

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

ANDRE SIMMONS : CIVIL ACTION
and LEATRICE SIMMONS, :
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 Plaintiffs, :
 :
 :
 v. :
 : NO. 96-5112
 :
 ALLSTATE INSURANCE COMPANY :
 :
 :
 Defendant. :

MEMORANDUM AND ORDER

Yohn, J. July , 1997

Plaintiffs have filed a motion requesting this court to amend its judgment of April 28, 1997 to add an award of prejudgment interest to the award of temporary building repair expenses and additional living expenses (ALE). For the reasons that follow, the court will GRANT plaintiffs' motion.

I. BACKGROUND

After a bench trial, the court concluded that defendant, Allstate Insurance Company, plaintiffs' homeowner's insurance carrier, was liable under defendant's homeowner's insurance policy for the collapse of plaintiffs' west and north basement walls and the collapse of the chimney abutting plaintiffs' recreation room. Therefore, the court found defendant liable to plaintiffs for 1) temporary building repair expenses (i.e., temporary shoring installed to hold up the

house); 2) past additional living expenses (i.e., hotel expenses incurred by plaintiffs from March 19, 1996, the date of the loss, to June 21, 1996); and 3) permanent building and contents damage.

The amount of permanent building and contents damage has not yet been ascertained by appraisal. Plaintiffs have stated that they will address the issue of the interest due on this amount in a subsequent motion and therefore the court will not discuss it at this time. However, the amount of temporary building repair expenses and past ALE for which defendant is liable to plaintiffs has been ascertained; it is \$ 13,898.39.¹ Thus, the court will address the issue of the amount of prejudgment interest due on this amount.

II. DISCUSSION

A. Which Law Applies?

The first issue is whether federal or state law applies to a determination of prejudgment interest. In Klaxon Co. v. Stentor Elec. Mfg. Co., 313 U.S. 487, 495-96 (1941), the Supreme Court concluded that rules for ascertaining the measure of damages are "matters of substance" for Erie purposes. See id., 313 U.S. at 496. In Yohannon v. Keene Corp., 924 F. 2d 1255, 1267 (3d Cir. 1991), the Third Circuit determined that rules

1. \$ 13,898.39 is the amount stated in plaintiffs' June 6, 1997 letter to the court. Since defendant has not objected to this amount, and since it is \$ 31.00 less than the total amount submitted by defendant in its May 30, 1997 letter, the court considers it to be the appropriate amount.

concerning prejudgment interest were "matters of substance" for purposes of Erie. Thus, under Erie, the court is to look to Pennsylvania law, as opposed to federal law, to determine prejudgment interest.

The next issue involves choice of law rules and requires the court sitting in diversity to examine whether a Pennsylvania court would apply Pennsylvania or New Jersey prejudgment interest law. The only real guidance in this area comes from Yohannon where the Third Circuit concluded that the Supreme Court of Pennsylvania would consider certain determinations involving prejudgment interest to be procedural for choice of law purposes, and therefore, would apply Pennsylvania prejudgment interest law to cases litigated in Pennsylvania's courts. See Yohannon, 924 F. 2d at 1265-1267 (Rule 238 of the Pennsylvania Rules of Civil Procedure which provides for the award of prejudgment interest or "delay damages" in tort cases was created to "encourage settlements and reduce a severe backlog of civil cases sounding in tort" and therefore it is procedural and must be applied to requests for prejudgment interest in tort cases, even if another state's law is applied to issues of liability and basic damages.). Although Yohannon is not directly on point in this matter, it lends significant support for the conclusion that here a Pennsylvania court would apply Pennsylvania prejudgment interest law, as opposed to New Jersey law, when determining the amount and availability of prejudgment interest. Moreover, defendant has not presented the

court with any convincing alternative methodology to be applied here by a Pennsylvania court.² Thus, this court will apply Pennsylvania prejudgment interest law to the instant case.

B. What is Pennsylvania Law on Prejudgment Interest?

In Pennsylvania, prejudgment interest is to be calculated at six percent per annum. See 41 Pa. Cons. Stat. Ann. § 202. In insurance cases involving prejudgment interest, when the insurer denies liability in toto, prejudgment interest is to be assessed from the date of loss. See Compagnie des Bauxites v. Ins. Co. of North America, 794 F. 2d 871, 879 (3d Cir. 1986) ("Courts have held that under Pennsylvania law when the insurer denies any liability, the insured is entitled to interest from the date the loss occurred.") (citing Berkeley Inn, Inc. v. Centennial Ins. Co., 422 A. 2d 1078, 1081 (Pa. Super. 1980)); PolSELLI v. Nationwide Mutual Fire Ins. Co., 1993 WL 137476, * 3 (E.D. Pa. April 30, 1993). The court has found no cases, and defendant has presented none, which state that this general principle does not apply to an award of prejudgment interest for temporary building repair expenses and additional living expenses.³

2. Defendant has in fact conspicuously vacillated between favoring Pennsylvania law and New Jersey law.

3. This makes some sense because these costs are usually incurred immediately on the date of the loss or on a continuum starting from the date of the loss.

C. Application of Pennsylvania Prejudgment Interest Law.

In this case, defendant denied liability for plaintiffs' collapse damage in toto. Practically from day one, the date of the loss, it concluded that the collapse of the basement walls, the chimney and the front porch, and the incidental damages resulting therefrom, were excluded perils under the insurance policy. Also from day one, plaintiffs had to expend money to temporarily shore up their home and live in a nearby hotel. Thus, under Pennsylvania law, prejudgment interest on \$ 13,898.39, representing the total temporary building repair expenses and additional living expenses incurred by plaintiffs, should be assessed upon defendant at the rate of six percent (6 %) per annum from March 19, 1996, the date of the loss, to April 28, 1997, the date of judgment.

An appropriate order follows.

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v.	:	
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	:	
ALLSTATE INSURANCE COMPANY	:	
	:	
Defendant.	:	

ORDER

AND NOW, this day of July, 1997, upon consideration of plaintiffs' motion to amend the judgment to add an award of prejudgment interest to the award of temporary building repair expenses and additional living expenses, defendant's response, and plaintiffs' reply, it is HEREBY ORDERED that plaintiffs' motion is GRANTED. Plaintiffs are awarded prejudgment interest on \$ 13,898.39, representing the total temporary building repair expenses and additional living expenses incurred by plaintiffs, at the rate of six percent (6 %) per annum from March 19, 1996, the date of loss, to April 28, 1997, the date of judgment.

William H. Yohn, Jr., Judge