

Insights

Indiana Supreme Court Declines (1) to Clarify Meaning of "Tolled Interest" and (2) to Further Protect Stimulus Payments under its 2020 Emergency COVID-19 Pandemic Orders

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In a pair of decisions issued March 19, 2021, the Indiana Supreme Court declined (1) to clarify the meaning of "tolled interest," and (2) to further protect stimulus payments under its 2020 emergency COVID-19 pandemic orders.

First March 19 Order

Specifically, in its first March 19 order, the Court declined petitions filed by the Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac") asking the Court to clarify the meaning of the Court's emergency orders issued from March 23 through May 29, 2020, directing that "no interest shall be due or charged during [a] tolled period" spanning March 23 through August 14, 2020. The Court noted Fannie Mae and Freddie Mac claimed that to avoid several constitutional concerns, the Court's orders should be understood to apply only "where Court action . . . establishes the right to interest and the amount thereof" — and not "to curtail the accrual of interest provided by Petitioners' private mortgage contracts," claiming that trial courts in four mortgage-foreclosure cases had, contrary to Fannie Mae's and Freddie Mac's interpretation of the Court's emergency orders, prohibited recovery of interest due under mortgage contracts during the tolled period.

In denying Fannie Mae's and Freddie Mac's petitions, the Court held that these petitioners were "impermissibly seeking to bypass the regular appellate process by invoking our non-adjudicative authority," noting that "[a]ny of the four complained-of cases are (or were) opportunities to adjudicate this issue on appeal; we see no reason that remedy is inadequate here."

Second March 19 Order

In its second March 19 order, the Court denied a petition filed by Indiana Legal Services, Inc., Prosperity Indiana, Neighborhood Christian Legal Clinic, Indianapolis Legal Aid Society, Pro Bono Indiana, Inc., and Indiana Institute for Working Families to extend parts of the Court's April 20, 2020 order related to stimulus payments under the Coronavirus Aid, Relief, and Economic Security ("CARES") Act, to stimulus payments under the American Rescue Plan Act of 2021 ("ARPA"), and to consider postponing the current July 1, 2021 expiration date for the protections under the Court's April 20, 2020 Order.

As noted in our prior Alerts, the Court's April 20, 2020 Order — as subsequently extended to July 1, 2021 — commands that all Indiana trial courts "shall issue **no new orders** placing a hold on, attaching, or garnishing funds in a judgment-debtor's account in a depository institution as defined in the Depository Financial Institutions Adverse Claims Act, I.C. § 28-9-1-1, et seq., if those funds are attributable to a stimulus payment, except that this prohibition shall not apply to judgments or orders for payment of child support," and "[a]s for any **previously issued court orders** placing a hold on a judgment-debtor's account in a depository institution, the judgment-debtor shall be entitled, upon request, to a hearing (either in-person or remotely, as local circumstances permit), within two business days of the court's receipt of said request, to determine what funds in the account are attributable to a stimulus payment and for the judgment-debtor to assert any exemption(s) under state or federal law", with the

Court further directing that trial courts “shall treat such hearings as ‘essential’ and ‘urgent’ under this Court’s (prior emergency) orders of March 16 and 23, 2020” (**emphasis** in original).

In rejecting the legal aid providers’ and social service organizations’ petition to further extend the July 1, 2021 expiration date of the protection provided by the Court’s April 20, 2020 Order, the Court simply noted that “[t]he Court has reviewed the pending petition [; e]ach Justice has had the opportunity to voice that Justice’s views on this matter in conference with the other Justices, and each has voted on the petition.” In other words, the Court provided no substantive reason for its denial of the petition. It is worth noting in this regard that the Court’s earlier April 20, 2020 Order was accompanied by a dissent from Justice Slaughter, who – while expressing sympathy “to Hoosiers who face severe financial challenges in these difficult and uncertain times” – nonetheless lamented that the Court’s April 20, 2020 Order “overstep[s the Court’s] limited role under Indiana’s constitution—which is to interpret law, not make it, and to leave to the political branches the prerogative of deciding and implementing policy,” noting that he was “aware of no law—federal or state—exempting these stimulus payments from garnishment and attachment [, a]nd the Court cites none”.

Takeaways: The Indiana Supreme Court’s two March 19, 2021 orders make clear that (1) any litigation regarding the meaning (with respect to accrual of mortgage interest) of its earlier orders to the effect that “no interest shall be due or charged during [a] tolled period” spanning March 23 through August 14, 2020, must go through the normal appellate process before the Court may issue a ruling, and (2) the Court will not intervene further to protect stimulus payments from creditors after July 1, 2021.

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