

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

DEAN MINER,

Plaintiff,

v.

Civil Action No. 5:08CV127
(STAMP)

VINCE BERLAND

Defendant.

MEMORANDUM OPINION AND ORDER
REGARDING COMPUTATION OF PRE-JUDGMENT INTEREST

I. Background

A jury verdict was filed in the above-styled civil action on August 18, 2009, after a three-day jury trial. This Court entered judgment in accordance with the jury verdict, but deferred entering judgment on the issue of pre-judgment interest so as to benefit from the parties' recommendations concerning the proper computation of pre-judgment interest. On August, 26, 2009, this Court directed the parties to meet and confer to attempt to reach agreement on the proper computation of pre-judgment interest in this matter. On September 8, 2009, the parties filed a report with this Court setting forth their recommendations regarding how pre-judgment interest should be calculated.

II. Discussion

In their report to this Court, the parties failed to reach an agreement on how to calculate the amount of pre-judgment interest. The parties, however, did agree on the interest rate for both 2008 and 2009. The West Virginia Code provides the interest rate for

pre-judgment interest. W. Va. Code Ann. § 56-6-31 (West 2009). The rate is equal to “three percentage points above the Fifth Federal Reserve District secondary discount rate in effect on the second day of January of the year in which the judgment or decree is entered: Provided, That the rate of pre-judgment and post-judgment interest shall not exceed eleven percent per annum or be less than seven percent per annum.” Id. Using this formula, the parties calculated the interest rate for 2008 at 8.25 percent and the interest rate for 2009 at 7 percent.

The parties did not reach a consensus on the method of calculating the amount of pre-judgment interest. The plaintiff recommends that this Court multiply the amount of principal owed in 2008 by the interest rate of 8.25 percent in one lump sum. Then the plaintiff suggests that this Court do the same for 2009 and then add the 2008 and the 2009 figure. The defendant, however, proposes a more complex formula. He recommends that this Court multiply the amount due each week by the applicable annual rate of interest and then divide that number by 365 days. Next, that number is multiplied by the number of days from the date due to the judgment date. This yields a total amount due to the plaintiff of \$2,974.57.¹

1

Payment Made	5% due	Interest	Days to Judgment	Total
5/25/2008	\$718	0.0825	458	\$74.33
6/1/2008	557	0.0825	451	\$56.78
6/8/2008	582	0.0825	444	\$58.41
6/15/2008	475	0.0825	437	\$46.92

In this case, the losses did not occur solely on one day. Instead, the losses accrued week by week. "The formal rule for

6/22/2008	826	0.0825	430	\$80.28
6/29/2008	930	0.0825	423	\$88.92
7/6/2008	797	0.0825	416	\$74.94
7/13/2008	996	0.0825	409	\$92.08
7/20/2008	1080	0.0825	402	\$98.13
7/27/2008	737	0.0825	395	\$65.80
8/3/2008	783	0.0825	388	\$68.67
8/10/2008	1116	0.0825	381	\$96.11
8/17/2008	652	0.0825	374	\$55.12
8/24/2008	804	0.0825	367	\$66.69
8/31/2008	804	0.0825	360	\$65.42
9/7/2008	908	0.0825	353	\$72.45
9/14/2008	1021	0.0825	346	\$79.85
9/21/2008	1162	0.0825	339	\$89.04
9/28/2008	1194	0.0825	332	\$89.60
10/5/2008	1894	0.0825	325	\$139.13
10/12/2008	1860	0.0825	318	\$133.69
10/19/2008	1446	0.0825	311	\$101.65
10/26/2008	2056	0.0825	304	\$141.27
11/2/2008	1424	0.0825	297	\$95.59
11/9/2008	1100	0.0825	290	\$72.10
11/16/2008	1600	0.0825	283	\$102.35
11/23/2008	1218	0.0825	276	\$75.98
11/30/2008	1058	0.0825	269	\$64.33
12/7/2008	1236	0.0825	262	\$73.19
12/14/2008	901	0.0825	255	\$51.93
12/21/2008	968	0.0825	248	\$54.26
12/28/2008	639	0.0825	241	\$34.81
1/4/2009	1095	0.07	234	\$49.14
1/11/2009	2002	0.07	227	\$87.16
1/18/2009	1279	0.07	220	\$53.96
1/25/2009	736	0.07	213	\$30.07
2/1/2009	1029	0.07	206	\$40.65
2/8/2009	807	0.07	199	\$30.80
2/15/2009	1761	0.07	192	\$64.84
2/22/2009	1639	0.07	185	\$58.15
	\$43,890			\$2,974.5

7

accrual of interest would require the court or trier to calculate a different set of interest for each week's or month's wage loss." 1 Dan B. Dobbs, Law of Remedies § 3.6(4) (2d ed. 1993). The defendant's method of calculating pre-judgment interest provides a more accurate result of making the plaintiff whole. Accordingly, this court will calculate the pre-judgment interest using the defendant's formula.

III. Conclusion

For the above stated reasons, this Court awards pre-judgment interest to the plaintiff in the amount of \$2,974.57.

IT IS SO ORDERED.

The Clerk is DIRECTED to transmit a copy of this memorandum opinion and order to counsel of record herein. Pursuant to Federal Rule of Civil Procedure 58, the Clerk is DIRECTED to enter an amended judgment on this matter to reflect the above award of pre-judgment interest.

DATED: September 17, 2009

/s/ Frederick P. Stamp, Jr.
FREDERICK P. STAMP, JR.
UNITED STATES DISTRICT JUDGE