

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

NUTRITION MANAGEMENT :  
SERVICES COMPANY :  
 :  
 : CIVIL ACTION  
 v. :  
 :  
 :  
 HARBORSIDE HEALTHCARE :  
 CORPORATION and : NO. 01-CV-0902  
 HARBORSIDE HEALTHCARE :  
 LIMITED PARTNERSHIP :

**SURRICK, J.**

**MAY 17, 2005**

**MEMORANDUM & ORDER**

Presently before the Court is Plaintiff Nutrition Management Services Company's Motion to Alter or Amend Judgment to Add Prejudgment Interest (Doc. No. 160). For the following reasons, Plaintiff's Motion will be denied.

**I. BACKGROUND**

This case involves a dispute between Plaintiff, a provider of food services for healthcare institutions, and Defendants, the owners and operators of long-term care facilities, over the existence and terms of an agreement for Plaintiff to provide food and dietary service at Defendants' facilities from early 2000 through February, 2001. Between 1993 and 1995, the parties entered into a series of written contracts for Plaintiff to provide food and nutrition services at nine (9) of Defendants' facilities. (Am. Compl. ¶ 5.) This initial relationship was successful, and by 1998, Plaintiff was managing the dietary operations at eleven (11) of Defendants' facilities. (*Id.* ¶¶ 6-7.) In the summer of 1998, Defendants solicited proposals from food service management companies interested in managing the dietary operations at all of

Defendants' facilities. (Doc. No. 163 at 106-07.) Plaintiff responded to the request, but Defendants did not act on any of the proposals. (*Id.* at 107.) In November, 1999, the parties began negotiating an agreement for Plaintiff to provide dietary management at all forty-eight (48) of Defendants' facilities. (Doc. No. 166 at 10-24.) Though several conversations and exchanges of information took place, no finalized written agreement was ever completed and signed by Plaintiff and Defendants. (*Id.*) Nevertheless, by the beginning of April, 2000, Plaintiff began providing dietary services at all of Defendants' facilities. (*Id.*)

During 2000, numerous disputes arose over the amount that Defendants were paying Plaintiff for its services. Defendants asserted that they had agreed to an all-inclusive, or "capitated," cost of \$12.75 per patient day, and refused to pay the full amount of the invoices submitted by Plaintiff. After several unsuccessful attempts to reconcile the disputed invoices, which eventually totaled over \$2 million, Plaintiff ceased providing services to Defendants' nursing homes on February 2, 2001.

Plaintiff filed a complaint against Defendants on February 7, 2001, in the Court of Common Pleas, Chester County. (Doc. No. 1 Ex. A.) The case was removed to this Court. (Doc. No. 1.) Thereafter, Plaintiff filed an Amended Complaint alleging claims for breach of contract, unjust enrichment, fraud, and interference with contractual relations.<sup>1</sup> (Am. Compl. ¶¶ 47-67, 72-74.) At trial, Plaintiff presented evidence that the parties had entered into a contract for the provision of Plaintiff's services at all of Defendants' facilities in 2000 and early 2001, and that Defendants' underpayment of Plaintiff's invoices breached the agreement. (Doc. No. 158 at

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<sup>1</sup> Plaintiff also asserted claims of conversion and violation of Chapter 93, Massachusetts General Laws. (Am. Compl. ¶¶ 68-71, 75-79.) On March 19, 2004, we granted summary judgment for Defendants on these claims. (Doc. No. 109.)

11-12.) Plaintiff also asserted that the agreement incorporated the parties' prior understanding that unpaid invoices would be charged interest at a rate of 1.5% per month (18% annually). (*Id.* at 77; Doc. No. 164 at 11.) In addition, Plaintiff claimed that Defendants interfered with its contractual relationship with Plaintiff's employees by hiring them after the termination of Plaintiff's services to Defendants, in violation of the non-competition clause in the employees' contracts. (Am. Compl. ¶¶ 40(c), 72-74; Doc. No. 164 at 14.) The jury concluded that a contract existed between the parties, found Defendants liable for breach of contract and interference with contractual relations,<sup>2</sup> and awarded Plaintiff \$2.5 million in damages. (Doc. No. 161.)

Plaintiff now requests an award of prejudgment interest at the statutory rate pursuant to Pennsylvania law. (Doc. No. 160.) Defendants argue that because Plaintiff submitted the issue of prejudgment interest to the jury as part of its breach of contract claim, Plaintiff is not entitled to an additional recovery of interest at the statutory rate. (Doc. No. 177.)

## **II. DISCUSSION**

### **A. Choice of Law**

We must first determine what law applies to the determination of prejudgment interest.<sup>3</sup> Under *Erie Railroad Co. v. Tompkins*, 304 U.S. 64, 78 (1938), and its progeny, a federal court sitting in diversity must apply the "substantive" law of the forum state in which it sits. *Yohannon v. Keene Corp.*, 924 F.2d 1255, 1265 (3d Cir. 1991) (citing *Klaxon Co. v. Stentor Elec. Mfg. Co., Inc.*, 313 U.S. 487, 496 (1941); *Erie*, 304 U.S. at 92); *see also Guar. Trust Co. v. York*, 326 U.S.

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<sup>2</sup> The jury found in favor of Defendants on the unjust enrichment claim and the fraud claim. (Doc. No. 161.)

<sup>3</sup> Plaintiff asserts, and Defendants do not dispute, that Pennsylvania law governs this issue. (Doc. No. 160 at 3-4.)

99, 109 (1945) (holding that “substantive” rules of law are those that are “outcome determinative”). Because a state’s choice-of-law rules are “substantive” for *Erie* purposes, *Klaxon*, 313 U.S. at 495-96, we will look to Pennsylvania’s choice-of-law rules to determine which state’s law will be applied to decide the instant Motion. *Calhoun v. Yamaha Motor Corp.*, 216 F.3d 338, 343 (3rd Cir. 2000).

Ordinarily, controlling state law will be determined by the relevant state legislature or the highest state court. *Erie*, 304 U.S. at 78; *Commercial Union Ins. Co. v. Bituminous Cas. Co.*, 851 F.2d 98, 100 (3d Cir. 1988). When a particular question of law has not been authoritatively decided by the highest state court, however, the federal court must predict what the highest state court would decide if confronted with the same question. *Aetna Cas. & Sur. Co. v. Farrell*, 855 F.2d 146, 148 (3d Cir. 1988). In *Yohannon v. Keene Corp.*, the Third Circuit predicted that the Pennsylvania Supreme Court would hold that Pennsylvania law determines the amount and the availability of prejudgment interest in all cases brought in a Pennsylvania forum.<sup>4</sup> *Yohannon*,

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<sup>4</sup> *Yohannon* involved a tort claim for injuries suffered as a result of asbestos exposure, and thus focused on Pennsylvania Rule of Civil Procedure 238, which applies in tort actions, rather than 41 Pa. Cons. Stat. § 202 and the Restatement of Contracts, which apply in contract cases. Compare Pa. R. Civ. P. 238(a)(1) (“At the request of the plaintiff in a civil action seeking monetary relief for bodily injury, death or property damages, damages for delay shall be added to the amount of compensatory damages . . .”), and *Pittsburgh Constr. Co. v. Griffith*, 834 A.2d 572, 591 (Pa. Super. Ct. 2003) (holding that “Rule 238 applies only to tort cases, not contract cases” (internal quotation and citation omitted)), with *Francisco v. United States*, 267 F.3d 303, 308 (3d Cir. 2001) (noting that Pennsylvania relies on Restatement of Contracts § 337 and 42 Pa. Cons. Stat. § 202 to determine awards of prejudgment interest). This distinction is not relevant to the determination of whether a Pennsylvania forum would apply Pennsylvania law, however, because Pennsylvania courts have treated the provisions as analogous. See, e.g., *Pittsburgh Constr. Co.*, 834 A.2d at 591; *Metro. Edison Co. v. Old Home Manor, Inc.*, 482 A.2d 1062, 1065 (Pa. Super. Ct. 1985). We agree with the conclusion of other courts in this District that “the reasoning of *Yohannon* applies with equal force to the issue of prejudgment interest in contract cases.” *Optopics Lab. Corp. v. Nicholas*, Civ. A. No. 96-8169, 1997 U.S. Dist. LEXIS 14655, at \*41 (E.D. Pa. Sept. 23, 1997).

924 F.2d at 1267. We must therefore apply Pennsylvania law to determine whether Plaintiff is entitled to an award of prejudgment interest.

### **B. Breach of Contract Claim**

Under Pennsylvania law, interest is available as a matter of right on money owed under a contract.<sup>5</sup> *Fernandez v. Levin*, 548 A.2d 1191, 1193 (Pa. 1988); *see also Nagle Engine & Boiler Works v. City of Erie*, 38 A.2d 225, 227-28 (Pa. 1944) (“[W]henever a fixed sum of money is wrongfully withheld from a party to whom it is properly due, such party is entitled to interest.”). Pennsylvania courts have adopted the Restatement of Contracts to determine a party’s entitlement to prejudgment interest. *Black Gold Coal Corp. v. Shawville Coal Co.*, 730 F.2d 941, 943 (3d Cir. 1984) (citing *Penneys v. Pa. R.R. Co.*, 183 A.2d 544 (Pa. 1962)); *Schiller v. Royal Maccabees Life Ins. Co.*, 759 A.2d 942, 944-45 (Pa. Super. Ct. 2000). The Restatement of Contracts states that a prevailing plaintiff has a right to recover prejudgment interest at the statutory rate<sup>6</sup> for breach of contract if the value of the contract is specified by the parties or is otherwise mathematically ascertainable. *See, e.g., Tr. of Univ. of Pa. v. Lexington Ins. Co.*, 815 F.2d 890, 908 (3d Cir. 1987) (discussing section 337(a) of the Restatement of Contracts). However, the Restatement also permits the parties to supersede this default rule by mutual agreement. Section 337(a) of the Restatement states:

*If the parties have not by contract determined otherwise, simple interest at*

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<sup>5</sup> “The burden of proof lies with the party seeking prejudgment interest under a contract.” *Black Gold Coal Corp. v. Shawville Coal Co.*, 730 F.2d 941, 944 (3d Cir. 1984).

<sup>6</sup> In Pennsylvania, the statutory rate of prejudgment interest “is calculated as simple interest at a rate of six percent per year.” *McDermott v. Party City Corp.*, 11 F. Supp. 2d 612, 632 (E.D. Pa. 1998) (citing 41 Pa. Cons. Stat. Ann. § 202; *Spang & Co. v. USX Corp.*, 599 A.2d 978, 983 (Pa. Super. Ct. 1991)).

the statutory legal rate is recoverable for damages for breach of contract as follows:

(a) Where the defendant commits a breach of contract to pay a definite sum of money, or to render a performance the value of which in money is stated in the contract or is ascertainable by mathematical calculation from a standard fixed in the contract or from established market prices of the subject matter, interest is allowed on the amount of the debt or money value from the time performance was due, after making all deductions to which the defendant may be entitled.

Restatement of Contracts § 337(a) (1932) (emphasis added). Likewise, the comment to section 352 of the Restatement (Second) of Contracts states that parties may contract around a statutory prejudgment interest provision. *See* Restatement (Second) of Contracts § 352 cmt. a (1981) (“If the parties have agreed on the payment of interest, it is payable not as damages but pursuant to a contract duty that is enforceable as is any other such duty . . .”). Thus, under Pennsylvania law, the parties are free to contractually determine the availability and/or rate of interest if one of the parties breaches its duties. *See, e.g., N. Am. Specialty Ins. Co. v. Chichester Sch. Dist.*, Civ. A. No. 99-2394, 2002 U.S. Dist. LEXIS 11730, at \*25 (E.D. Pa. Jan. 3, 2002) (“[T]he parties’ contract controls the award of prejudgment interest when the contract provides for the payment of interest.” (quoting *Giant Food Stores v. Kmart Corp.*, Civ. A. No. 94-6817, 1997 WL 129020, at \*1 (E.D. Pa. Mar. 18, 1997))); *Pittsburgh Constr. Co. v. Griffith*, 834 A.2d 572, 591 (Pa. Super. Ct. 2003) (“[I]n anticipation of non-payment of money due, parties to a contract may stipulate to a higher rate of prejudgment interest.”).

Under Pennsylvania law, it is the role of the jury to determine the terms of a disputed contract between the parties. *McCormack v. Jermyn*, 40 A.2d 477, 479 (Pa. 1945); *see also Fort Wash. Res. v. Tannen*, 846 F. Supp. 354, 358 (E.D. Pa. 1994) (“[I]t is for the factfinder to determine the contents of mixed oral and written contracts, or oral contracts alone, when there is

conflicting evidence.”). At trial, Plaintiff took the position that the contract that existed between the parties included a provision for the payment of 1.5% interest per month (18% annually) on unpaid invoices. In his opening statement, Plaintiff’s counsel asserted that, based on the prior written contracts between the parties, there was an ongoing agreement that Plaintiff would charge interest at a rate of 1.5% per month on the unpaid balance of all invoices after a thirty (30) day grace period. (Doc. No. 164 at 11.) Plaintiff offered the testimony of Kathleen Hill, the company’s President and Chief Operating Officer (“COO”), in support of this claim. (Doc. No. 169 at 58.) Hill testified that the parties agreed to specific payment terms in their prior written contracts. (*Id.* at 68-69.) These contracts, which were introduced into evidence, included a provision that Defendants would be assessed interest on unpaid invoices at a rate of 1.5% per month. (Tr. 2/16/05 at 114; Pl.’s Ex. P-2.) On cross-examination, Hill testified as follows:

Q: And you’re aware that you’re claiming 18 percent interest as an applicable rate of interest with respect to the relationship you had with Harborside. Is that correct?

A: That’s correct.

Q: And you’re claiming that, although there’s no written contract to that effect? Is that right?

A: It ties back to the 1995 [written] agreement, sir.

Q: So, your claim of 18 percent interest in this case, where there’s been no written contract during a period of time of historically low interest rate[,] is based on a 1995 contract?

A: It’s been the rate we’ve used really since we went into business.

...

Q: Is your claim of 18 percent interest in this case that

[Defendants] should pay you 18 percent interest insofar as it owes you any money, is that based on a 1995 contract?

A: Yes.

Q: And there was never any agreement in this relationship, in 2000, to pay any interest, was there?

A: It was an established course of doing business, so that therefore it was essentially driven by the 1995 contract.

(Doc. No. 170 at 57-58.) On redirect, Plaintiff also elicited testimony that a draft contract dated July 28, 2000, and sent from Joseph Roberts, Plaintiff's Chief Executive Officer, to Damian Dell'Anno, Defendants' Executive Vice President and COO, included a provision providing for interest on the balance of unpaid invoices at a rate of 1.5% per month, and that Defendants never voiced an objection regarding this provision to Plaintiff. (Doc. No. 171 at 28-29; Pl.'s Ex. P-53.)

Plaintiff also submitted into evidence an exhibit prepared by Linda Haines, Plaintiff's Controller, which calculated the total damages claimed by Plaintiff. (Doc. No. 174 at 29-34, 37; Pl.'s Ex. P-138.) This exhibit included a claim for interest on unpaid invoices, calculated at a rate of 1.5% per month through the beginning of trial, in the amount of \$1,637,935. (Pl.'s Ex. P-138.) Finally, Plaintiff's counsel argued in his summation that the contract included a provision for 1.5% interest per month and that the jury should include that amount in its damage calculations:

Nutrition Management contends that it is entitled to one-and-a-half percent month -- per month interest on the contract. It was established since 1995 that that was the arrangement. It's true that, when the parties exchanged back and forth the form agreement, those financial terms were blank and, although there was an interest factored to be in there, the number was left blank. But the one time it was filled in, on July 28, 2000, when Mr. Roberts sent back that agreement to Damian Dell'Anno and Damien Dell'Anno sent it to his lawyer, his lawyer completely accepted it. His lawyer made markups all over the rest of the agreement on

August 16th, [but] didn't touch the one-and-a-half percent interest per month.

You'll also see all the invoices, that big notebook, P-20, that's sitting on the floor over there. And, as I pointed out to you yesterday, every single invoice that was sent every month on all 48 facilities says, one-and-a-half percent per month interest is charged, balance over 30 days due. Nobody ever protested. Nobody from Harborside ever said, no, no, no, that's not the deal. That's the deal.

(Doc. No. 158 at 74-75.)

Before commencing its deliberations, we instructed the jury regarding the various principles of law that it was required to follow. With regard to Plaintiff's claim that it was due interest pursuant to the terms of the contract, we instructed the jury as follows:

And finally, ladies and gentlemen, with regard to the contract issue, the contract and breach of contract, if you find that the parties had a contract and that the contract provided for the payment of interest, you must award the amount of interest and include it in your assessment of damages. If, however, you find that the parties did not have a contract[,] or that the contract did not provide for the payment of interest, then you may not include an amount of interest in your damage assessment.

(Doc. No. 159 at 35-36.)

In its verdict, the jury agreed with Plaintiff, concluding that a contract existed between the parties and that Defendants breached that contract. (Doc. No. 161.) The jury awarded Plaintiff total damages in the amount of \$2.5 million. (*Id.*) This lump-sum figure included all damages suffered by Plaintiff, including those arising from Plaintiff's breach of contract claim. (*Id.*) The verdict form, however, did not include a separate interrogatory as to whether the lump-sum amount included interest due pursuant to the terms of the contract.<sup>7</sup>

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<sup>7</sup>Prior to the Court's charge, counsel agreed that the following verdict slip was appropriate:

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**VERDICT**

**Question 1:**

Was there a contract between Plaintiff and Defendants in 2000 for Plaintiff's services at Defendants' nursing homes?

Yes \_\_\_ No \_\_\_

If you answered Question 1 "Yes," go on to Question 2. If you answered Question 1 "No," do not answer Question 2 and proceed to Question 3.

**Question 2:**

Did Defendants breach the contract with Plaintiff?

Yes \_\_\_ No \_\_\_

If you answered Question 1 or Question 2 "No," go on to Question 3. If you answered Question 2 "Yes," go on to Question 4.

**Question 3:**

Were Defendants unjustly enriched by Plaintiff?

Yes \_\_\_ No \_\_\_

**Question 4:**

Did Defendants commit fraud on Plaintiff?

Yes \_\_\_ No \_\_\_

**Question 5:**

Did Defendants unlawfully interfere with Plaintiff's contractual relationship with a third party?

Yes \_\_\_ No \_\_\_

**Question 6:**

If you have answered Questions 2, Question 3, Question 4, or Question 5 "Yes," state the amount of damages, if any, sustained by the Plaintiff as a result of the conduct of Defendants:

\$ \_\_\_\_\_

(Doc. No. 161.)

After the jury had retired, the Court advised counsel that it had prepared a verdict slip that included the first five questions above, but that also included Questions 6 through 9, which broke out the damages as to each claim. A discussion ensued on the record between counsel and the Court concerning what verdict slip would be appropriate and the impact of the verdict slip on any prejudgment interest that might be appropriate. (Doc. No. 159 at 50-60.) Ultimately, counsel agreed that the original verdict slip should be used and that after the verdict was rendered the

A party may not recover interest pursuant to both the terms of the contract and Pennsylvania's statutory prejudgment provision. *See Am. Enka Co. v. Wicaco Mach. Corp.*, 686 F.2d 1050, 1056-57 (3d Cir. 1982) (holding that a tort plaintiff may not recover prejudgment interest under both a common law provision and a state statute or rule of procedure); *cf. Friedrich v. U.S. Computer Sys.*, Civ. A. No. 90-1615, 1995 U.S. Dist. LEXIS 9791, at \*7 (E.D. Pa. July 7, 1995) (concluding that an award for breach that includes both liquidated damages and statutory prejudgment interest "provides an unjustifiable double recovery"). Such an award would result in a "windfall" double recovery for the plaintiff. A leading treatise on contracts states that:

The contract may also provide, either expressly or by reasonable implication, for the payment of interest at a specified rate after the maturity of an obligation, and, therefore, after a breach by non-performance of the contract. . . . [I]f the contract is a valid one, it determines the amount of interest that is collectible after a breach of the contract, as well as before; *and no interest by way of damages for breach of the contract will be awarded other than in accordance with the terms of the contract itself.*

11 Arthur L. Corbin, *Corbin on Contracts* § 1045 (Joseph M. Perillo ed., interim rev. ed. 2002) (emphasis added).

Plaintiff clearly argued to the jury that there was a contractual agreement between the parties, that the agreement included a provision for interest at a rate of 1.5% per month on all unpaid invoices, and that the jury should award this interest as part of its calculations. We instructed the jury that if they determined that the contract provided for the payment of interest,

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Court would determine what, if any, prejudgment interest should be awarded.

they should award interest as provided in the contract as part of their damage calculations. (Doc. No. 159 at 35-36.) In the absence of any evidence to the contrary, we must presume that the jury followed the Court's instructions with regard to the calculation of damages. *Paves v. Corson*, 801 A.2d 546, 550 (Pa. 2002). Thus, if the jury found that the contract provided for interest, it included that amount as part of its lump-sum damage award.

Plaintiff asserts that although the jury accepted all of its other arguments regarding its breach of contract claim—that a contract existed, that Defendants breached that contract, and that Plaintiff was entitled to an award in excess of \$2 million on the unpaid balance of the invoices—it somehow did not include interest as part of its damage calculations. (Doc. No. 178 Ex. A at unnumbered 3-4.) Accordingly, Plaintiff asserts that it is entitled to prejudgment interest on the entire verdict at the legal rate. This would amount to \$633,724.92.

In *Graco Children's Products, Inc. v. Century Products Co.*, Civ. A. No. 93-6710, 1996 U.S. Dist. LEXIS 10356 (E.D. Pa. July 23, 1996), another court in this District was confronted with a strikingly similar situation. At trial, plaintiff in *Graco* submitted evidence regarding the appropriate amount of prejudgment interest, including a chart prepared by plaintiff's damages expert that included prejudgment interest as part of its calculations. *Id.* at \*104-05. In his summation, plaintiff's counsel asked the jury to include prejudgment interest as part of its damage calculations. *Id.* at \*105. The jury returned a verdict in favor of plaintiff, but awarded less than the total amount of damages calculated by plaintiff's expert. Plaintiff then asked the court to award prejudgment interest at the statutory rate. *Id.* at \*103-04. The court denied the request, finding that the jury's lump-sum damage award likely included prejudgment interest. *Id.* at \*106-07. The court concluded that

because [plaintiff] emphasized the inclusion of prejudgment interest in its damage amount, the jury reasonably would have included such interest with its award of lost profit. [Plaintiff] could have omitted its request for prejudgment interest from its argument and ensured that the jury would limit its award to lost profit, and then seek prejudgment interest from the court in a post-trial motion. [Plaintiff], however, did not choose this path, and the court will not permit it to have a double helping of prejudgment interest.

*Id.* at \*106. The court’s discussion in *Graco* is compelling.

In the instant case, Plaintiff submitted the issue of prejudgment interest to the jury and urged them to include it as part of their lump-sum damage calculations. It offered evidence and argument in support of this request. We must presume that, in light of Plaintiff’s evidence and argument and the Court’s charge, the jury’s verdict included whatever interest the jury deemed appropriate. *See, e.g., Raybestos Prods. Co. v. Younger*, 54 F.3d 1234, 1247 (7th Cir. 1995) (“Because [plaintiff] provided the jury with damage figures that included interest estimates, we will presume that the jury’s award included an interest augmentation.”); *see also Poleto v. Conrail Corp.*, 826 F.2d 1270, 1277 (3d Cir. 1987) (“It has been suggested that when a jury has been asked to render only a general verdict, it might be presumed to have included prejudgment interest in its calculation of damages.”). Accordingly, an award by this Court of prejudgment interest at the statutory rate would give Plaintiff an impermissible “double recovery.” We therefore deny Plaintiff’s request for prejudgment interest on its breach of contract claim.

### **C. Interference With Contractual Relations**

Plaintiff also asserts that we should grant prejudgment interest as part of its recovery on the intentional interference with contractual relations claim. (Doc. No. 160 at 6-7.) “A tort plaintiff in Pennsylvania has potentially two distinct sources of compensation for delay, often

referred to in short-hand fashion as ‘pre-judgment interest.’” *Am. Enka Co.*, 686 F.2d at 1056.

First, a court may award “delay damages” to tort plaintiffs pursuant to Pennsylvania Rule of Civil Procedure 238.<sup>8</sup> *Weber v. GAF Corp.*, 15 F.3d 35, 36 (3d Cir. 2002). Rule 238 is not applicable in this case, however, as it authorizes delay damages only in actions “for bodily injury, death, or property damages.” Pa. R. Civ. P. 238(a)(1); *see also Am. Enka Co.*, 686 F.2d at 1056 (“[Rule] 238 provides that a plaintiff who recovers for personal injury, death, or property damage is entitled to interest . . . from the date of the complaint.”). Plaintiff’s interference with contractual relations claim does not involve bodily injury, death or property damage.

Second, Pennsylvania common law allows for recovery of delay damages in tort claims where the damages are liquidated sums that “can be measured by market value or other definite standards.” *Am. Enka Co.*, 686 F.2d at 1056 (quoting *Richards v. Citizens Natural Gas Co.*, 18 A. 600, 600 (Pa. 1889)); *see also Marrazzo v. Scranton Nehi Bottling Co.*, 263 A.2d 336, 338 (Pa. 1970). Such cases usually involve torts against property, such as conversion. *Am. Enka Co.*, 686 F.2d at 1056. At trial, Plaintiff asserted that its claim for the tort of interference with contractual relations involved a definite, liquidated amount, \$242,227, which Plaintiff claims is the amount that Defendants agreed to pay in exchange for Plaintiff’s waiver of its non-compete covenants with its employees. (Doc. No. 160 at 2.) According to Plaintiff, this sum represents 30% of the employees’ annual salary. (Doc. No. 158 at 76.) Defendants disagreed, asserting that it was only liable for, at most, the finders’ fee paid by Plaintiff to hire new employees. (Doc.

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<sup>8</sup> “Because the damages awarded pursuant to Rule 238 are determined by reference to prevailing interest rates, Pennsylvania courts have frequently characterized the rule as providing for ‘prejudgment interest.’” *Francisco*, 267 F.3d at 309-10.

Nos. 158 at 132, 184 at 2-3.) Defendants argued at trial that this applied to no more than ten employees, for a possible damage award of \$10,000. (Doc. No. 158 at 132.)

We conclude that Plaintiff is not entitled to a recovery of delay damages on its interference with contractual relations claim because the amount of damages is not liquidated or readily measurable by a market value or other well-defined standard. Liquidated damages are defined as “[a]n amount contractually stipulated as a reasonable estimation of actual damages to be recovered by one party if the other party breaches.” Black’s Law Dictionary at 395 (Bryan A. Garner ed., 7th ed. 1999). Here, it does not appear that the parties agreed to an amount of liquidated damages for Defendants’ hiring of Plaintiff’s employees. Plaintiff asserts that Defendants agreed to a fee of 30% of the employees’ annual salary, but Defendants’ COO, Dell’Anno, testified that he had not agreed to such a fee. (Doc. No. 165 at 115-16.) In fact, Plaintiff submitted into evidence an email from Dell’Anno to Hill, Plaintiff’s President and COO, on January 31, 2000, where Dell’Anno stated that he would *not* agree to payment of an additional 30% fee to hire Plaintiff’s employees. (Doc. Nos. 165 at 115, 174 at 114; Pl.’s Ex. P-115.) Plaintiff did not submit any other well-defined standard for the valuation of Defendants’ hiring of Plaintiff’s employees. Therefore, we must deny Plaintiff’s motion for delay damages on the intentional interference with contractual relation claim as well.

An appropriate Order follows.

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

NUTRITION MANAGEMENT	:	
SERVICES COMPANY	:	
	:	CIVIL ACTION
v.	:	
	:	
HARBORSIDE HEALTHCARE	:	
CORPORATION and	:	NO. 01-CV-0902
HARBORSIDE HEALTHCARE	:	
LIMITED PARTNERSHIP	:	

**ORDER**

AND NOW, this 17th day of May, 2005, upon consideration of Plaintiff Nutrition Management Services Company's Motion to Alter or Amend Judgment to Add Prejudgment Interest (Doc. No. 160, 01-CV-902), and all documents filed in support and opposition thereof,<sup>9</sup> it is ORDERED that Plaintiff's Motion is DENIED.

IT IS SO ORDERED.

BY THE COURT:

S:/R. Barclay Surrick, Judge

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<sup>9</sup> As part of the submissions in this matter, we considered the Surreply included in Defendants' Motion for Leave to File a Surreply to Plaintiff's Motion (Doc. No. 184). Accordingly, that Motion is granted.