

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

SUSSEX COUNTY COURTHOUSE
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GEORGETOWN, DE 19947
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September 4, 2013

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RE: **Scott O'Riley v. Shawn Rogers**
Case No.: S08C-07-020 RFS

Dear Counsel:

I have reviewed Defendant Shawn Rogers's Motion to Alter or Amend the Judgment and/or for Reargument Pursuant to Superior Court Rule 59 (d) & (e). Defendant contends that my August 15, 2013 Order should be altered or amended so that Plaintiff's judgment interest, owed to her under 6 Del. C. § 2301(d),¹ would be

¹
In any tort action for compensatory damages in the Superior Court or the Court of Common Pleas seeking monetary relief for bodily injuries, death or property damage, interest shall be added to any final judgment entered for damages awarded, calculated at the rate established in subsection (a) of this section, commencing from the date of

calculated using two separate rates. The first rate would be a pre-judgment rate, calculated as the sum of the legal rate of 6.25%, the Federal Reserve Discount Rate on the date of the accident, September 18, 2006, plus the statutorily mandated 5%, equaling 11.25%. The second rate would be a post-judgment rate, calculated as the sum of the legal rate of .5%, the Federal Reserve Discount Rate on the date of the judgment, December 8, 2009, plus the statutorily mandated 5%, equaling 5.5%.

I do not agree that Plaintiff's judgment interest should be calculated using two separate rates. In the recent Superior Court case of Houghton v. Shapira, this Court held that "[b]ecause 6 Del. C. 2301(d) does not distinguish between pre-judgment and post-judgment interest, the same interest rate will apply to both calculations. . . . The interest is a continuing liability which merely accumulates with the passage of time [and] is not recalculated on the day final judgment is entered to determine a different post-judgment rate. The interest rate remains fixed."² The treatise Delaware Trial Handbook, cited in my Order, provides additional instruction on this issue:

Interest is money awarded to a successful plaintiff in a civil action beyond the amount of the judgment to compensate the plaintiff for additional losses resulting from being deprived of the use of the money

injury, provided that prior to trial the plaintiff had extended to defendant a written settlement demand valid for a minimum of 30 days in an amount less than the amount of damages upon which the judgment was entered.

² 2013 WL 3349956, at *5 (Del. Super. June 27, 2013) (quoting and citing *TranSched Sys. Ltd v. Versyss Transit Solutions, LLC*, 2012 WL 1415466, at *6 (Del. Super. Mar. 29 2012); *Rollins Env'tl. Servs., Inc. v. WSMW Indus., Inc.*, 426 A.2d 1363, 1367–68 (Del. Super. 1980)) (internal quotation marks omitted).

during the period between the injury and payment. . . . The rate of interest allowed in actions at law generally is equated to the “legal rate” of interest described in 6 Del. C. § 2301 [D]isfavored is the segmenting of interest, i.e., awarding different rates of interest for pre-judgment and post-judgment interest, although such segmentation may be permitted in equity in the discretion of the court.³

Defendant cites the Delaware Supreme Court case of Wilmington Country Club v. Cowee⁴ and the Superior Court case of Novkovic v. Paxson⁵ as support for the use of two separate rates. I find neither case to be on point. In Wilmington Country Club, the court stated that “Delaware law provides that Post-Judgment Interest is a right belonging to the prevailing plaintiff and is not dependant on the trial court’s discretion. Interest on a judgment begins to accrue when the judgment is entered as final and determinative of a party’s rights.”⁶ The court found this accrual date to be the date of the first jury verdict, notwithstanding the erroneously granted second trial.⁷ Significantly, it made no mention of the rate to be used when calculating the post-judgment interest. Rather, the court merely acknowledged post-judgment relief as the Plaintiff’s right, and pointed out the day on which the relief began to accrue.⁸ In Novkovic, this Court split the interest rates to be applied to the respective pre and

³ David L. Finger & Louis J. Finger, *Delaware Trial Handbook*, § 28.10 (1994) (emphasis added).

⁴ 747 A.2d 1087 (Del. 2000).

⁵ 2009 WL 659075 (Del. Super. Mar. 16, 2009).

⁶ 747 A.2d at 1097.

⁷ *Id.* at 1097–1098.

⁸ *See id.*

post-judgment periods, and did so by citing to Wilmington Country Club. As I have explained, however, the Delaware Supreme Court in Wilmington Country Club did not dictate that separate rates should be used when calculating pre and post-judgment interest. Therefore I agree with the reasoning in Houghton and not Novkovic.

Lastly, I do not perceive any real difference between using 360 days, rather than 365 days to reach the per diem rate of Plaintiff's interest owed. I recognize that using 360 days yields a per diem rate of \$91.35 ($\$292,330 \times 11.25\%$ divided by 360), whereas using 365 days yields a per diem rate of \$90.10 ($\$292,330 \times 11.25\%$ divided by 360). Interest calculations, however, frequently use 360 days, rather than 365 days.⁹ Therefore, I will keep 360 days as the denominator in the calculation.

For the above reasons, Defendant's Motion to Alter or Amend the Judgment and/or for Reargument Pursuant to Superior Court Civil Rule 59 (d) & (e) is **DENIED**. Plaintiff's interest rate, both pre and post-judgment, will be the sum of the legal rate of 6.25%, the Federal Reserve Discount Rate on the date of the accident,

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See W. R. Habeeb, Annotation, *Computing Interest on the Basis of 360 Days in a Year, 30 Days in Month, or the Like, in Usury*, 35 A.L.R.2d 842 (1954) ("The fact that a year contains 365 days, and that a month may have 28, 29, 30, or 31 days, may complicate the computation of interest for fractional parts of a year. So a method of computing interest on the basis of 360 days in the year or 30 days in the month was generally adopted, as a matter of convenience of calculation. . . . Although there is some authority to the contrary, the majority of the courts have held or recognized that the computation of interest on the basis of 360 days in the year or 30 days in the month is not usurious." (referencing Restatement (First) of Contracts § 534 (1932)); *see also Black's Law Dictionary* 1171 (8th ed. 2004) (defining *per annum* as "by, for, or in each year"); *Merriam-Webster's Collegiate Dictionary* 918 (11th ed. 2003) (defining *per annum* as "in or for each year").

September 18, 2006, plus the statutorily mandated 5%, equaling 11.25%.
Additionally, this rate, when multiplied by the amount of the judgment, will be
divided by 360 days to equal the per diem rate of \$91.35.

IT IS SO ORDERED.

Very truly yours,

/s/ Richard F. Stokes

Richard F. Stokes