Interest Accrual on Attorney's Fee Awards

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I. INTRODUCTION

In 1984, MidAmerica Federal Savings & Loan Association sued Shearson/American Express, Inc. for violations of the Oklahoma Securities Act and breach of fiduciary duty in connection with MidAmerica's purchase of fifty million dollars in investment trusts from Shearson.[1] MidAmerica prevailed, and on July 23, 1986, the district court entered judgment for MidAmerica and granted it the right to recover attorney's fees.[2] On April 22, 1991, the court set MidAmerica's attorney's fee award at $512,197.15.[3] Following the April 22, 1991 judgment, MidAmerica and Shearson disputed the proper date to begin interest accrual on the attorney's fee award[4] under 28 U.S.C. § 1961(a),[5] the federal interest statute: the July 23, 1986 merits judgment or the April 22, 1991 attorney's fee judgment.[6]

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1. MidAmerica Fed. Sav. & Loan Ass'n v. Shearson/Am. Express, Inc., 962 F.2d 1470, 1471 (10th Cir. 1992).
2. *Id.* at 1471-72.
3. *Id.* at 1472.
4. *Id.*
5. 28 U.S.C. § 1961(a) (2000).
6. *MidAmerica*, 962 F.2d at 1472.

Attorney's fee disputes, such as MidAmerica's and Shearson's, usually include two judgments.[7] The first judgment, i.e., July 23, 1986, is the "merits judgment."[8] At the merits judgment (also known as the judgment on the jury verdict),[9] the court enters judgment for the prevailing party and grants the prevailing party the right to recover attorney's fees.[10] The second judgment, i.e., April 22, 1991, follows a separate hearing by the court to determine the specific amount or quantum of attorney's fees to award.[11] It is called the "exact quantum judgment," because this judgment determines the amount of attorney's fees to be awarded.[12]

The United States Courts of Appeals are split on whether interest accrual under § 1961(a) begins on the date of the merits judgment or the exact quantum judgment.[13] The split of authority results from the fact that § 1961(a) does not distinguish between the two judgments in attorney's fee cases.[14] The interest statute, § 1961(a), provides that interest accrual begins on "the date of . . . judgment."[15] The Fifth, Sixth, Eighth, Ninth, Eleventh, and Federal

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7. *See* Bundinich v. Becton Dickinson & Co., 486 U.S. 196, 202 (1988) (regarding the separation of a merits judgment from a money judgment); Vargas v. Hudson County Bd. of Elections, 949 F.2d 665, 669 (3d Cir. 1991) (agreeing with the proposition that two separate judgments exist in such cases).

8. *MidAmerica*, 962 F.2d at 1462.

9. *See* Associated Gen. Contractors of Ohio, Inc. v. Drabik, 250 F.3d 482, 494 (6th Cir. 2001) ("We believe that Congress used the term 'money judgment' in its commonly understood sense of the judgment on a verdict.").

10. *E.g.*, Eaves v. County of Cape May, 239 F.3d 527, 528 (3d Cir. 2001) (stating that "the District Court entered judgment on the jury verdict . . . together with attorney's fees . . . to be determined").

11. *MidAmerica*, 962 F.2d at 1472.

12. *See Drabik*, 250 F.3d at 485 (construing "any money judgment" as including a judgment awarding attorney's fees).

13. *Compare Drabik*, 250 F.3d at 495 (6th Cir.) (holding that interest accrual on attorney's fee awards under § 1961(a) begins on the date of the merits judgment), *and* Copper Liquor, Inc. v. Adolph Coors Co., 701 F.2d 542, 543 (5th Cir. 1983) (same), *and* Jenkins v. Missouri, 931 F.2d 1273, 1275-77 (8th Cir. 1991) (same), *and* Friend v. Kolodieczak, 72 F.3d 1386, 1391-92 (9th Cir. 1995) (same), *and* BankAtlantic v. Blythe Eastman Paine Webber, Inc. 12 F.3d 1045, 1052-53 (11th Cir. 1994) (same), *and* Mathis v. Spears, 857 F.2d 749, 759-60 (Fed. Cir. 1988) (same), *with Eaves,* 239 F.3d at 542 (3rd Cir.) (holding that interest accrual on attorney's fee awards under § 1961(a) begins on the date of the exact quantum judgment), *and MidAmerica*, 962 F.2d at 1475-77 (10th Cir.) (same), *and* Fleming v. County of Cane, 898 F.2d 553, 565 (7th Cir. 1990) (same).

14. *See* 28 U.S.C. § 1961(a) (providing only that "interest shall be calculated from the date of the entry of the judgment").

15. *Id.*

Circuit Courts of Appeals have held that interest accrual under § 1961(a) begins on the date of the merits judgment.[16] The merits judgment circuits have reasoned that § 1961(a) compensates prevailing parties for delays in payment of damage awards from the date the prevailing party becomes fully entitled to its damage award.[17] Furthermore, because the prevailing party becomes entitled to its attorney's fee award on the date of the merits judgment, the prevailing party is entitled to interest under § 1961(a) from the date of the merits judgment.[18] Under the merits judgment approach, MidAmerica would be entitled to approximately $200,000 in interest—at the then-prevailing rate of approximately 7%—for the delay in payment between the merits judgment and the exact quantum judgment.[19]

The Third, Seventh, and Tenth Circuit Courts of Appeals, conversely, have held that interest accrual under § 1961(a) begins on the date of the exact quantum judgment.[20] The exact quantum judgment circuits have reasoned that the term "judgment" in § 1961(a) is short for "money judgment."[21] Furthermore, because the exact quantum judgment is the judgment for a specific amount of money (in attorney's fee cases), interest accrual under § 1961(a) begins on the date of the exact quantum judgment.[22] Under the exact quantum judgment approach, MidAmerica would not have been entitled to collect the $200,000 in interest that accrued between the merits and exact quantum judgments.[23]

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16. *See* cases cited *supra* note 13.

17. *See, e.g.*, *Drabik*, 250 F.3d at 495 (discussing policy arguments for awarding interest from the date the prevailing party becomes entitled to such fees).

18. *Id.*

19. *See MidAmerica*, 962 F.2d at 1472. The 7% prevailing interest rate provided offers a rough average of the prevailing interest rates between the July 23, 1986 merits judgment and the April 22, 1991 exact quantum judgment. *See* 28 U.S.C. § 1961(a) note (2000) (52-Week T-Bill Rate Table of Changes). The $200,000 interest award offers a rough estimate, determined by calculating 7% interest (compounded annually) on the $512,197.15 fee award over the period between the merits judgment and exact quantum judgment.

20. *See* cases cited *supra* note 13.

21. *See, e.g.*, *Eaves*, 239 F.3d at 532 (analyzing text of § 1961(a) and controlling case law to determine that "judgment" means "money judgment").

22. *See id.* at 534-35 (holding that "the judgment at issue [must] award a fixed amount of fees to the prevailing party in order to trigger the past-judgment interest period").

23. *See MidAmerica*, 962 F.2d at 1472 (reciting the date of MidAmerica's judgment on the merits and the date of awarding the actual attorney's fee).

This Article argues that the date of the merits judgment is the correct date to begin interest accrual on attorney's fee awards under § 1961(a). Part II introduces § 1961(a), provides the statutory language relevant to the interest accrual dispute, and discusses the United States Supreme Court's interpretation of § 1961(a). Part III defines the merits judgment and exact quantum judgment approaches to the interest accrual dispute.

Part IV argues that the merits judgment approach provides the correct solution to the interest accrual dispute, because the merits judgment approach remains consistent with the statutory language of § 1961(a), advances the legislative intent behind § 1961(a), and is supported by public policy. The statutory language of § 1961(a) forces the losing party (in civil suits) to pay interest to the prevailing party for delays in payment of the prevailing party's damage award from the date of the judgment entitling the prevailing party to its award.[24] The merits judgment approach is consistent with this requirement, because the merits judgment is the judgment entitling the prevailing party to its fee award in attorney's fee cases.[25] The legislative intent behind § 1961(a) was that § 1961(a) be the exclusive means of compensating prevailing parties for delays in payment of damage awards.[26] The merits judgment approach advances this intention by compensating prevailing parties with interest payments for the delay in payment between the merits judgment and the exact quantum judgment in attorney's fee cases.[27] The exact quantum judgment approach, conversely, violates legislative intent by compensating prevailing parties through

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24. 28 U.S.C. § 1961(a) (2000).

25. *See* Copper Liquor, Inc. v. Adolph Coors Co., 701 F.2d 542, 544-45 (5th Cir. 1983) (providing that the prevailing party becomes fully entitled to its fees when the court recognizes or grants the prevailing party the right to recover attorney's fees, which occurs on the date of the merits judgment in attorney's fee cases).

26. *See* S. REP. NO. 97-275, at 11 (1982), *reprinted in* 1982 U.S.C.C.A.N. 11, 11. Congress's intent is implicit in its stated purpose of eliminating variances between the United States federal district courts in the interest rates applied to damage awards. Congress accomplished this purpose by establishing a uniform interest rate under § 1961(a) and providing that interest payments under § 1961(a) be the exclusive form of compensation to prevailing parties for delays in payment of their damage awards.

27. *See Copper Liquor*, 701 F.2d at 544-45 (arguing that this approach "would better serve the purpose of awarding these expenses [attorney's fees and costs] to the prevailing party since it would more nearly compensate the victor" for litigation expenses).

payments other than interest payments under § 1961(a) (alternative compensation is necessary because, with this approach, interest payments under § 1961(a) are prohibited until the exact quantum judgment).[28] Public policy arguments also support the merits judgment approach. Requiring the losing party to pay interest from the date of the merits judgment deters the losing party from delaying the exact quantum judgment to avoid paying the fee award, to secure additional time to freely use the money owed or collect interest on it, or to hassle the losing party.[29]

II. BACKGROUND

A. Introduction to § 1961(a)

The interest statute, 28 U.S.C. § 1961(a), requires the losing party in suits decided in United States federal district courts to pay the prevailing party interest on damage awards from the date of judgment until the debt is satisfied.[30] Congress's purposes for requiring such payments were twofold.[31] First, interest payments compensate the prevailing party for the economic injury the prevailing party suffers as a result of delays in payment of its damage award; i.e., the damage award is worth less if paid in the future than if paid immediately upon judgment.[32] Second, interest payments deter the losing party from filing unnecessary appeals to avoid payment of the damages owed or to delay payment and collect interest on the prevailing party's fee award.[33]

The text of § 1961(a) provides in part:

> Interest shall be allowed on any money judgment in a civil case recovered in a district court. Execution

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28. *See* Eaves v. County of Cape May, 239 F.3d 527, 541-42 (3d Cir. 2001) (discussing the limitations imposed by § 1961(a) on money judgments contrasted with alternative methods of calculating interest on delayed payments).

29. *See* Jenkins v. Missouri, 931 F.2d 1273, 1276-77 (8th Cir. 1991) (providing four public-policy arguments in support of the merits judgment approach to interest accrual that are briefly summarized here).

30. 28 U.S.C. § 1961(a).

31. S. REP. NO. 97-275, at 11, *reprinted in* 1982 U.S.C.C.A.N. at 11.

32. *Id.*

33. *Id.*

> therefor may be levied by the marshal, in any case where, by the law of the State in which such court is held, execution may be levied for interest on judgments recovered in the courts of the State. Such interest shall be calculated from the date of the entry of the judgment, at a rate equal to the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding the date of the judgment.[34]

The language of § 1961(a) requiring the losing party to make interest payments includes two distinct parts.[35] The first clause, "[i]nterest shall be paid on any money judgment . . . recovered in a district court," establishes recovery of a "money judgment" as the precondition to the right to collect interest under § 1961(a).[36] The second clause, "[s]uch interest shall be collected from the date of . . . judgment," sets "the date of . . . judgment" as the trigger date for interest accrual on damage awards.[37] The remaining element of § 1961(a) provides that the interest rate shall be set at the fifty-two week average of the Treasury yield, which historically ranges between 3.5% and 6%.[38] Congress tied the interest rate under § 1961(a) to the fifty-two week average of the United States Treasury yield to establish a uniform interest rate applicable to all damage awards recovered in United States federal district courts.[39] Congress established a uniform interest rate to prevent variances in interest rates between federal district courts.[40]

B. United States Supreme Court's Interpretation of § 1961(a)

In *Kaiser Aluminum & Chemical Corp. v. Bonjorno*,[41] the United States Supreme Court interpreted § 1961(a) in a context

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34. 28 U.S.C. § 1961(a).
35. *See id.*
36. *Id.*
37. *Id.*
38. 28 U.S.C. § 1961(a) note (2000) (52-Week T-Bill Rate Table of Changes).
39. S. REP. NO. 97-275, at 11 (1982), *reprinted in* 1982 U.S.C.C.A.N. 11, 11.
40. *Id.*
41. 494 U.S. 827 (1990).

unrelated to the interest accrual dispute.[42] Bonjorno, a small aluminum pipe production company, sued Kaiser Aluminum under the Sherman Antitrust Act for monopolizing the aluminum pipe industry and driving Bonjorno out of business.[43] Bonjorno prevailed, and on August 21, 1979, the jury awarded Bonjorno $5,445,000 in damages.[44] On August 22, 1979, the district court entered judgment for Bonjorno, but it vacated the damage award for lack of evidence and ordered a new trial to decide damages.[45] On December 4, 1981, the district court entered judgment for Bonjorno for $9,567,939 in damages.[46] The December 4, 1981 judgment triggered further litigation over the proper date to begin interest accrual on Bonjorno's damage award under § 1961(a):[47] the August 22, 1979 judgment or the December 4, 1981 judgment.[48]

The United States Supreme Court ruled that the purpose behind § 1961(a) barred Bonjorno from collecting interest on its fee award from the August 22, 1979 judgment.[49] The Court ruled that the purpose of § 1961(a) is "'to compensate the successful plaintiff for being deprived of compensation for its loss [for] the time between the ascertainment of the damage and payment by the defendant.'"[50] Included in the Court's statement are two distinct dates, between which the losing party is required to pay interest under § 1961(a): the date of "ascertainment of the damage" and the date of payment.[51] The date of ascertainment serves as the date the losing party must begin paying interest, and the date of payment or satisfaction of the debt operates as the date the losing party is released from its obligation to pay interest. Furthermore, the Court ruled that a damage judgment not supported by the evidence, such as the August 22, 1979 judgment, is not "ascertained," and therefore, interest cannot be collected on it under § 1961(a).[52]

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42. *Id.* at 834-36.
43. *Id.* at 827.
44. *Id.* at 830.
45. *Id.*
46. *Bonjorno*, 494 U.S. at 830.
47. *Id.* at 834-36.
48. *Id.* at 830.
49. *Id.* at 835-36.
50. *Id.* (quoting Poleto v. Consol. Rail Corp., 826 F.2d 1270, 1280 (3d Cir. 1987)).
51. *Bonjorno*, 494 U.S. at 835-36.
52. *Id.*

The United States Supreme Court's ruling in *Bonjorno* does not resolve the dispute over the proper date of interest accrual on attorney's fee awards under § 1961(a) because the merits judgment in that case had been vacated for lack of evidence.[53] However, the United States Courts of Appeals have disputed whether the Court's ruling that interest accrual under § 1961(a) begins on the date of "ascertainment" of damages aids in resolving the interest dispute.[54] Part III discusses this split of authority.

III. SPLIT OF AUTHORITY AMONG THE CIRCUITS

Attorney's fee cases usually result in two judgments:[55] the merits judgment[56] and the exact quantum judgment.[57] At the merits judgment, the court grants the prevailing party the right to recover attorney's fees.[58] At the exact quantum judgment, the court establishes the specific amount of attorney's fees owed to the prevailing party.[59] The language of § 1961(a)—interest accrual begins on "the date of . . . judgment"[60]—caused the split of authority among the United States Courts of Appeals over the proper date of

53. *Id.* at 834-36.

54. *See* Eaves v. County of Cape May, 239 F.3d 527, 537-38 (3d Cir. 2001) (ruling that an "ascertainment" of damages is a determination by the court of the specific amount of attorney's fees owed, which occurs at the exact quantum judgment); *but see* Associated Gen. Contractors of Ohio, Inc. v. Drabik, 250 F.3d 482, 492 (6th Cir. 2001) (ruling that the United States Supreme Court's *Bonjorno* decision interpreting § 1961(a) in the context of damage awards vacated for lack of evidence is inapplicable to the interest-accrual question in attorney's fee cases).

55. *See, e.g.*, MidAmerica Fed. Sav. & Loan Ass'n v. Shearson/Am. Express, Inc., 962 F.2d 1470, 1472 (10th Cir. 1992) (entering both a merits judgment and an exact quantum judgment); Bundichi v. Becton Dickinson & Co., 486 U.S. 196, 202 (1988) (noting that merits judgment and money judgment are separate).

56. *See Eaves*, 239 F.3d at 528 (explaining that the first judgment in attorney's fee cases, where the court grants the prevailing party the right to recover attorney's fees, is the "merits judgment").

57. *See Drabik*, 250 F.3d at 485 (defining the second judgment in attorney's fee cases, where the court determines the specific amount of attorney's fees owed, as the "exact quantum judgment").

58. *See Eaves*, 239 F.3d at 528 (awarding prevailing party "attorney's fees and costs in an amount to be determined").

59. *See Drabik*, 250 F.3d at 485 (finding no distinction between "judgments for attorney fees and judgments for other types of damages").

60. 28 U.S.C. § 1961(a) (2000).

interest accrual on attorney's fee awards, because the language does not discriminate between the two judgments in attorney's fee cases.[61]

This Article limits its discussion of the merits judgment and exact quantum judgment approaches to the Third and Sixth Circuit Courts of Appeals decisions in *Eaves v. County of Cape May*[62] and *Associated General Contractors v. Drabik*,[63] respectively, for two reasons. First, *Eaves* and *Drabik* are the most recent decisions on each side of the interest dispute, and they incorporate the holdings of the circuits that have previously ruled on the issue.[64] Second, the *Eaves* and *Drabik* decisions include additional arguments regarding the effect of the United States Supreme Court's *Bonjorno* decision on the interest dispute.[65]

A. Exact Quantum Judgment Approach

In *Eaves v. County of Cape May*, the Third Circuit Court of Appeals used the exact quantum judgment approach and discussed the rationales supporting the approach.[66] On July 8, 1994, the County of Cape May demoted Pamela Eaves, an American of Chinese descent, from County Treasurer to County Comptroller.[67] Eaves responded by filing a complaint with the Equal Employment Opportunity Commission (EEOC) charging Cape May with discrimination. Cape May fired Eaves. Eaves then sued Cape May for retaliation under Title VII. Eaves prevailed on the Title VII claim, and on August 11, 1998, the district court entered judgment for Eaves and granted her the right to recover attorney's fees.[68] On

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61. *See supra* note 13 and accompanying text.

62. 239 F.3d 527 (3d Cir. 2001).

63. 250 F.3d 482 (6th Cir. 2001).

64. *See Eaves*, 239 F.3d at 532 (discussing the Seventh and Tenth Circuits' decisions to adopt the exact quantum judgment approach); *Drabik*, 250 F.3d at 493-94 (discussing the Fifth, Eighth, Ninth, Eleventh, and Federal Circuits' decisions to adopt the merits judgment approach); *see also supra* note 13 and accompanying text.

65. *See Eaves*, 239 F.3d at 532-39; *Drabik*, 250 F.3d at 486-93 (both discussing the effects of Kaiser Aluminum & Chem. Corp. v. Bonjorno, 494 U.S. 827 (1990) on their decisions).

66. 239 F.3d at 527 ("[P]ost-judgment interest on an attorney's fee award . . . runs from the date that the District Court enters a judgment quantifying the amount of fees owed to the prevailing party rather than the date that the court finds that the party is entitled to recover fees . . . ").

67. *Id.* at 528.

68. *Id.* at 528.

January 27, 2000, the district court set Eaves's attorney's fee award at $254,248.57.[69]

The Third Circuit ruled that interest accrual on Eaves's attorney's fee award under § 1961(a) began on January 27, 2000—the date of the exact quantum judgment, or the judgment on the specific amount of attorney's fees to be awarded.[70] The court's ruling prevented Eaves from collecting approximately $19,000 in interest on her fee award for the delay in payment between the merits judgment on August 11, 1998 and the exact quantum judgment on January 27, 2000.[71]

The Third Circuit reached its holding in *Eaves* in three steps.[72] First, the court considered the language of § 1961(a), including "[i]nterest shall be allowed on any money judgment," followed by "interest shall be calculated from the date of . . . judgment."[73] The court ruled that "judgment" in the second clause references "money judgment" in the first.[74] The court ruled, therefore, that the second clause in § 1961(a) effectively reads as follows: interest shall be calculated from the date of the money judgment.[75]

Second, the Third Circuit defined "money judgment."[76] Neither § 1961(a) nor its legislative history provides a definition of "money judgment."[77] The court, therefore, concluded that Congress intended for the phrase "money judgment" to be accorded its

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69. *Id.*

70. *Id.* at 542.

71. *See Eaves*, 239 F.3d at 528 (stating that interest accrues from the date of the quantum judgment). The $19,000 figure is a rough estimate determined by calculating 5% interest (compounded annually) on the $254,248.57 fee award. The 5% interest rate used is a rough average of the interest rates for the period between the merits judgment (August 11, 1998) and the exact quantum judgment (January 27, 2000). *See* 28 U.S.C. § 1961(a) note (2000) (52-Week T-Bill Rate Table of Changes).

72. *See Eaves*, 239 F.3d at 527 (using a three-step approach to eventually hold that interest accrual on attorney's fee awards under § 1961(a) begins on the date of the exact quantum judgment).

73. *Id.* at 532; 28 U.S.C. § 1961(a) (2000).

74. *Eaves*, 539 F.3d at 532.

75. *See id.* at 532 ("[B]y its terms, post judgment interest does not begin to run under § 1961(a) until the district court enters the judgment at issue, i.e., the 'money judgment.'").

76. *Id.* at 532-35.

77. *See* 28 U.S.C. § 1961(a); S. REP. NO. 97-275, at 11 (1982), *reprinted in* 1982 U.S.C.C.A.N. 11, 21.

ordinary meaning.[78] Furthermore, on the strength of the holdings of various Courts of Appeals, the court ruled that a money judgment constitutes a judgment for a specific amount of money.[79] Thus, the court ruled that the second clause in § 1961(a) effectively reads as follows: interest shall be calculated from the date of a judgment for a specific amount of money (the exact quantum judgment).[80]

Third, the Third Circuit used language from the decision in *Bonjorno*[81] to support its holding.[82] The Third Circuit focused on the Supreme Court's ruling that interest accrual under § 1961(a) begins on the date of "ascertainment of the damage."[83] The Third Circuit ruled that an "ascertainment" is an act of determining.[84] Therefore, the Supreme Court's ruling requires interest accrual under § 1961(a) to begin on the date of the "determination of damages," which does not occur until the judgment for a specific amount of money (the exact quantum judgment).[85]

B. Merits Judgment Approach

Other circuits, however, have rejected the exact quantum approach. In *Associated General Contractors of Ohio, Inc. v. Drabik*,[86] the Sixth Circuit Court of Appeals adopted the merits judgment approach and explained the rationales supporting that approach.[87] Associated General Contractors (AGC), a conglomerate of construction companies in Ohio, sued Sandra Drabik, the Director of the Ohio Department of Administrative Services, to obtain an

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78. *See Eaves*, 239 F.3d at 532 ("Given the plain language and structure of the statute, it is clear that 'the judgment' referred to . . . is the money judgment.").

79. *Id.* at 532-35 (citing Penn Terra Ltd. v. Dept. of Envtl. Res., 733 F.2d 267, 274-75 (3d Cir. 1984); EEOC v. Gurnee Inns, Inc., 956 F.2d 146, 149 (7th Cir. 1992); *In re* Commonwealth Oil Ref. Co., 805 F.2d 1175, 1186 (5th Cir. 1986); Happy Chef Sys., Inc. v. John Hancock Mut. Life Ins. Co., 933 F.2d 1433, 1435-37 (8th Cir. 1991)).

80. *See Eaves*, 239 F.3d at 534-35 (agreeing that "§ 1961(a) simply does not permit post-judgment interest on an attorney's fee award to run from the date that the court initially determines that the prevailing party is entitled to an award if the amount was not also quantified and included in that judgment").

81. Kaiser Aluminum & Chem. Corp. v. Bonjorno, 494 U.S. 827 (1990).

82. *Eaves*, 239 F.3d at 537-38.

83. *Id.* at 538.

84. *Id.*

85. *Id.*

86. 250 F.3d 482 (6th Cir. 2001).

87. *Id.* at 493-95.

injunction preventing her from following Ohio's Minority Business Enterprise Act on grounds that it was unconstitutional under the Equal Protection Clause of the Fourteenth Amendment.[88] AGC prevailed, and on November 3, 1998, the district court entered an injunction for AGC and granted AGC's request for attorney's fees.[89] On October 13, 1999, the district court set AGC's attorney's fee award at $113,915.48.[90]

The Sixth Circuit Court of Appeals ruled that interest accrual on AGC's fee award under § 1961(a) began on November 3, 1998—the date of the merits judgment, when the court granted AGC's request for attorney's fees.[91] The Sixth Circuit's ruling permitted AGC to collect approximately $5,700 in interest on its fee award for the delay in payment between the merits judgment on November 3, 1998 and the exact quantum judgment on October 13, 1999.[92] The Third Circuit Court of Appeals, conversely, would have ruled that AGC could not collect interest on its fee award until the exact quantum judgment, and, therefore, would have prevented AGC from collecting the $5,700 in interest.[93]

The Sixth Circuit did not reach its holding in a stepwise manner like the Third Circuit did in *Eaves*. The Sixth Circuit held that the interest accrual on attorney's fee awards under § 1961(a) begins on the date of the merits judgment[94] and provided several supporting rationales.[95] The Sixth Circuit's first rationale in support of the merits judgment approach was that a majority of the circuits that have decided the interest accrual issue, including the Fifth,

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88. *Id.* at 483.

89. *Id.*

90. *Id.* at 484.

91. *Drabik*, 250 F.3d at 483.

92. *Id.* at 495. The $5,700 figure provides a rough estimate that was determined by calculating 5% interest on the $113,915.48 fee award. The 5% interest rate used serves as a rough average of the interest rates for the period between the merits judgment (November 3, 1998) and the exact quantum judgment (October 13, 2000). *See* 28 U.S.C. § 1961(a) note (2000) (52-Week T-Bill Rate Table of Changes).

93. *See* Eaves v. County of Cape May, 239 F.3d 527, 542 (3d Cir. 2001) (holding that interest on the attorney's fee award runs from date of exact quantum judgment, not merits judgment).

94. *Drabik*, 250 F.3d at 495 ("We believe that the language of § 1961(a) permits the interest to run on a fee award from the time of entry of the judgment which unconditionally entitles the prevailing party to reasonable attorney's fees.").

95. *See id.* at 482 (discussing the rationales supporting the approach).

Eighth, Ninth, Eleventh, and Federal Circuits, have adopted the merits judgment approach.[96]

The Sixth Circuit's second rationale in support of its adoption of the merits judgment approach was that public policy required interest accrual under § 1961(a) to begin on the date of the merits judgment.[97] The court provided four public policy arguments in support of the merits judgment approach.[98] First, requiring the losing party to make interest payments under § 1961(a) from the date of the merits judgment is necessary to offset the time differential decrease in the value of the prevailing party's fee award during the time between the merits judgment and the exact quantum judgment.[99] Second, requiring the losing party to pay interest from the date of the merits judgment deters the losing party from delaying the exact quantum judgment to avoid paying the fee award, to secure additional time to freely use the money owed, or to hassle the prevailing party.[100] Third, interest payments from the date of the merits judgment are necessary to fully compensate prevailing parties and, through them, their attorneys for the attorneys' successful efforts.[101] Fourth, interest payments from the date of the merits judgment prevent the losing party from profiting on the prevailing party's fee award because such payments prevent the losing party from keeping any interest earned on the fee award between the merits judgment and the exact quantum judgment.[102]

The Sixth Circuit's third rationale in support of its adoption of the merits judgment approach was that the grant of attorney's fees made by courts at the merits judgment is a "money judgment" for purposes of § 1961(a) in attorney's fee cases.[103] The court reasoned, therefore, that interest accrual on attorney's fee awards begins on the date of the merits judgment under § 1961(a).[104] The court did not provide an explanation for its ruling. One can assume, however, that the court ruled that a grant of attorney's fees constitutes a "money

96. *Id.* at 487-90; *see also supra* note 13 and accompanying text.
97. *Drabik*, 250 F.3d at 494-95.
98. *Id.* at 493-95.
99. *Id.* at 493.
100. *Id.*
101. *Id.* at 485.
102. *Drabik*, 250 F.3d at 494-95.
103. *See id.* at 489-90 (arguing that "a judgment that unconditionally entitles a party to reasonable attorney fees is the 'money judgment' contemplated by § 1961").
104. *Id.*

judgment," because a grant of attorney's fees constitutes a judgment for money, distinguishable from other types of judgments, such as judgments for equitable or injunctive relief.

The Sixth Circuit's fourth rationale in support of its adoption of the merits judgment approach was that the common definition of "money judgment," i.e., a judgment entered upon the jury verdict, supported its holding.[105] Because the merits judgment is the judgment entered upon the jury verdict, the court ruled that the merits judgment serves as the "money judgment" referred to in § 1961(a) and, therefore, the judgment triggering interest accrual under § 1961(a).[106]

Finally, the Sixth Circuit considered the Supreme Court's *Bonjorno* decision.[107] The Sixth Circuit did not use *Bonjorno* to support its holding as the Third Circuit did in *Eaves*.[108] Instead, the Sixth Circuit analyzed the *Bonjorno* decision to prove that the decision did not influence its holding.[109] The Sixth Circuit ruled that the *Bonjorno* opinion was inapplicable to the interest dispute because the opinion decided the unrelated question of whether interest accrual under § 1961(a) begins on the date of a judgment that is vacated for lack of evidence.[110]

IV. ANALYSIS

This Article argues that the merits judgment approach offers the correct approach to interest accrual on attorney's fee awards under § 1961(a). Three reasons explain why the merits judgment approach is better than the exact quantum judgment approach. First, the merits judgment approach remains consistent with the statutory language of § 1961(a). Second, the merits judgment approach is consistent with the legislative intent behind § 1961(a). Third, public policy supports the merits judgment approach.

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105. *Id.* at 494.

106. *Id.*

107. *Drabik*, 250 F.3d at 490-91.

108. *Id.* at 492; *see also supra* notes 82-88 and accompanying text.

109. *See Drabik*, 250 F.3d at 491 ("While we have remained faithful to the Supreme Court's dictates in *Bonjorno*, we have also ensured that the purpose of § 1961 is served.").

110. *Id.* at 492.

A. Statutory Language

The statutory language of § 1961(a) supports the merits judgment approach as the correct solution to the interest accrual dispute.[111] The pertinent statutory language in § 1961(a) consists of two clauses: "[i]nterest shall be allowed on any money judgment" and "interest shall be calculated from the date of . . . judgment."[112] The United States Courts of Appeals involved in the interest dispute have agreed either explicitly or implicitly that "judgment" in the second clause refers to "money judgment" in the first, and, therefore, interest accrual under § 1961(a) begins on the date of the "money judgment."[113] However, the circuits disagree over the proper definition of "money judgment," and thus, over the proper date of interest accrual on attorney's fee awards.[114] Neither the definitions section of § 1961(a) nor the legislative history defines "money judgment."[115]

In *Eaves*, the Third Circuit ruled that the exact quantum judgment constitutes the "money judgment" for purposes of § 1961(a) in attorney's fee cases and provided two arguments in support of its holding.[116] First, the Third Circuit provided circuit-court precedent defining the phrase "money judgment" (as the term is used in other statutes) as a judgment for a specific amount of money or an exact quantum judgment.[117] Second, the Third Circuit used the Supreme Court's *Bonjorno* ruling that interest accrual under § 1961(a) begins on the date of "ascertainment of the damage" to support its holding.[118] The Third Circuit reasoned that the date of "ascertainment of the damage" is the date damages are determined or

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111. *See* 28 U.S.C. § 1961(a) (2000).

112. *Id.*

113. *See Drabik*, 250 F.3d at 489 (noting that all circuits agree that interest accrual begins on the date of the "money judgment").

114. *See id.* at 490 (ruling that the award of "reasonable attorney fees" at the merits judgment is a "money judgment" for purposes of § 1961(a)); *but see* Eaves v. County of Cape May, 239 F.3d 527, 532-35 (3d Cir. 2001) (providing precedent supporting the Third Circuit's ruling that "money judgment" under § 1961(a) in attorney's fee cases means a judgment for a specific amount of money or an exact quantum judgment).

115. *See Eaves*, 239 F.3d at 532 ("Section 1961 does not define the term 'money judgment.'"); S. REP. NO. 97-275, at 11 (1982), *reprinted in* 1982 U.S.C.C.A.N. 11, 21.

116. *Eaves*, 239 F.3d at 532-35, 537-38.

117. *Id.* at 532-35.

118. *Id.* at 538.

specifically quantified, which is the date of the exact quantum judgment.[119]

However, neither of the Third Circuit's justifications is convincing. First, the precedent the Third Circuit used to support its definition of "money judgment" defines "money judgment" in the context of other statutes,[120] e.g., § 362(b)(5) of the Bankruptcy Code,[121] that are completely unrelated to § 1961(a). Second, the Third Circuit improperly used the United States Supreme Court's "ascertainment of the damage" language to support its holding.[122] The Supreme Court specifically defined the phrase "ascertainment of the damage" as a judgment supported by the evidence or judgment on the merits,[123] leaving no doubt that it did not mean an exact quantum judgment.

Conversely, in *Drabik*, the Sixth Circuit Court of Appeals ruled that the merits judgment constitutes a "money judgment" for purposes of § 1961(a) and supported its ruling with two arguments.[124] First, the court argued that the grant to the prevailing party of its request for attorney's fees at the merits judgment equates to a judgment for money, i.e., attorney's fees, or "money judgment" for purposes of § 1961(a).[125] Second, the court argued that the phrase "money judgment" is commonly defined as the judgment entered upon the jury verdict, which is the merits judgment.[126]

The merits judgment approach remains most consistent with the statutory language of § 1961(a) for three reasons. First, the grant of attorney's fees the court makes at the merits judgment constitutes a "money judgment," pursuant to § 1961(a), because it involves a judgment for money, i.e., attorney's fees, distinguishable from other types of judgments, such as judgments for equitable or injunctive relief.[127] Second, the United States Supreme Court has ruled that

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119. *Id.*

120. *Id.* at 532-35.

121. 11 U.S.C. § 362(b)(5) (1993).

122. *See Eaves*, 239 F.3d at 538 (reasoning that prejudgment interest should begin to accrue only after determination of "liquidated" sum of damages, although recognizing that the weight of authority is against that determination).

123. Kaiser Aluminum & Chem. Corp. v. Bonjorno, 494 U.S. 827, 835-36 (1990).

124. Associated Gen. Contractors of Ohio, Inc. v. Drabik, 250 F.3d 482, 489-90 (6th Cir. 2001).

125. *Id.* at 490.

126. *Id.* at 494.

127. *Id.* at 489-90.

interest accrual under § 1961(a) begins on the date of "ascertainment of the damage," which—pursuant to the Court's definition of "ascertainment of the damage"—means the date of the merits judgment.[128] Third, and most importantly, § 1961(a) essentially aims to provide interest to prevailing parties for delays in payment on damage awards between the date the prevailing party becomes entitled to its fees and the date of payment.[129] Because the date of entitlement in attorney's fee cases is the date of the merits judgment,[130] interest accrual under § 1961(a) begins on the date of the merits judgment.[131]

B. Legislative Intent

The legislative intent behind § 1961(a) also supports the merits judgment approach as the correct solution to the interest accrual dispute.[132] Congress tied the interest rate under § 1961(a) to the fifty-two-week average of the United States Treasury yield to establish a uniform interest rate to be applied to all damage awards recovered in United States federal district courts.[133] Congress established a uniform interest rate to prevent variances in interest rates and, therefore, variances in compensation to prevailing parties for delays in payment of their damage awards between federal district courts.[134] Implicit in Congress's enactment of a uniform interest rate is its intention that interest payments, pursuant to § 1961(a), be the exclusive means of compensating prevailing parties for delays in payment of their damage awards because using § 1961(a) as the exclusive form of compensation would prevent variances in compensation between federal district courts.[135] Any other method of awarding compensation on damage awards would

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128. *Bonjorno*, 494 U.S. at 835-36.

129. *See* 28 U.S.C. § 1961(a) (2000).

130. *See* Copper Liquor, Inc. v. Adolph Coors Co., 701 F.2d 542, 544-45 (5th Cir. 1983) (stating that if attorney's fees "are part of the judgment, they will bear the interest that accompanies a judgment on the merits").

131. *See id.* at 544 ("The relevant judgment for purposes of determining when interest begins to run is the judgment establishing the right to fees or costs."); *see also* 28 U.S.C. § 1961(a).

132. S. REP. NO. 97-275, at 11 (1982), *reprinted in* 1982 U.S.C.C.A.N. 11, 11.

133. *Id.*

134. *Id.*

135. *Id.*

violate Congressional intent by destroying uniformity in compensation among federal district courts.[136] Congress's intent that interest payments under § 1961(a) be the exclusive means of compensating prevailing parties for delays in the payment of damage awards indicates that the merits judgment approach is the proper solution to the interest dispute.[137]

Following its holding that the exact quantum judgment approach provides the proper resolution to the interest dispute, the Third Circuit ruled in Eaves that the prevailing party in attorney's fee cases is entitled to some sort of compensation for the time that it is deprived of its money between the merits judgment and the exact quantum judgment.[138] Included in this ruling is a sub-ruling that the compensation be something other than interest payments under § 1961(a) because the Third Circuit's holding barred recovery of interest under § 1961(a) until the exact quantum judgment.[139] This sub-ruling expressly violates Congress's intent that interest payments under § 1961(a) serve as the exclusive form of compensation to prevailing parties for delays in payment of damage awards. Thus, by ruling that the prevailing party in attorney's fee cases is entitled to compensation for the delay in payment of its attorney's fees between the merits judgment and the exact quantum judgment, the Third Circuit, in order to not subvert Congressional intent, inadvertently ruled that the prevailing party is entitled to interest payments under § 1961(a) from the date of the merits judgment.[140]

C. Public Policy

In addition to the statutory language of § 1961(a) and the legislative intent behind it, public policy supports the merits judgment approach as the correct solution to the interest accrual

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136. *Id.*

137. S. REP. NO. 97-275, at 11 (1982), *reprinted in* 1982 U.S.C.C.A.N. 11, 11.

138. *See* Eaves v. County of Cape May, 239 F.3d 527, 540-41 (3d Cir. 2001) (providing that in order to "make whole" or fully compensate the prevailing party's attorneys, it is proper to compensate them for the delay in payment of the attorneys' fees between the merits judgment and the exact quantum judgment and that a delay-in-payment adjustment to the prevailing party's attorneys' fee award is an appropriate means of providing such compensation).

139. *Id.* at 534-35.

140. *Id.*

dispute.[141] The lone policy argument supporting the exact quantum judgment approach suggests that requiring the losing party to pay interest under § 1961(a) from the date of the merits judgment unfairly prejudices the losing party by denying the losing party the opportunity to avoid the interest payments.[142] The losing party cannot avoid paying interest on the fee award for the time between the merits judgment and exact quantum judgment by satisfying the fee award on the date of the merits judgment because the fee award is not quantified until the exact quantum judgment.[143] This argument correctly assumes that the losing party cannot avoid the interest payment.[144] However, the argument incorrectly describes the interest owed as a penalty or additional fee.[145] To the contrary, the interest is a time differential adjustment to the value of the fee award, bringing the fee award up from its market value at the time of the merits judgment to its market value at the time of the exact quantum judgment.[146] The economic fact that a certain sum of money paid in the future is worth less than that same sum would have been worth were it paid in the past makes this adjustment necessary.[147] Money to be paid in the future is worth less than money paid in the past because of factors such as inflation and the ability of the person in possession of the money to earn interest on it or invest it and collect dividends.[148] Therefore, because the losing party maintains possession of the fee award from the date of the merits judgment to the date of the exact quantum judgment, the losing party is not harmed by being required to pay interest on the fee award.[149] Instead, in awarding the prevailing party interest on the attorney's fees from the date of the merits judgment, the losing

141. *See supra* note 29 and accompanying text.

142. Jenkins v. Missouri, 931 F.2d 1273, 1277 (8th Cir. 1991).

143. *See* Associated Gen. Contractors of Ohio, Inc. v. Drabik, 250 F.3d 482, 494 (6th Cir. 2001) (concluding that "it is logical to conclude that Congress intended that post-judgment interest on all damages, including reasonable attorney fees and costs, would run from entry of judgment on the merits").

144. *Id.*

145. *See Jenkins*, 931 F.2d at 1277 ("The fee-paying party suffers no prejudice from any delay in quantifying the award because it has the use of the money in the interim.").

146. *Id.* at 1276.

147. *Id.*

148. *Id.* at 1277.

149. *Id.* at 1276-77.

party is prevented from being unjustly enriched by keeping the time differential increase in the value of the fee award.[150]

The following example clarifies this point. Assume that a court in an attorney's fee case entered the merits judgment on June 1, 2000, and the exact quantum judgment for $100,000 on June 1, 2001. The prevailing interest rate for that year was 5%, and the losing party possessed sufficient funds to satisfy the $100,000 award at the date of the merits judgment and any time thereafter. If the court required the losing party to pay interest on the fee award from the date of the merits judgment, then the losing party would owe $105,000 at the time of the exact quantum judgment. Advocates of the exact quantum approach would argue that this result lacks fairness because it denies the losing party the opportunity to satisfy the $100,000 award on the date of the merits judgment, thus avoiding the $5,000 interest payment.[151] Imagine, however, that the losing party's bank account contains an interest-bearing sub-account containing $100,000 on the date of the merits judgment. After a year has passed and the exact quantum judgment is rendered, the sub-account will contain $105,000, having earned 5% interest during the year between judgments. The losing party could satisfy the fee award and the interest due on it by turning over the sub-account, and therefore, would have paid only $100,000 out of pocket. Conversely, if the losing party were required only to pay interest from the date of the exact quantum judgment, it would get to keep the $5,000 in interest it earned on the sub-account. Therefore it would effectively have to pay only $95,000 out of pocket to satisfy the damage award. Thus, to prevent the losing party from profiting on the prevailing party's fee award, one must require the losing party to pay interest from the date of the merits judgment.[152]

In contrast to the absence of legitimate policy arguments in support of the exact quantum approach, four policy arguments support the merits judgment approach.[153] First, interest payments from the date of the merits judgment are necessary to deter the losing party from delaying the exact quantum judgment to avoid paying the fee award, to secure additional time to freely use the money owed, or

150. *Jenkins*, 931 F.2d at 1277.
151. *See supra* notes 142-44 and accompanying text.
152. *See supra* notes 146-50 and accompanying text.
153. *Jenkins*, 931 F.2d at 1276-77.

to hassle the prevailing party.[154] Second, interest payments from the date of the merits judgment are necessary to fully compensate prevailing parties and, through them, their attorneys.[155] If prevailing attorneys are not made whole, they might become less willing to take on complex and expensive litigation, such as important civil rights cases.[156] Third, interest from the date of the merits judgment is necessary to prevent the losing party from profiting on the prevailing party's fee award by collecting interest on it between the merits judgment and the exact quantum judgment.[157] Fourth, awarding interest from the date of the merits judgment is needed to properly compensate the prevailing party for the time differential decrease in the value of the fee award during the time between the merits judgment and the exact quantum judgment.[158]

Overall, public policy supports the merits judgment approach as the proper solution to the interest dispute. This support, combined with the fact that the merits judgment approach, unlike the exact quantum judgment approach, stays consistent with the plain language of § 1961(a),[159] advances the legislative intent behind the statute,[160] and conclusively distinguishes the merits judgment approach as the correct solution to the interest dispute.[161]

V. CONCLUSION

The United States Courts of Appeals have split on the question of whether interest accrual on attorney's fee awards under 28 U.S.C. § 1961(a) begins on the date of the "merits judgment" or the date of the "exact quantum judgment." The Fifth, Sixth, Eighth, Ninth, Eleventh, and Federal Circuits have held that interest accrual

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154. Associated Gen. Contractors of Ohio, Inc. v. Drabik, 250 F.3d 482, 493 (6th Cir. 2001).

155. *Jenkins*, 931 F.2d at 1276-77; *see also* S. REP. NO. 97-275, at 11 (1982), *reprinted in* 1982 U.S.C.C.A.N. 11, 11.

156. *Jenkins*, 931 F.2d at 1276-77.

157. *Id.*

158. *Id.*

159. *See* 28 U.S.C. § 1961(a) (2000).

160. *See* S. REP. NO. 97-275, at 11 (1982), *reprinted in* 1982 U.S.C.C.A.N. 11, 11.

161. *See Jenkins*, 931 F.2d at 1276-77 (holding that Jenkins's class is entitled to post-judgment interest on its attorney's fees accruing from the February 24, 1986 order declaring the class's entitlement to those fees).

begins on the date of the merits judgment (the "merits judgment approach"). The Third, Seventh, and Tenth Circuits have held that interest accrual begins on the date of the exact quantum judgment (the "exact quantum judgment approach").

The merits judgment approach provides the correct solution to the interest accrual dispute because it remains consistent with the statutory language of § 1961(a), advances the legislative intent behind § 1961(a), and receives support from public policy. The statutory language of § 1961(a) forces the losing party in civil suits to pay interest to the prevailing party for delays in payment of the prevailing party's damage award from the date of the judgment entitling the prevailing party to its award.[162] The merits judgment approach remains consistent with this requirement because the merits judgment constitutes the judgment entitling the prevailing party to its fee award in attorney's fee cases.[163] The legislative intent behind § 1961(a) was that § 1961(a) serve as the exclusive means of compensating prevailing parties for delays in payment of damage awards.[164] The merits judgment approach advances this intention by compensating prevailing parties with interest payments under § 1961(a) for the delay in payment between the merits judgment and the exact quantum judgment in attorney's fee cases.[165] The exact quantum judgment approach, conversely, violates legislative intent by compensating prevailing parties through payments other than interest payments under § 1961(a). Alternative compensation becomes necessary because interest payments under § 1961(a) are prohibited until the exact quantum judgment.[166] The merits judgment approach also finds support in the public policy argument that requiring the losing party to pay interest from the date of the merits judgment deters the losing party from delaying the exact quantum judgment to avoid paying the fee award, to secure additional time to freely use the money owed or collect interest on it, or to hassle the losing party.[167] For all these reasons, courts should adopt the merits judgment approach to determining the date of interest accrual on attorney fee awards.

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162. 28 U.S.C. § 1961(a).

163. *See supra* note 25 and accompanying text.

164. *See supra* note 26 and accompanying text.

165. *See supra* note 26 and accompanying text.

166. *See* Eaves v. County of Cape May, 239 F.3d 527, 541-42 (3d Cir. 2001) (discussing the need to compensate the attorney for the "time gap between actual expenditures of service and the fee award").

167. *See supra* note 29 and accompanying text.