

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No.: 13-cv-02438-WYD-CBS

JEFFREY CHORAK,

Plaintiff,

v.

UNION PACIFIC RAILROAD COMPANY, a Delaware corporation,

Defendants.

ORDER

This matter is before me on Plaintiff Jeffrey Chorak's Motion for Addition of Statutory Interest Pursuant to Fed. R. Civ. P. 59(e) (ECF No. 94). Plaintiff requests that I amend the final judgment to award prejudgment interest at a rate of 9% per annum. No response was filed. For the reasons stated below, the motion is granted.

By way of background, following a five-day jury trial, the jury returned a verdict in favor of the Plaintiff on his claim of premises liability against the Defendant. On February 9, 2016, Judgment was entered in favor of the Plaintiff and against the Defendant in the amount of \$33,648.75. Post-judgment interest was awarded at the legal rate of 0.52% per annum from the date of the entry of judgment. (ECF No. 90). Plaintiff seeks an additional award of prejudgment interest at the rate of 9% per annum from the date the cause of action arose.

A party must make a motion to amend a judgment pursuant to Fed. R. Civ. P. 59(e) no later than 28 days after the entry of judgment. The Final Judgment was entered on February 9, 2016. Thus, on March 4, 2016, Plaintiff timely filed the instant

motion. I agree with Plaintiff that prejudgment interest is appropriate under the law and should be awarded in this case for several reasons.

First, as a federal court sitting in diversity, I apply state law, not federal law, to the issue of prejudgment interest. *Atlantic Richfield Co. v. Farm Credit Bank of Wichita*, 226 F.3d 1138, 1156 (10th Cir. 2000). Under Colorado law, an award of prejudgment interest is mandatory in personal injury cases such as this matter. Colo. Rev. Stat. § 13-21-101; *James v. Coors Brewing Co.*, 73 F. Supp. 2d 1250, 1257 (D. Colo. 1999). Further, prejudgment interest is an element of compensatory damages. “Courts have long characterized prejudgment interest as an element of [plaintiff’s] complete compensation.” *Johnson v. Continental Airlines Corp.*, 964 F.2d 1059, 1062 (10th Cir. 1992) (internal quotations and citations omitted). “Prejudgment interest is normally designed to make the plaintiff whole and is part of the actual damages sought to be recovered.” *Id.*

Second, in his complaint, Plaintiff sought appropriate damages, both prejudgment and post-judgment interest, costs and attorney fees. See *Colorado Performance Corp. v. Mariposa Associates*, 754 P.2d 401 (Colo. App. 1987) (holding that plaintiff’s request for interest in his complaint was sufficient to permit an award of prejudgment interest). Thus, I find that the final judgment should be amended pursuant to Rule 59(e) to include prejudgment interest. Accordingly, in light of the fact that Colorado law determines prejudgment interest in this diversity case, I find that Plaintiffs are entitled to prejudgment interest at a rate of 9% per annum. Colo. Rev. Stat. § 13-21-101(1).

Based on the foregoing, it is

ORDERED that Plaintiff Jeffrey Chorak's Motion for Addition of Statutory Interest Pursuant to Fed. R. Civ. P. 59(e) (ECF No. 94) is **GRANTED**. Plaintiff is entitled to prejudgment interest at a rate of 9% per annum as follows:

Simple interest is awarded pursuant to statute at the rate of 9% per annum from the date the cause of action arose. After the date the Plaintiff filed his complaint, he is entitled to compound annual interest. Colo. Rev. Stat. § 13-21-101(1).

- Simple interest at 9% from September 13, 2011 through September 12, 2012 is \$3,028.39.
- Simple Interest at 9% from September 13, 2012 through September 5, 2013 is \$2,971.40 Verdict plus simple interest is \$5,999.79.
- Compound interest from September 6, 2013 through September 6, 2014 is 9% of \$39,648.54 = \$3,568.37; total \$43,216.91.
- Compound interest from September 6, 2014 through September 6, 2015 is 9% of \$43,216.91 = \$3,889.52; total \$47,106.43
- Compound interest from September 6, 2015 to February 5, 2016 is 9% of \$47,106.43 = \$1,780.62 (152 days); total \$48,870.05
- Post judgment interest added until verdict paid \$11.00/day.
It is FURTHER ORDERED that the Clerk of the Court shall amend the Final

Judgment consistent with this Order.

Dated: March 31, 2016

BY THE COURT:

s/ Wiley Y. Daniel
Wiley Y. Daniel
Senior United States District Judge