

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

HENRY duPONT RIDGELY  
PRESIDENT JUDGE

KENT COUNTY COURT HOUSE  
38 THE GREEN  
DOVER, DELAWARE 19901

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Re: *Heintz v. Lafferty*  
C.A. No. 00C-05-007 HDR

**Submitted: June 3, 2003**  
**Decided: August 1, 2003**

**Upon Defendant's Motion for New Trial -**  
**DENIED**

**Upon Plaintiff's Motion for Assessment of**  
**Expert Witness Fees and Costs - GRANTED**

Counsel:

This is a civil action arising from an intersection collision of motor vehicles that occurred on May 11, 1998. Defendant admitted that he was negligent in causing the accident and also charged that the Plaintiff was also negligent. Defendant also contested the issue of proximate cause of the injuries. The jury appointed the percentage of negligence between the parties attributing 90% to Defendant and 10% to Plaintiff. It then determined compensatory damages to be \$67,500 which after reduction for comparative negligence resulted in a judgement of \$60,750 plus costs. Defendant has moved for a new trial contending that the verdict is grossly out of proportion to the injuries suffered. Plaintiff has moved for an award

of expert witness fees and costs. For the reasons which follow, Defendant's motion is denied and Plaintiff's motion is granted.

## I

As a result of the collision the airbag in Plaintiff's vehicle deployed causing his head to be thrown into the driver's side window.

The initial diagnosis was a contusion of the scalp and cervical sprain. While Plaintiff did improve and did have less symptoms as treatment progressed in 1999, the treating physician gave a prognosis of permanent partial impairment with flare ups to be expected for the rest of Plaintiff's life. His life expectancy is 30 years. Spasms were noted by the treating physician on various dates as recently as April of 2003 and the doctor testified that they were caused by the May 11, 1998 collision. Thus, Plaintiff presented evidence of cervical injuries that affected him over a 5 year period, expert opinion that the injuries were permanent, and a life expectancy of 30 years.

## II

A jury verdict is presumed to be correct and just.<sup>1</sup> The Court has the authority to grant a new trial if the verdict is out of proportion to the injury so as to shock the Court's conscience and sense of justice, or if the verdict was based upon passion, partiality, prejudice, mistake or misapprehension on the part of the jury.<sup>2</sup>

In this case I am not shocked by the award nor do I find the award to be grossly excessive when the evidence is viewed in the light most favorable to the prevailing party. Defendant has not shown that a new trial is warranted.

## III

Turning to Plaintiff's Motion for assessment of expert witness fees and

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<sup>1</sup> *Mills v. Telenczak*, Del. Supr., 345 A.2d 424 (1975).

<sup>2</sup> *Storey v. Castner*, Del. Supr., 314 A.2d 187 (1973); *McCloskey v. McKelvey*, Del. Super., 174 A.2d 691 (1961).

costs, as amended, Plaintiff seeks an award of \$5,987.55 representing various court costs, a medical expert witness fee, court reporter services, and interest on the arbitration award. Defendant disputes any award in excess of \$3,571.10. The contested issues are the interest rate on the arbitration award of August 21, 2000 and the amount of the expert witness fee.

Superior Court Civil Rule 16.1 (k)(D)(iii) provides that when a plaintiff obtains a verdict from the jury more favorable than the order of arbitration after the Defendant has demanded a trial *de novo*, then interest accrues on that order in accordance with 6 *Del. C.* § 2301 beginning with the date of the order. Defendant argues the present rate of 7.25% interest should apply and the Plaintiff responds that the rate of interest at the time of the arbitrator's order controls. That rate is 11%.

6 *Del. C.* § 2301 expressly provides that “[t]he legal rate of interest shall be 5% over the Federal Reserve discount rate including any surcharge as of the time from which interest is due.” This Court has previously held concerning pre-judgment interest that “the rate of interest is calculated according to the Federal Reserve discount rate as of the date of commencement of interest liability and it remains fixed at that rate.”<sup>3</sup>

In the context of interest on an arbitrator's award, I hold that the rate as of the date of the arbitrator's order controls. Plaintiff's application for interest at 11% on the arbitrator's award of \$12,000 from August 21, 2000 until May 19, 2003 is granted.

The final issue is the cost for Dr. Glen Rowe's deposition. Dr. Rowe is an orthopedic specialist and he charged \$1,850 for a deposition at his office that lasted approximately two hours. Defendant has cited a range for fees used in 2001 and argues the fee should be at the low end of a range from \$591.50 to \$1,064.70. I am satisfied that, given the time and expertise involved, the fee of Dr. Rowe is reasonable.

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<sup>3</sup> *Rollins Environmental, etc. v. WSMW Industries*, 426 A. 2d 1363, 1368 (Del. Super. 1980).

**IV**

Accordingly, Defendant's motion for new trial is **denied**. Plaintiff's motion for costs in the amount of \$5,987.55 is **granted**.

**IT IS SO ORDERED.**

Very truly yours,

/s/ Henry duPont Ridgely

oc: Prothonotary  
xc: Order distribution