



Legal Opinion (LO) No.:	2022-13
Date:	26 April 2022

MS. MARTHA JASMINE BARTILAD

mdbartilad@up.edu.ph

SUBJECT: Query on Applicable Interest Rates in Relation to Sections 249 and 250 of the Insurance Code, as amended

Dear Ms. Bartilad:

This pertains to your email inquiring as to the applicability of interest rate/s in relation to **Section 249** and **250** of the **Insurance Code, as amended**. In the said email, the query can simply be summarized as: *"What is the applicable interest rate in case of refusal to pay by the insurer of the loss or damage within the prescribed period as reflected in Section 249 of the Insurance Code, as amended?"*

The query pertains to Sections 249 and 250 of the Insurance Code, as amended, particularly the last sentence, which states that:

"Section 249. The amount of any loss or damage for which an insurer may be liable, under any policy other than life insurance policy, shall be paid within thirty (30) days after proof of loss is received by the insurer and ascertainment of the loss or damage is made either by agreement between the insured and the insurer or by arbitration; but if such ascertainment is not had or made within sixty (60) days after such receipt by the insurer of the proof of loss, then the loss or damage shall be paid within ninety (90) days after such receipt. Refusal or failure to pay the loss or damage within the time prescribed herein will entitle the assured to collect interest on the proceeds of the policy for the duration of the delay at the rate of twice the ceiling prescribed by the Monetary Board, unless such failure or refusal to pay is based on the ground that the claim is fraudulent.

Section 250. In case of any litigation for the enforcement of any policy or contract of insurance, it shall be the duty of the Commissioner or the Court, as the case may be, to make a finding as to whether the payment of the claim of the insured has been unreasonably denied or withheld; and in the affirmative case, the insurance company shall be adjudged to pay damages which shall consist of attorney's fees and other expenses incurred by the insured person by reason of such unreasonable denial or withholding of payment plus interest of twice the ceiling prescribed by the Monetary Board of the amount of the claim due the insured, from the date following the time prescribed in Section 248 or in Section 249, as the case may be, until the claim is fully satisfied: Provided, That failure to pay any such claim within the time prescribed in said sections shall be considered prima facie evidence of unreasonable delay in payment."

At the outset, Section 249 presupposes a situation wherein an insurer refused or failed to pay a valid claim either within the prescribed thirty or ninety day period, as the case may be. Considering that the said section refers to the "...ceiling prescribed by the Monetary Board," please note that the ceiling prescribed by the Bangko Sentral ng Pilipinas (BSP) Monetary Board is what is commonly referred to as the legal rate or legal interest. Such pronouncement defining the legal rate can be found in its circulars issued addressing the same. Relevant to this are **Central Bank Circular No. 416 s. 1974**, and with the most recent, **BSP Memorandum Circular No. 799, s. 2013**¹.

Central Bank Circular No. 416, which took effect on 29 July 1974, states that:

"By virtue of the authority granted to it under Section 1 of Act No. 2655, as amended, otherwise known as the "Usury Law", the Monetary Board, in its Resolution No. 1622 dated July 29, 1974, has prescribed that the rate of interest for the loan or forbearance of any money, goods or credits and the rate allowed in judgments, in the absence of express contract as to such rate of interest, shall be twelve per cent (12%) per annum."

Whereas, the more recent **BSP Memorandum Circular No. 799**, which took effect on 01 July 2013, states that:

"Section 1. The rate of interest for the loan or forbearance of any money, goods or credits and the rate allowed in judgments, in the absence of an express contract as to such rate of interest, shall be six percent (6%) per annum.
x x x"

¹ <https://www.bsp.gov.ph/SitePages/Regulations/RegulationDisp.aspx?ItemId=3072>

The issue as to the application of which interest rate has been the subject of a number of cases considering the variance of rates to be applied. However, it must first be noted that there are primarily two kinds of interests imposed on a given obligation. In the case of **Sebastian Siga-an v Alicia Vilanueva**², these two kinds are differentiated:

“Interest is a compensation fixed by the parties for the use or forbearance of money. This is referred to as **monetary interest**. Interest may also be imposed by law or by courts as penalty or indemnity for damages. This is called **compensatory interest**. The right to interest arises only by virtue of a contract or by virtue of damages for delay or failure to pay the principal loan on which interest is demanded.”

As a brief background, the wealth of our jurisprudence has tried to harmonized and simplify the varying rulings on applicable interest rates, particularly, the landmark case of **Eastern Shipping Lines, Inc. v Hon. Court of Appeals and Mercantile Insurance Company, Inc.**³ which discussed the issue extensively. In the said case, the Supreme Court explained that:

“x x x

II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:

1. When the obligation is breached, and it consists in the payment of a sum of money, i.e., a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, **the rate of interest shall be 12% per annum** to be computed from default, i.e., from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.
2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the

² G.R. 173227; January 20, 2009; retrieved: https://lawphil.net/judjuris/juri2009/jan2009/gr_173227_2009.html

³ G.R. 97412; 12 July 1994; retrieved: https://lawphil.net/judjuris/juri1994/jul1994/gr_97412_1994.html

court at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code) but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.

3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 12% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.

x x x" (Emphases and underscoring supplied)

With the issuance of BSP Memorandum Circular No. 799 on 01 July 2013, the legal interest of twelve percent (12%) was effectively reduced to six percent (6%). The Court noted the same in a subsequent ruling in **Dario Nacar vs. Gallery Frames and/or Felipe Bordey, Jr.**⁴, where it was explained that, to quote:

"x x x

Thus, from the foregoing, in the absence of an express stipulation as to the rate of interest that would govern the parties, the rate of legal interest for loans or forbearance of any money, goods or credits and the rate allowed in judgments shall no longer be twelve percent (12%) per annum.

x x x

It should be noted, nonetheless, that the new rate could only be applied prospectively and not retroactively. Consequently, the twelve percent

⁴ G.R. No. 189871; 13 August 2013; retrieved: https://lawphil.net/judjuris/juri2013/aug2013/gr_189871_2013.html

(12%) per annum legal interest shall apply only until June 30, 2013. Come July 1, 2013 the new rate of six percent (6%) per annum shall be the prevailing rate of interest when applicable.

To recapitulate and for future guidance, the guidelines laid down in the case of Eastern Shipping Lines are accordingly modified to embody BSP-MB Circular No. 799, as follows:

x x x

II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:

1. When the obligation is breached, and it consists in the payment of a sum of money, i.e., a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, **the rate of interest shall be 6% per annum** to be computed from default, i.e., from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.
2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court **at the rate of 6% per annum**. No interest, however, shall be adjudged on unliquidated claims or damages, except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extra judicially (Art. 1169, Civil Code), but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.

3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 6% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.

x x x” (Emphases and underscoring supplied)

In the case of **Stronghold Insurance vs. Pamana Island Resort Hotel and Marina Club, Inc.**,⁵ also confirmed the pronouncement in the earlier *Nacar vs. Gallery Homes* case. The Supreme Court cited that:

“x x x ... given the provisions of the Insurance Code, which is a special law, the applicable rate of interest shall be that imposed in a loan or forbearance of money as imposed by the Bangko Sentral ng Pilipinas (BSP), even irrespective of the nature of Stronghold's liability. In the past years, this rate was at 12% per annum. However, in light of Circular No. 799 issued by the BSP on June 21, 2013 decreasing interest on loans or forbearance of money, the CA's declared rate of 12% per annum shall be reduced to 6% per annum from the time of the circular's effectivity on July 1, 2013. The Court explained in *Nacar v. Gallery Frames* that the new rate imposed under the circular could only be applied prospectively, and not retroactively. x x x”

Thus, based on the above cases, the applicable interest rate, whether by way of legal interest in the absence of stipulation or by way compensatory interest, is uniformly pegged at six percent (6%) per annum. Consequently, under Section 249 of the Insurance Code, as amended, the last sentence refers to payment of interest “...*for the duration of delay*” due to insurer's refusal or failure to pay the proceeds within the time allowed for, hence, such interest effectively takes in the form of a compensatory interest. With the interest rate fixed at six percent (6%), and Section 249 of the Insurance Code, as amended, prescribes “...twice the ceiling prescribed by the Monetary Board.” therefore, the current applicable interest rate for the delay of payment of the proceeds of the policy is **Twelve Percent (12%) per annum**.

Notwithstanding the fact that the discussions of applicable interest rates in this legal opinion mainly relates to non-life insurance and the appropriate provisions of Section 249, the same would also find application to life insurance and its appropriate provision in Section 248, particularly with regard to “...*Refusal or failure to pay the claim within*

⁵ G.R. No. 174838; 27 July 2016; Retrieved: https://www.lawphil.net/judjuris/juri2016/jun2016/pdf/gr_174838_2016.pdf

the time prescribed herein will entitle the beneficiary to collect interest on the proceeds of the policy for the duration of the delay at the rate of twice the ceiling prescribed by the Monetary Board, unless such failure or refusal to pay is based on the ground that the claim is fraudulent. The applicable interest rate for such refusal or failure to pay is also at **Twelve Percent (12%) per annum.**

Moreover, pursuant to Section 250 of the Insurance Code, as amended, upon finding by the Insurance Commissioner that the payment of the claim of the insured has been unreasonably denied or withheld, the insurance company shall be adjudged to pay damages plus interest of twice the ceiling prescribed by the Monetary Board of the amount of the claim due the insured. Therefore, the current applicable interest rate for the adjudged unreasonable denial or withholding of payment is also at **Twelve Percent (12%) per annum.**

Kindly note that the legal interest prescribed by the BSP Monetary Board is to be applied prospectively, as explained in the above cited cases. That being said, in view of the Central Bank Circular No. 416, setting then the legal interest rate at twelve percent (12%) for the period covering 29 July 1974 up to 30 June 2013, taken together with the provisions of Section 248, 249, and 250 of the Insurance Code, as amended, the applicable interest rate then is **Twenty-Four Percent (24%) per annum.** On the other hand, for the period covering 01 July 2013 up to present, pursuant to the six percent (6%) legal interest prescribed by BSP Memorandum Circular No. 799, vis-à-vis Sections 248, 249, and 250 of the Insurance Code, as amended, the current applicable rate is now at Twelve Percent (12%) per annum.

Please note that the above opinion rendered by this Commission is based solely on the particular facts disclosed in the query and relevant solely to the particular issues raised therein and shall not be used, in any manner, in the nature of a standing rule binding upon the Commission in other cases whether for similar or dissimilar circumstances.

For your information and guidance.

Thank you.

Very truly yours,



DENNIS B. FUNA
Insurance Commissioner

