

Appellate Strategy Lessons From Pa. Excess Coverage Ruling

By **Lorelie Masters and Alice Weeks** (April 6, 2026, 1:00 PM EDT)

In a Jan. 21 **opinion** addressing cross-motions for summary judgment, the Court of Common Pleas of Allegheny County, Pennsylvania, set forth a clear holding that policyholders may recover postjudgment interest under excess liability insurance policies only when the policy language expressly says so — and only when the stated conditions are met.

The decision in *Federal Express Corp. v. National Union Fire Insurance Co. of Pittsburgh, Pa.*, underscores the importance for policyholders to thoroughly examine the defense and payment provisions outlined in their insurance policies. As the holding in this case provides, that issue applies not just to "first-dollar" insurance policies, but also to those "up the stack."

A big loss can lead to an unexpectedly big number for postjudgment interest — and prejudgment interest too.

The coverage dispute arose from an incident that occurred in 2011 when an automobile accident involving a FedEx driver resulted in a \$165 million verdict against FedEx. The judgment was later affirmed on appeal. FedEx sued its excess insurers for their refusal to pay the more than \$200 million in postjudgment interest that accrued during FedEx's appeal.

The court reviewed the National Union policy and determined that the policy provisions regarding the payment of interest are unambiguous and must be enforced as written. National Union's excess policy, whose terms were largely followed by the Great American and Liberty Mutual excess policies, identified two specific scenarios in which interest obligations could arise beyond limits:

- When the insurer assumes the defense of a suit against the insured, activating supplementary payment obligations; and
- When the insured does not appeal a judgment in excess of the retained limits, but the insurance company elects to do so, in which case the insurer may become liable for court costs, expenses and interest associated with that appeal.

The court found that, because neither scenario occurred here, neither condition was satisfied. FedEx, not the insurers, appealed the underlying judgment, and none of the insurers ever assumed the defense. The court agreed with the insurers that their payment obligations as they relate to the postjudgment interest under the policies' defense provisions and appeals clause did not apply.

FedEx argued that the insuring agreement, which obligated the insurer to pay sums the insured became legally obligated to pay as damages, should encompass interest.

The court rejected that argument, concluding under the policy language at issue that the insuring agreement was expressly subject to the policy's definition of "loss." "Loss" was limited to amounts paid as judgments or settlements and, only in narrow circumstances, defense expenses if specifically



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designated in the retained limits. Because the applicable retained limits did not include defense expenses, interest could not be recharacterized as covered damages.

In reaching its conclusions, the court emphasized that the "'polestar' in interpreting an insurance policy 'is the language of the insurance policy itself.'" The court's conclusions on how the excess insurance policy language at issue should apply underscore the importance of reviewing policy provisions at the time of purchase to ensure that pre- and postjudgment interest — which can be considerable — is covered.

The court also addressed FedEx's argument that National Union breached the policy by failing to pay promptly, thereby allowing additional interest to accrue. The policy required payment promptly once the amount of loss was determined. Payment within seven days, the court held, satisfied that obligation as a matter of law. Notably, the court observed that the outcome might have differed had the policy required payment immediately.

In an interesting turn, however, despite holding that National Union did not breach the insurance policy, the court declined to dismiss FedEx's promissory estoppel and statutory bad faith claims against National Union. The court reasoned that those claims focused on alleged deficiencies in National Union's handling of the claims, including communications and conduct during settlement discussions and the appellate process.

The court's holding reaffirmed that statutory bad faith under Title 42 of the Pennsylvania Consolidated Statutes Annotated, Section 8371, is not limited to coverage denials. Because the record at issue reflected disputed issues of material fact regarding National Union's conduct, both claims were left for resolution at trial, serving as a good reminder that there are rare instances where a bad faith case survives even if the policyholder may have lost the coverage argument.

This decision carries significance well beyond the interest dispute at issue. For policyholders facing large verdicts, postjudgment interest can grow rapidly during lengthy appeals, and this ruling makes clear that excess coverage with unambiguous provisions will be applied as written. This underscores the importance of reviewing all policies prior to making appeal decisions.

From a practical standpoint, the decision highlights the importance of the appeal stage. Who controls the appeal, and who formally elects to pursue it, may be the determining factor in whether there is coverage for postjudgment interest. Policyholders appealing due to business considerations should be aware that doing so may result in large amounts of uninsured postjudgment interest and should review their insurance policies carefully.

The case also highlights the need for careful policy review at placement and renewal, not just after a loss. Supplementary payments provisions, defense-assumption clauses and appeal language are often treated as boilerplate, particularly in excess layers. That does not mean they should remain so.

Policyholders should evaluate what changes can be proposed to these provisions. Where excess policies are silent or restrictive, policyholders can seek to negotiate clearer interest language or endorsements addressing appellate interest specifically. Even modest wording changes can have significant effects in high-value cases.

Policyholders should also consider whether alternative risk-transfer mechanisms, such as structured settlements, appeal bonds or negotiated tolling agreements with insurers, may help manage interest exposure during appeals. Ultimately, this case reinforces that appellate strategy and insurance strategy cannot always operate separately from each other; there are scenarios where both must be evaluated together to avoid unintended gaps in coverage.

Finally, the ruling serves as a reminder that interest rate exposure is not merely ancillary; it can rival or exceed policy limits. For policyholders with significant verdict risk, early coordination with insurers around control of the defense, settlement posture and appellate strategy may be just as critical as considering the merits of the underlying dispute.

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