive “for their Services a Compensation which shall not be diminished during their Continuance in Office.”

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