

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

|                                    |   |                |
|------------------------------------|---|----------------|
| PAREXEL INTERNATIONAL CORPORATION, | : |                |
| PAREXEL INTERNATIONAL TRUST, and   | : |                |
| BARNETT INTERNATIONAL,             | : |                |
|                                    | : |                |
| Plaintiffs and                     | : | CIVIL ACTION   |
| Counterclaim Defendants,           | : |                |
|                                    | : | No. 04-cv-3798 |
| v.                                 | : |                |
|                                    | : |                |
| OSWALDO FELICIANO and INNOVATIVE   | : |                |
| MEDIA MACHINE, INC.,               | : |                |
|                                    | : |                |
| Defendants and                     | : |                |
| Counterclaim Plaintiffs.           | : |                |

MEMORANDUM AND ORDER

Joyner, J.

December 4, 2008

Presently before the Court are Counterclaim Plaintiff's Motion to Mold Judgment to Include Prejudgment Interest (Doc. No. 175), Counterclaim Defendant's Response (Doc. No. 178), and Counterclaim Plaintiff's Reply (Doc. No. 183). For the reasons set forth below, the Court GRANTS Plaintiff's Motion and awards prejudgment interest on Counterclaim Plaintiff's award of back pay damages and breach of contract damages.

**Background**

In August of 2004, Parexel brought suit against former employee Oswaldo Feliciano and Innovative Media Machine, Inc.

("IMM") for tortious interference with contract relations, commercial disparagement, misappropriation of confidential or proprietary information, breach of contract and defamation. Feliciano, who worked as a Managing Systems Architect for Barnett,<sup>1</sup> brought counter-claims alleging that he was terminated for refusing to engage in illegal activity in violation of Pennsylvania public policy when requested to do so by his supervisor and in retaliation, in violation of the Sarbanes-Oxley Act of 2002 ("SOX"), for reporting his supervisor's allegedly illegal activities. Specifically, Feliciano claimed that Ann Carraher, Vice President of Barnett Educational Systems, wrongfully obtained the membership records of various private organizations and authorized the incorporation of these records into a Parexel marketing database. Between July of 2003 and October of 2003, Feliciano made complaints regarding the allegedly unlawful use of the database to various Barnett employees, including Ms. Carraher herself and Lisa Roth, head of Human Resources. Upon Ms. Roth's request, Lorrie Ferraro, Human Resources Director at Parexel, commenced an investigation of the matter which resulted in Ms. Carraher's termination in April of 2004. On June 21, 2004, Feliciano himself was terminated.

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<sup>1</sup> Barnett became a division of Parexel International Corporation during the course of Feliciano's employment.

Counterclaim Defendants ("Defendants") contended that Feliciano was terminated because he had an undisclosed ownership interest in an outside company, in violation of the terms of his employment agreement. The company in question, IMM, provided services to Parexel during the course of Feliciano's employment, and it was alleged that Feliciano was involved in approving payments to IMM, but never disclosed his conflict of interest.

In an Order dated June 30th, 2008, this Court granted summary judgment in favor of Counterclaim Plaintiff ("Plaintiff") on Defendants' claims of tortious interference, commercial disparagement, breach of contract and misappropriation of proprietary information. A trial commenced on the remaining claims on September 9, 2008. At the conclusion of trial, the jury found that Parexel had retaliated against Feliciano in violation of SOX and had terminated Feliciano's employment because he refused to engage in illegal conduct in violation of Pennsylvania public policy. The jury awarded Feliciano \$44,000 in back pay on the wrongful termination and retaliation claims as well as \$50,000 in compensatory damages and \$1.7 million in punitive damages on the wrongful termination claim. The jury also awarded IMM \$45,000 for its breach of contract claim.

At the conclusion of trial, we denied Defendants motion for judgment as a matter of law on the SOX claim. After trial, we

also denied Defendants renewed motion for judgment as a matter of law or, in the alternative, for a new trial pursuant to Fed. R. Civ. P. 50(b) and motion for remittitur of the punitive damages award or, in the alternative, for a new trial on the wrongful termination claim. Plaintiff now moves to mold the judgment to include prejudgment interest on the back pay and breach of contract damages awards.

### **Discussion**

#### **A. Back Pay**

An employee who prevails in a retaliation claim pursuant to SOX is entitled "to all relief necessary to make the employee whole," including "back pay, with interest." 18 U.S.C. § 1514A(c). Defendants argue first that Plaintiff is not entitled to prejudgment interest pursuant to SOX because the back pay award was made on the wrongful termination claim. Defendants then argue that Plaintiff is not entitled to prejudgment interest on the back pay award because the jury did not specify a time period for which the back pay was awarded.

Upon review of the verdict sheet and the jury instructions, it is clear that the back pay award was for both the SOX claim and the wrongful termination claim. Although question three on the verdict slip only refers to the wrongful termination claim, the Court explained in its instructions to the jury that the back

pay applied "to both Claim Number 1 and Claim Number 2" but that the verdict slip included only one back pay because Plaintiff was not entitled to double back pay. N.T., Sept. 15, 2008, at 141. The jury then found Defendants guilty of both retaliation under SOX and unlawful termination in violation of Pennsylvania public policy. Thus, the back pay award was for both the SOX claim and the unlawful termination and Plaintiff is entitled to prejudgment interest.

To determine the applicable amount of prejudgment interest, the Third Circuit has instructed in wrongful termination cases under Title VII that the district court may use the rate contained in the federal post-judgment interest rate statute, 28 U.S.C. § 1961(a), for guidance to determine the applicable interest rate. Sun Ship, Inc. v. Matson Navigation, Co., 785 F.2d 59, 63 (3d Cir. 1986). In fact, many courts have employed this approach in calculating prejudgment interest. See, e.g., Tomasso v. Boeing Co., 2007 WL 2753171 (E.D. Pa. Sept. 21, 2007); O'Neill v. Sears, Roebuck & Co., 108 F. Supp. 2d 443, 445 (E.D. Pa. 2000); Shovlin, 1997 WL 102523, at \*2. Among other reasons, this approach is desirable because it is easy to determine the rate by using the rate charts in the federal statute, and the Treasury bill ("T-bill") rates found in 28 U.S.C. § 1961 are a "suitable approximation of the available return for a typical

risk-free investment" during the back pay period. O'Neill, 108 F. Supp. 2d at 445 (quoting Davis v. Rutgers Cas. Ins. Co., 964 F. Supp. 560, 576 (D.N.J. 1997)). The post-judgment interest rate statute provides for the calculation as follows:

Such interest shall be calculated from the date of the entry of the judgment, at a rate equal to weekly 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding.

28 U.S.C. § 1961(a).

The Court finds that this calculation is also appropriate under the present circumstances because here, as in Title VII cases, awarding prejudgment interest "serves to compensate a plaintiff for the loss of the use of money that the plaintiff otherwise would have earned had he not been unjustly discharged." Booker v. Taylor Milk Co., 64 F.3d 860, 868 (3d Cir. 1995).

Plaintiff calculated the prejudgment interest due on the back pay award in the above method and by dividing the amount of the back pay award by the amount of time between Plaintiff's termination and the judgment in his favor. Defendant did not challenge the method of the calculation, but rather asserted that Plaintiff was not entitled to prejudgment interest because the jury did not specify a time period for which back pay was awarded. The Court, however, instructed the jury that "[b]ack pay is an amount that reasonably compensates the plaintiff for

any lost income and benefits from the date of his termination of his employment until he found new employment earning at least what he earned while working at Parexel." N.T., Sept. 15, 2008, at 141. Plaintiff proffered uncontradicted testimony that he was terminated by Defendants on June 21, 2004. Defendants' cross examination of Plaintiff brought to light that Plaintiff began earning income through a company called SEI in November of 2004 in the amount of \$136,000 a year. See N.T., Sept. 9, 2008, at 260.<sup>2</sup> Thus, the appropriate time period for which the jury awarded back pay was June 21, 2004 until October 31, 2004 and the amount of interest should be calculated as if the pay would have been received during that time period. The proper amount of prejudgment interest on the back pay award is, therefore, \$7261.<sup>3</sup>

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<sup>2</sup> Plaintiff earned \$98,000 a year at Parexel. N.T., Sept. 9, 2008, at 260.

<sup>3</sup>

| <b>Period</b>   | <b>Back-Pay</b> | <b>1 Year T-Bill</b> | <b>Interest</b> |
|-----------------|-----------------|----------------------|-----------------|
| 6/21/04-6/20/05 | \$44,000        | 3.42%                | \$1505          |
| 6/21/05-6/20/06 | \$44,000        | 5.23%                | \$2301          |
| 6/21/06-6/20/07 | \$44,000        | 4.97%                | \$2187          |
| 6/21/07-6/20/08 | \$44,000        | 2.49%                | \$1096          |
| 6/21/08-9/15/08 | \$44,000        | 1.66%                | \$172           |
| <b>Total</b>    |                 |                      | \$7261          |

## **B. Breach of Contract**

Under Pennsylvania law, prejudgment interest is awardable as a legal right in contract cases. Fernandez v. Levin, 548 A.2d 1191, 1193 (Pa. 1988); Kaiser v. Old Republic Ins. Co., 741 A.2d 748, 755 (Pa. Super. 1999). "That right to interest begins at the time payment is withheld after it has been the duty of the debtor to make such payment." Fernandez, 548 A.2d at 1193. The legal rate of interest is six percent (6%) per year, as provided by statute. See Fiat Motors of N. Am. v. Mellon Bank, 827 F.2d 924, 931 (3d Cir. 1987); Sec. Pac. Int'l Bank v. Nat'l Bank of W. Pa., 772 F. Supp. 874, 878 (W.D. Pa. 1991); 41 PA. CONS. STAT. § 202 (2008).

Defendants argue that Plaintiff's calculation of prejudgment interest on the breach of contract award is incorrect. They argue that prejudgment interest should be calculated from the date of filing the complaint and not from the date of demand. As stated above, however, under Pennsylvania law, prejudgment interest is calculated from the date on which payment became due. See Fernandez, 548 A.2d at 1193. Under the present circumstances, payment became due in June, 2004, when Plaintiff demanded payment of the unpaid invoices.

Defendants also argue that the jury must have included interest in its award because it awarded Plaintiff \$45,000

whereas Plaintiff's complaint only claimed he was due \$42,609 plus interest. Feliciano testified at trial, however, that Parexel owed IMM \$44,000 and the jury was within its right to credit this testimony. See N.T., Sept. 9, 2008, at 240. Nonetheless, Defendants' argument is persuasive to the extent that the jury's award exceeded \$44,000. The Court, therefore, finds for the Plaintiff to the extent that he is owed prejudgment interest on the breach of contract claim, but concludes that the proper amount due is \$10,220.<sup>4</sup>

#### **Conclusion**

In sum, we find that Plaintiff is entitled to \$7261 in prejudgment interest on the back pay award and \$10,220 in prejudgment interest on the breach of contract award.

An order follows.

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<sup>4</sup> This amount represents \$44,000 at 6% for 51 months (4.25 years), less the \$1,000 awarded by the jury in excess of the amount Feliciano testified was owed to IMM.

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v. :  
: :  
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MEDIA MACHINE, INC., :  
: :  
Defendants and :  
Counterclaim Plaintiffs. :

ORDER

AND NOW, this 4th day of December, 2008, upon consideration of Counterclaim Plaintiff's Motion to Mold Judgment to Include Prejudgment Interest (Doc. No. 175), and responses thereto (Doc. Nos. 178, 183), for the reasons set forth in the accompanying memorandum, it is hereby ORDERED that the Motion is GRANTED and Counterclaim Plaintiff is awarded a total of \$17,481.00 in prejudgment interest on the back pay damages award and the breach of contract damages award.

BY THE COURT:

s/J. Curtis Joyner  
J. CURTIS JOYNER, J.