

[Cite as *Thomas v. Ohio Bur. of Workers' Comp.*, 2008-Ohio-3641.]

Court of Claims of Ohio

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RICHARD M. THOMAS, D.C.

Plaintiff/Counter Defendant

v.

OHIO BUREAU OF WORKERS'
COMPENSATION

Defendant/Counter Plaintiff

[Cite as *Thomas v. Ohio Bur. of Workers' Comp.*, 2008-Ohio-3641.]

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Case No. 2000-02810

Judge Joseph T. Clark

JUDGMENT ENTRY

{¶1} On May 27, 2008, the court issued a decision and entry rendering judgment in favor of defendant/counter plaintiff, the Ohio Bureau of Workers' Compensation (OBWC), in the amount of \$473,388.51. On June 5, 2008, OBWC filed a motion seeking prejudgment interest pursuant to R.C. 1343.03(A). Plaintiff/counter defendant, Richard M. Thomas, D.C. (Thomas), filed a response on June 19, 2008.

{¶2} The award of prejudgment interest is controlled by R.C. 1343.03(A) which provides, in pertinent part, as follows: "[W]hen money becomes due and payable upon any * * * instrument of writing * * * the creditor is entitled to interest at the rate per annum determined pursuant to section 5703.47 of the Revised Code * * * unless a written contract provides a different rate of interest in relation to the money that becomes due and payable, in which case the creditor is entitled to interest at the rate provided in that contract."

{¶3} The Tenth District Court of Appeals has held that "[w]here the amount owing under a contract is clear, interest runs on the debt from the time it was due and payable, even though liability for the debt is disputed." *Tony Zumbo & Son Constr. Co. v. Ohio Dep't of Transp.* (1984), 22 Ohio App.3d 141, 147-148, citing *Braverman v. Spriggs* (1980), 68 Ohio App.2d 58. In this case, the court has determined that the contract between the parties contains a detailed agreement that sets forth the parties' expectations and duties including the obligation of Thomas to refund overpayments to OBWC upon discovery of such payments.

{¶4} On November 20, 2002, OBWC notified Thomas that its investigation had concluded that he had received overpayments in the amount of \$473,388.51; the jury returned a verdict in favor of OBWC for the same amount.

{¶5} "The language in R.C. 1343.03(A), providing for prejudgment interest rates to be determined according to the annual variable interest rate determined by the Ohio Department of Taxation pursuant to R.C. 5703.47, represents a change from the prior version of that statute, which set the interest rate at ten percent per annum. The change, embodied in Sub.H.B. No. 212, 125 Ohio Laws 63, took effect on June 2, 2004. The uncodified portion of H.B. 212 provided that for court actions pending on the effective date, interest would be awarded at the old statutory rate of ten percent per annum from the date when the money became payable until the effective date and

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would accrue at the new variable rates beginning on the effective date.” *Jones v. Progressive Preferred Ins. Co.*, 169 Ohio App.3d 291, 2006-Ohio-5420, ¶20.

{¶6} Upon review, OBWC’s motion for prejudgment interest is GRANTED. The court finds that the money owed by Thomas to OBWC became due and payable on November 20, 2002, and that OBWC is entitled to prejudgment interest as follows:

561 days (11/20/2002 to 06/02/2004) @ 10% of \$473,388.51	= \$ 72,759.17
212 days (06/03/2004 to 12/31/2004) @ 4% of \$473,388.51	= \$ 10,998.18
365 days (01/01/2005 to 12/31/2005) @ 5% of \$473,388.51	= \$ 23,669.43
365 days (01/01/2006 to 12/31/2006) @ 6% of \$473,388.51	= \$ 28,403.31
365 days (01/01/2007 to 12/31/2007) @ 8% of \$473,388.51	= \$ 37,871.08
148 days (01/01/2008 to 05/27/2008) @ 8% of \$473,388.51	= \$ 15,355.95
Total Prejudgment Interest	= \$ 189,057.12

{¶7} Accordingly, the court’s May 27, 2008 judgment entry is modified such that prejudgment interest in the amount of \$189,057.12 is added to the damage award of \$473,388.51, yielding total damages in the amount of \$662,445.63. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

JOSEPH T. CLARK
Judge

cc:

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AMR/cmd
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