

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

PARSONS ENERGY & CHEMICALS GROUP	:	
Plaintiff,	:	
	:	
v.	:	No. 03-3168
	:	
WILLIAMS UNION BOILER,	:	
Defendant.	:	

MEMORANDUM

GREEN, S.J. **December , 2005**

Presently pending is Parsons Energy & Chemicals Group, Inc.’s (“Parsons”) Motion to Set Aside, or in the Alternative, to Reduce Writ of Execution, and Williams Union Boiler’s (“Williams”) Response in Opposition thereto. For the reasons set forth below Parsons’ Motion to Set Aside, or in the Alternative, to Reduce Writ of Execution will be granted, in part and denied in part.

Factual and Procedural Background.

On March 30, 2004 this court confirmed two arbitration awards granted in Williams’ favor. The Initial Arbitration Award (“Initial Award”) granted Williams a net payment of \$3,273,292 on Williams’ claims for unpaid invoices and the Schedule Incentive Fee. The net payment ordered paid to Williams included \$522,074 in accrued interest. In the Initial Award Williams’ claim to recover attorneys and expert fees and expenses was also granted. The amount of attorneys fees and expenses to be granted was not stated in the Initial Award but was determined after separate supplemental hearings were held. On August 1, 2003, in a Supplemental Arbitration Award (“the Supplemental Award”) the Arbitration Panel (the “Panel”) granted Williams’ claim for \$870,190 in attorneys and experts fees and expenses. The Panel did not expressly award any interest on attorneys fees and expenses in the Supplemental

Award.

After this court confirmed the arbitration awards granted in Williams' favor, Parsons filed a Notice of Appeal to the Court of Appeals for the Third Circuit on April 17, 2004. On June 17, 2004 Williams filed a writ of execution on any accounts held by Parsons with the Bank of America, in the amount of \$4,593,281 plus \$11,485 in post-judgment interest. On June 30, 2004 Parsons filed the instant motion to set aside or to reduce the writ of execution filed. This court entered an Order staying the instant motion until after such time as the Court of Appeals for the Third Circuit rendered a decision. The Court of Appeals for the Third Circuit affirmed this court's confirmation of the arbitration awards on April 25, 2005. After a conference was held in this matter on June 13, 2005, I afforded the parties the opportunity to file supplemental briefs in support of their positions regarding the instant motion.

Discussion

Parsons originally moved to set aside Williams' writ of execution asserting that: (1) in its calculations of amounts presently due Williams improperly utilized an interest rate in effect during 2000 instead of the interest rate effective on February 18, 2003, the date of the arbitration award; (2) the writ was defective because it calculated interest upon interest, or compounded interest¹; and, (3) Williams cannot obtain interest on the Schedule Incentive Fee, and attorneys' and experts' fees and expenses.

Again, the Panel's Initial Award included an award for interest payable to Williams on sums awarded under the Subcontract. The Initial Award does not identify the interest rate used

¹In the instant Motion (Docket No. 41) Parsons originally asserted that Williams improperly compounded interest. In its Supplemental Memorandum (Docket No. 45), Parsons no longer makes this assertion, and in its Supplemental Memo (Docket No. 47) Williams states that Parsons has agreed to withdraw this challenge to the writ. See Williams Supp. Mem. at 2.

in calculating the interest accrued, nor does it identify the date of breach. Because the Arbitration Award determined amounts due and owing under the contract as well as the interest rate applied and the amount of interest awarded - without identifying either a date liability was imposed on Parson nor the interest rate applied, this court cannot and will not attempt to determine such. Despite Williams' assertions that this court stated that the project at issue was completed on April 21, 2000, this court did not intend to find that a breach occurred on any particular date nor did this court conclude that Parsons' liability began on an exact date. It is not possible for this court to identify the date the Panel imposed liability on Parsons and the interest rate utilized by the Arbitration Panel to determine the amount of interest accrued and awarded. Williams argues that its calculations "...simply continue pre-judgment interest from the date of the award until this Court entered judgment of March 30, 2004." Williams Supp. Mem. at 4. However, like this court Williams has no way of determining whether it is utilizing the same pre-judgment interest rate used by the Panel. Williams cannot, therefore, properly state that it is simply continuing pre-judgment interest at the rate used by the Panel.

The parties correctly rely on 6 Del.C. § 2301 which provides that ". . . where there is no expressed contract rate, the legal rate of interest shall be 5% over the Federal Reserve discount rate including any surcharge as of the time from which the interest is due..." Here the issue is when the interest became due. Parsons argues that pursuant to this court's Order of March 30, 2004 Williams was awarded interest only on the "undisputed portion of the Award....from the date of the [Initial] Award."² Parsons misconstrues the meaning and intent of this Court's Order

²Parsons further argues that pre-judgment interest is only due on the portion of the Initial Award relating to unpaid invoices and that there is no pre-judgment interest due on the Schedule Incentive Fee.

of March 30, 2004. At the hearing held in this matter on Mar 3, 2004, Williams moved to confirm the Panel's award of the undisputed amount and also defended against vacating both the Initial Award and the Supplemental Award. Paragraph three of this court's Order of March 30, 2004 merely granted Williams' motion made during the hearing to confirm the undisputed portion of the Initial Award which was that portion not pertaining to the Schedule Incentive Fee and attorney expenses. Paragraph three of this court's Order of March 30, 2004 was in no way intended to limit any amount of pre-judgment interest. Nevertheless, the court recognizes that the Panel had already granted Williams an amount for accrued interest, from whatever date it imposed liability on Parsons to the date of its Initial Award. Therefore, interest is only due from the date of the Arbitration Panel's initial award to the present. Pre-judgment interest is due on Williams' claim for unpaid invoices and on the Schedule Incentive Fee at the rate effective on February 18, 2003 through and including March 30, 2004. Post-judgment interest is due on these amounts beginning on March 31, 2004 through the present.

Williams also argues that pre-judgment interest is due on the Supplemental Award of attorney's fees and expenses beginning on February 18, 2003. Williams asserts that the Arbitration Panel Awarded such costs on that date. However, on February 18, 2003 the Arbitration Panel simply determined that it would make a supplemental award of attorneys' fees and expenses at a future date. On August 1, 2003 the Arbitration Panel granted Williams a Supplemental Award of \$870,190 in attorneys and expert fees and expenses. The amount awarded on that date did not expressly include an award of interest. Therefore, this court will not grant pre-judgment interest on the Supplemental Award beginning on February 18, 2003, but instead will grant pre-judgment interest beginning on August 1, 2003, at the interest calculated pursuant to 6 Del.C. § 2301 effective on August 1, 2003 until the date of this Court's Judgment

on March 30, 2004. Post judgment interest on the Supplemental Award is due from March 31, 2004 until the present.

An appropriate Order follows.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

PARSONS ENERGY & CHEMICALS GROUP	:	
		Plaintiff,
		:
		:
v.		No. 03-3168
		:
		:
WILLIAMS UNION BOILER,		
		Defendant.
		:

ORDER

AND NOW this day of December 2005, **IT IS HEREBY ORDERED** that:

1. Parsons' Motion to Set Aside, or in the Alternative, to Reduce Writ of Execution is **GRANTED**, in part, and **DENIED**, in part.
2. Pre-judgment interest is awarded to Williams pursuant to the Initial Award on Williams' claim for unpaid invoices and on the Schedule Incentive Fee beginning on February 18, 2003 at the rate of interest calculated pursuant to 6 Del.C. § 2301 until the date of this Court's Judgment on March 30, 2004. Post-judgment interest is due on these amounts beginning on March 31, 2004 through the present.
3. Pre-judgment interest is awarded to Williams pursuant to the Supplemental Award on Williams claim for attorneys and expert fees and expenses beginning on August 1, 2003, at the interest rate calculated pursuant to 6 Del.C. § 2301 effective on August 1, 2003 until the date of this Court's Judgment on March 30, 2004. Post judgment interest on the Supplemental Award is due from March 31, 2004 until the present.
4. Williams shall file an Amended Writ of Execution in accordance with the aforementioned directions within 10 days of the date of this Order.

BY THE COURT:

CLIFFORD SCOTT GREEN