

FAKED
3-5-14

IN THE CIRCUIT COURT OF MORGAN COUNTY, WEST VIRGINIA

U.S. SILICA COMPANY,
Plaintiffs,

v.

CASE NO. 06-C-2
JUDGE FRYE

ACE FIRE UNDERWRITERS
INSURANCE COMPANY, ET AL.
Defendants

ORDER DENYING DEFENDANT'S MOTION FOR JUDGMENT
AS A MATTER OF LAW AND IN THE
ALTERNATIVE, MOTION FOR A NEW TRIAL AND
GRANTING PLAINTIFF'S MOTION FOR
ATTORNEYS' FEES, EXPENSES AND PREJUDGMENT INTEREST

This matter comes before the Court upon the Travelers Indemnity Company's ("Travelers") Rule 50(b) Motion for Judgment as a Matter of Law and, in the Alternative, Motion for a New Trial (the "Motion") and upon the Plaintiff U.S. Silica Company's ("U.S. Silica") Motion for Attorneys' Fees, Expenses and Prejudgment Interest. The Court heard oral argument from the parties on January 13, 2014, and has reviewed the Motions, all papers submitted in support and opposition thereof, and all pertinent legal authorities. The Court will dispose of these motions in turn.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Background

1. For a number of years, Plaintiff U.S. Silica Company ("U.S. Silica") has been sued by claimants alleging, among other things, bodily injury from exposure to silica sand allegedly sold or distributed by U.S. Silica (the "Silica Claims"). The Silica Claims have been filed in various jurisdictions and allege various causes of action including without limitation negligence, strict liability and product liability.

2. U.S. Silica has historical insurance coverage for the Silica Claims, including coverage pursuant to comprehensive general liability insurance policies issued by Defendant Travelers Indemnity Company, on behalf of Travelers Insurance Company ("Travelers") to U.S. Silica in consideration for the payment of substantial premiums (the "Travelers Policies").
3. U.S. Silica sought insurance coverage for the Silica Claims from Travelers and other insurers since at least September 2005. U.S. Silica commenced this action on January 6, 2006. This dispute has been focused on obtaining insurance from three primary insurers: (1) Travelers; (2) the ACE family of insurers ("ACE"); and (3) Arrowood Indemnity Company ("Arrowood").
4. Subsequent to the filing of U.S. Silica's Complaint in this West Virginia action, ACE filed its own action in New York state court. Travelers and ACE each then filed separate motions to dismiss or stay this action in deference to the New York action. U.S. Silica opposed Travelers' and ACE's motions.
5. During the pendency of Travelers' and ACE's motions to dismiss or stay, U.S. Silica's former parent, ITT Corporation ("ITT"), named U.S. Silica as a defendant in ITT's California action and sought to have insurance disputes over the U.S. Silica claims litigated there. Ultimately, Travelers and ACE argued that, if U.S. Silica's West Virginia action were not dismissed or stayed in deference to the New York action, it should be dismissed or stayed in deference to the California action.
6. On October 3, 2007, Judge Groh denied the motions to dismiss but granted Travelers' and ACE's motions to stay this case in deference to the New York or, in the alternative, California actions. The New York court ultimately stayed the case before it in deference

- to the California action. Thus, while the parties had been litigating their dispute in West Virginia and New York, the focus of the dispute moved to California.
7. At the beginning of 2008, ACE agreed to provide coverage to U.S. Silica and they thereafter settled the claims between them in the litigation. Accordingly, the focus of the dispute was further narrowed to U.S. Silica's claims against Travelers and Arrowood.
 8. Because the pace of the litigation was slowed by the presence of ITT's unrelated and complex disputes, on April 16, 2012, U.S. Silica requested that the West Virginia court lift the stay with respect to its claims against Travelers and Arrowood. This Court *sua sponte* lifted the stay with respect to all insurers. The insurers, including Travelers and Arrowood, then filed a renewed motion to dismiss or for reconsideration. In fact, Travelers and Arrowood filed their own reply brief in support of such motion. This Court denied the insurers' motion on June 19, 2012. In so denying, the Court ruled that discovery taken in the California action could be used in this action.
 9. The insurers, including Travelers and Arrowood, then filed a writ of prohibition with the West Virginia Supreme Court, seeking to reverse this Court's ruling. The Supreme Court denied the writ.
 10. U.S. Silica then filed two summary judgment motions against only Travelers and Arrowood. Days before such motions were to be heard in November 2012, Arrowood and U.S. Silica settled. (A month or so prior, U.S. Silica had also settled with ITT, and hence the ITT insurers were dismissed.) Thus, from the time of the Arrowood settlement in November 2012, this case has been exclusively against Travelers.
 11. Travelers refused to provide the coverage to U.S. Silica under the Travelers Policies for the investigation, defense and indemnification of the Silica Claims, and raised 45 separate

affirmative defenses in this action raising reasons why it claimed it owed no coverage to U.S. Silica.

12. In 2010 Travelers agreed to participate in the defense of a small percentage of the Silica Claims, subject to a full and complete reservation of rights. Travelers paid approximately \$30,000 to U.S. Silica but, at all times, refused to pay any amount toward U.S. Silica's pre-2010 defense or indemnity costs.
13. U.S. Silica sought to recover from Travelers costs incurred prior to September 12, 2005, in the amount \$8,037,745, which U.S. Silica claimed was the amount covered under the Travelers Policies.
14. On September 23, 2013, this action proceeded to a jury trial, presided over by this Court. On September 25, 2013, the jury returned a verdict in favor of U.S. Silica, finding that Travelers breached the Travelers Policies when it refused to pay U.S. Silica's claims for insurance coverage for the Silica Claims, and awarding U.S. Silica \$8,037,745 in damages, the amount sought by U.S. Silica from Travelers.
15. On October 15, 2013, this Court entered an Order of Judgment which, among other things, entered judgment in favor of U.S. Silica and against Travelers in the amount of \$8,037,745, with post-judgment interest thereon at the rate of 7% per annum from the date of the verdict.
16. With respect to U.S. Silica's claim for declaratory relief, the Order of Judgment incorporated by reference this Court's prior orders and rulings in this action, which ruled that Travelers had a duty to defend U.S. Silica in the Silica Claims that alleged exposure to silica prior to or during any of the policy periods of the Travelers Policies, or that allege exposure to silica but are silent or vague as to the dates of such exposure.

17. The Order of Judgment further required U.S. Silica to submit papers in support of its oral motion for prejudgment interest and attorneys' fees and expenses within 10 days.

II. Attorneys' Fees and Expenses

18. As noted above, in this action, the jury found that Travelers breached its obligations to U.S. Silica under the Travelers Policies and that U.S. Silica suffered damages in the amount of \$8,037,745 as a result.

19. In addition, through a number of orders and rulings incorporated into the Court's Order of Judgment, the Court awarded declaratory relief to U.S. Silica regarding Travelers' duty to defend U.S. Silica in the Silica Claims.

20. Because U.S. Silica was forced to litigate to a verdict and judgment in order to enforce its rights to defense and indemnification of the Silica Claims under the Travelers Policies, U.S. Silica is entitled to recover from Travelers its reasonable attorneys' fees and expenses incurred to pursue those claims.

21. "Where a declaratory judgment action is filed to determine whether an insurer has a duty to defend its insured under its policy, if the insurer is found to have such a duty, its insured is entitled to recover reasonable attorney's fees arising from the declaratory judgment litigation." Syl. Pt. 2, *Aetna Cas. & Sur. Co. v. Pittolo*, 176 W. Va. 190, 342 S.E.2d 156 (1986).

22. The Supreme Court adopted this rule "in recognition of the fact that, when an insured purchases a contract of insurance, he buys insurance – not a lot of vexatious, time-consuming, expensive litigation with his insurer." *See Hayseeds, Inc. v. State Farm Fire & Cas.*, 177 W. Va. 323, 329, 352 S.E.2d 73, 79 (1986). Thus, "where an insurer has violated its contractual obligation to defend its insured, the insured *should be fully compensated for all expenses* incurred as a result of the insurer's breach of contract, including those expenses incurred in a declaratory judgment action. To hold otherwise would be unfair to the insured, who originally purchased the insurance

policy to be protected from incurring attorney's fees and expenses arising from litigation." *Pitrolo*, 176 W. Va. at 194 (emphasis added). "To impose upon the insured the cost of compelling his insurer to honor its contractual obligation is effectively to deny him the benefit of his bargain." *Hayseeds*, 177 W. Va. at 329.

23. Pursuant to *Pitrolo*, U.S. Silica seeks compensation for a total of \$4,679,962 in attorneys' fees and expenses that U.S. Silica was forced to incur to pursue its contractual rights to defense and indemnity for the Silica Claims. More specifically, U.S. Silica seeks an order awarding it the following categories of attorneys' fees and expenses, which it incurred from January 2006 (the Complaint in this action was filed on January 6, 2006), through the date of the verdict against Travelers on September 25, 2013: (1) fees and expenses paid to the firm K&L Gates LLP in the amount of \$4,251,327.12; (2) fees and expenses paid to the firm Bowles Rice LLP in the amount of \$266,721.15; and (3) expenses paid directly by U.S. Silica to testifying experts and court reporters and other vendors in the amount of \$161,913.86.

24. Under *Pitrolo*, "the test of what should be considered a reasonable fee is determined not solely by the fee arrangement between the attorney and his client." 176 W. Va. at 195. "Rather, the reasonableness of the attorney's fees is generally based on broader factors," such as:

(1) the time and labor required, (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases.

Id. at 195-96.

25. The relevant factors outlined in *Pitrolo* establish the reasonableness of U.S. Silica's attorneys' fees and expenses and support awarding U.S. Silica the full amount that it seeks in its Motion.

Time and Labor Required

26. This Court has observed first hand that the litigation of this coverage dispute between U.S. Silica and its insurers took more than seven years, spanned multiple jurisdictions and required a substantial expenditure of time and effort by U.S. Silica and its attorneys.

27. The prosecution of this West Virginia action included extensive discovery and motions practice, numerous court hearings involving oral argument, defense of an interlocutory appeal to the West Virginia Supreme Court in the summer of 2012, and a full jury trial before this Court.

28. U.S. Silica, through its attorneys, K&L Gates and Bowles Rice, was required to invest thousands of hours to pursue coverage for the Silica Claims.

Complexity

29. The coverage dispute involved complex questions of law and fact. The parties engaged in multiple rounds of briefing on a wide range of legal issues, including issues related to the appropriate forum in which to litigate the dispute, the propriety of this Court's decision to lift the stay, the proper choice of law rules to apply in the litigation, and numerous specialized issues of coverage law, including trigger, scope of coverage, allocation and the legal standard applicable to "late-notice" and "pre-tender" defenses, among other issues.

30. Travelers raised numerous defenses to coverage for the Silica Claims, asserting 45 separate affirmative defenses in its answer in this action alone. The parties submitted thousands of pages of legal memoranda and exhibits resulting in extensive rulings.

Skill and Expertise

31. Properly presenting U.S. Silica's positions to the Court and jury required skill and expertise in the areas of complex insurance coverage litigation.

32. Affidavits by attorneys that U.S. Silica submitted in support of its Motion demonstrate that the firm K&L Gates has a respected insurance coverage practice group that is recognized for, among other things, insurance coverage litigation regarding rights to coverage under historical insurance policies for "long tail" bodily injury liabilities, the type of liabilities at issue in this case.

33. It is notable that Travelers was represented in this case by Steptoe & Johnson LLP from Washington, DC, an international law firm that presents itself as having "one of the largest insurance, reinsurance, and surety practices in the nation" with "extensive experience in representing insurers in many large, complex declaratory judgment actions regarding asbestos and other product claims, and environmental and hazardous waste claims."¹

Experience, Reputation and Ability of the Attorneys

34. As the affidavits submitted by U.S. Silica in support of its Motion set forth in details, both of U.S. Silica's outside law firms, and the attorneys involved for those firms, have a strong reputation for providing high-quality legal services to corporate clients like U.S. Silica.

¹ <http://www.steptoe.com/practices-155.html>.

35. Bowles Rice and the partners, associates and paralegals working in the firm's Martinsburg, West Virginia office have an excellent reputation in the Eastern Panhandle for providing high-quality legal services.

36. K&L Gates' has a respected policyholder-side insurance coverage practice group that is recognized in Pittsburgh and nationally for, among other things, insurance coverage litigation regarding rights to coverage under historical insurance policies for "long tail" bodily injury liabilities.

Nature and Length of Professional Relationship

37. Both Bowles Rice and K&L Gates have longstanding relationships with U.S. Silica, which has been a client of each firm for over a decade.

Fee Structure, Customary Fee and Discount

38. Both K&L Gates and Bowles Rice were paid fees based on an hourly rate fee structure.

39. The hourly rates billed by Bowles Rice over the course of this litigation are consistent with an insurance coverage action of this duration and scope, and are commensurate with the rates charged by commercial litigators and paralegals of comparable skill, experience and reputation. See Affidavit of Charles S. Trump, IV at ¶ 10 (submitted with U.S. Silica's Motion).

40. The hourly rates billed by K&L Gates, including its lead attorneys John Waldron, Andrew Stanton and Paul Fuener for work performed in connection with this dispute are customary and consistent with the market for legal services for complex insurance coverage litigation of a national scope for "long tail" bodily injury claims. See Affidavit of Richard A. Ejzak at ¶¶ 6-8; Affidavit of Matthew Jacobs at ¶¶ 7-10; Affidavit of David Strasser at ¶¶ 6-9; Affidavit of Mark Shepard at ¶¶ 8-10; Affidavit of James Dattilo at ¶¶ 8-10 (all submitted with U.S. Silica's Motion).

41. K&L Gates' invoices reflect that U.S. Silica received a 5% discount from K&L Gates' standard hourly rates throughout the life of this matter.

Amount Involved and Results Obtained

42. The amount in dispute on U.S. Silica's breach of contract claim against Travelers was substantial – \$8,037,745.

43. The result was highly favorable to U.S. Silica – the jury awarded U.S. Silica the full amount of damages.

44. In addition to its contractual damages awarded by the jury, this Court also granted declaratory judgment in favor of U.S. Silica, ruling that Travelers has a duty to defend U.S. Silica in pending and future Silica Claims – including "silent" claims for which Travelers had previously denied any coverage obligation.

45. For the foregoing reasons, U.S. Silica's attorneys' fees and expenses are reasonable under *Pittolo*, and the Court ORDERS that U.S. Silica shall be awarded its attorneys' fees and expenses in the amount of \$4,679,962.

III. Prejudgment Interest

46. This Court finds it appropriate to award prejudgment interest on the verdict in the amount of 7% per annum under West Virginia Code §56-6-27.

47. West Virginia Code §56-6-27 governs prejudgment interest in breach of contract actions and provides as follows:

The jury, in any action founded on contract, may allow interest on the principal due, or any part thereof, and in all cases they shall find the aggregate of principal and interest due at the time of the trial, after allowing all proper credits, payments and sets-off; and judgment shall be entered for such aggregate with interest from the date of the verdict.

48. The Supreme Court of Appeals of West Virginia has interpreted the Code to exclude the use of §56-6-31 when §56-6-27 applies.

"In an action founded on contract, a claimant is entitled to have the jury instructed that interest may be allowed on the principal due, W.Va.Code, 56-6-27 [1923], but is not entitled to the mandatory award of interest contemplated by W.Va.Code, 56-6-31 [1981], since this statute does not apply where the rule concerning interest is otherwise provided by law."

City Nat. Bank of Charleston v. Wells, 181 W. Va. 763, 778, 384 S.E.2d 374, 389 (1989) quoting *Thompson v. Stuckey*, 171 W. Va. 483, 300 S.E.2d 295 (1983).

49. Usually, a Plaintiff waives pre-judgment interest by not requesting an instruction for the jury's consideration.

[T]he plaintiff here is not entitled to an award of prejudgment interest after trial, although he could have demanded an instruction to that effect in order to submit the issue to the jury. His failure to do so must be deemed a waiver of that right.

Id.

50. Here, however, the Defendant affirmatively proposed that the Court, not the jury, should determine prejudgment interest, and the Court and parties agreed to proceed in that fashion.

51. West Virginia courts hold that, where a defendant agrees that the Court will determine prejudgment interest, the defendant has waived any subsequent objection that the jury should have determined interest under §56-6-27, and the Court determines an award of prejudgment interest. *Dieter Eng'g Servs., Inc. v. Parkland Dev., Inc.*, 199 W. Va. 48 (1996). (Plaintiff failed to request a jury instruction regarding prejudgment interest. However, to answer jury's question, the circuit court and counsel agreed that the court

would award interest based on the verdict. Accordingly, the Supreme Court found that the defendants had waived any objection to the circuit court's determination that the court, and not the jury, would award pre-judgment interest.)

Dieter Engineering represents in its brief that the circuit court upon receiving the question from the jury conferred with the parties in chambers where it was agreed by all to answer the jury's question in the negative and that the circuit court would award interest on any principal sum returned by the jury...The appellants do not disagree with Dieter Engineering's representation of the above facts. Furthermore, not only did the appellants fail to object on the record to how the circuit court chose to answer the question submitted by the jury during deliberations, but the appellants agreed to the answer the circuit court provided to the jury. Thus, we find the appellants waived any error by failing to object to the circuit court's response to the jury's question: "Where objections were not shown to have been made in the trial court, and the matters concerned were not jurisdictional in character, such objections will not be considered on appeal." Syl. pt. 1, *State Road Commission v. Ferguson*, 148 W.Va. 742, 137 S.E.2d 206 (1964)... Accordingly, we will not further address this assignment of error.

Dieter Eng'g Servs., Inc. v. Parkland Dev., Inc., 199 W. Va. 48, 61-62, 483 S.E.2d 48, 61-62 (1996) emphasis added, internal citations omitted.

52. Accordingly, this Court determines that the Defendant waived any objection to this Court now awarding pre-judgment interest.
53. The Plaintiff should be granted pre-judgment interest required to make it whole from Travelers' breach of its coverage obligations.
54. The Court finds that an award of pre-judgment interest of 10% per annum would produce a windfall and exceed rightful compensation for Plaintiff's loss of the use of funds expended. Instead, guided, but not controlled, by West Virginia Code §56-6-31, this Court finds that the rate

of 7% per annum is an appropriate pre-judgment interest rate to be levied upon the verdict from the day Plaintiff filed its Complaint, January 6, 2006, to date of the jury's verdict and Order of Judgment, October 15, 2013.

55. Accordingly, the Court ORDERS that U.S. Silica shall be awarded prejudgment interest at the daily annualized rate of .01918% for the 2,839 days between the filing of this action and the date of verdict in the amount of \$4,376,715.96 on the jury-awarded damages.

56. Post-judgment interest will incur only upon the principal verdict and not include pre-judgment interest.

57. Likewise, the Court finds that the Plaintiff is entitled to pre-judgment interest on attorneys' fees at the rate of 7% per annum from the date Plaintiff incurred the expenditure.

IV. Travelers' Motion for Judgment as a Matter of Law is Denied

58. In ruling on a Rule 50(b) motion for judgment as a matter of law under West Virginia law, "the evidence must be viewed in the light most favorable to the nonmoving party." *Kizer v. Harper*, 211 W. Va. 47, 51 (2001) (quoting Syl. pt. 1, *Mildred L.M. v. John O.E.*, 192 W. Va. 345 (1994)).

59. "[E]very reasonable and legitimate inference fairly arising from the testimony; when considered in its entirety, must be indulged in favorably to plaintiff; and the court must assume as true those facts which the jury may properly find under the evidence." *Stewart v. Johnson*, 209 W. Va. 476, 480 (2001).

60. "Only [w]hen the plaintiff's evidence, considered in the light most favorable to him, fails to establish a prima facie right to recovery, [should] the trial court . . . [grant judgment as

a matter of law] in favor of the defendant." *Id.* at 482 (quoting Syl, pt. 3, *Roberts ex rel. Roberts v. Gale*, 149 W. Va. 166 (1964)) (alterations in original).

61. "In a case where evidence is such that jury could have properly found for either party upon the factual issues, a motion for judgment [as a matter of law] should not be granted." Syl. pt. 4, *Stas v. W-P Coal Co.*, 185 W. Va. 569 (1991) (quoting Syl. pt. 7, *McClung v. Marion Cnty. Comm'n*, 178 W. Va. 444 (1987)).

62. The arguments set forth in the Defendant's motion cite the same facts and law, that this Court rejected in its Order denying Travelers' Motion for Summary Judgment, in denying Travelers' Motion for Judgment as a Matter of Law, made at the conclusion of U.S. Silica's case-in-chief during trial, and in denying Travelers' renewed Motion for Judgment as a Matter of Law, made at the close of Travelers' evidence. This Court held that the evidence was sufficient to permit the jury to decide whether Travelers breached the insurance policies it sold to U.S. Silica, and if so, the amount of damages U.S. Silica suffered as a result. Viewing the evidence in the light most favorable to the nonmoving party, the Court finds no reason to depart from its prior rulings. Accordingly, Travelers' Motion for Judgment as a Matter of Law is DENIED.

V. Travelers' Motion for Remittitur is Denied

63. A "motion for a remittitur is technically a motion to alter or amend judgment pursuant to W. Va. R. Civ. P. 59(e)." *Alkire v. First Nat'l Bank of Parsons*, 197 W. Va. 122, 127 n.6 (1996).

64. A Rule 59(e) motion seeks an "extraordinary remedy which should be used sparingly" and is only granted where: "(1) there is an intervening change in the controlling law; (2) new evidence not previously available comes to light; (3) it becomes necessary to

remedy a clear error of law or (4) to prevent obvious injustice." *Mey v. Pep Boys-Manny, Moe & Jack*, 228 W. Va. 48, 56-57 (2011) (internal quotations omitted).

65. The Court FINDS that Travelers has not demonstrated grounds for granting a remittitur. The jury, having heard the competing evidence put forward by the parties, rejected the evidence presented by Travelers and returned a verdict in favor of U.S. Silica. The Court finds no error of law in submitting this matter to the jury for decision, finds no change in the controlling law or new evidence that would alter the jury's verdict, and finds no injustice in permitting the jury's verdict to stand. Accordingly, Travelers' Motion for Remittitur is DENIED.

VI. Travelers' Motion for New Trial is Denied

66. Under Rule 59(a), "a new trial should not be granted 'unless it is reasonably clear that prejudicial error has crept into the record or that substantial justice has not been done.' *State ex rel. Meadows v. Stephens*, 207 W. Va. 341, 345 (2000) (quoting *In re State Pub. Bldg. Asbestos Litig.*, 193 W. Va. 119, 124 (1994)).

67. "When a case involving conflicting testimony and circumstances has been fairly tried, under proper instructions, the verdict of the jury will not be set aside unless plainly contrary to the evidence or without sufficient evidence to support it." *Id.* at Syl. pt. 2 (quoting Syl. pt. 4, *Laslo v. Griffith*, 143 W. Va. 469 (1958)).

68. The Court FINDS that this matter presented a triable question of fact as to whether Travelers breached the insurance policies it sold to U.S. Silica, and if so, the amount of damages U.S. Silica suffered as a result. The Court finds that its instructions to the jury were proper and finds no conflict between the jury's verdict and the evidence presented at trial. Accordingly, Travelers' Motion for New Trial is DENIED.

VII. Conclusion

For the reasons set forth above,

69. U.S. Silica's Motion for Attorneys' Fees, Expenses and Prejudgment Interest is GRANTED IN PART. U.S. Silica shall be awarded its attorneys' fees and expenses in the amount of \$4,679,962. U.S. Silica shall be awarded prejudgment interest at the daily annualized rate of .01918% for the 2,839 days between the filing of this action and the date of verdict in the amount of \$4,376,715.96 on the jury-awarded damages. Post-judgment interest, which was awarded and began on October 15, 2013, will incur only upon the principal verdict and not include pre-judgment interest.
70. Because the Plaintiff submitted calculations for pre-judgment interest on attorneys' fees at a rate of 10%, the Court ORDERS the Plaintiff to submit a brief to the Court with any necessary exhibits demonstrating how it calculated the proposed amount for pre-judgment interest for attorneys' fees as well as a calculation of the same, using instead the rate of 7% per annum from the date Plaintiff incurred the expenditures. If desired, Defendant shall thereafter have thirty (30) days to file an objection to the calculation, but not to the merits of pre-judgment interest. Parties are directed to send a judicial copy to this Court electronically by Microsoft Word or PDF to Claire.Watson@courtswv.gov. This Court will thereafter issue an Order specifically dealing with the amount of the award for pre-judgment interest of attorneys' fees.
71. Travelers' Motion for Judgment as a Matter of Law Pursuant to West Virginia Rule 50(b) and alternatively for a New Trial Pursuant to Rule 59(a) is DENIED.
72. Travelers' Motion for Remittitur pursuant to Rule 59(e) is DENIED.
73. All outstanding motions to exceed page limitations are GRANTED.

74. The Court notes the objections and exceptions of the parties to any adverse ruling herein. The Court directs the Circuit Clerk to distribute attested copies of this order to the following counsel of record.

Counsel for Plaintiff:
Charles F. Printz, Jr.
Bowles Rice, LLP
P.O. Drawer 1419
Martinsburg, WV 25402

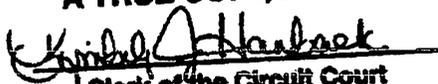
Counsel for Defendant:
Wm. Richard McCune, Jr.
115 West King St.
Martinsburg, WV 25401

Enter this 5th day of March 2014.

CC: 3-5-14
Printz
McCune


ANDREW N. FRYE, JR., JUDGE
TWENTY-THIRD JUDICIAL CIRCUIT
MORGAN COUNTY, WEST VIRGINIA

GUARDIAN MAG L:
DOM MH
CIVIL JUVENILE
CRIMINAL ADM
ORDER BOOK 44
PAGE 3 INITIAL
DATE 3-5-14

A TRUE COPY, ATTEST:

Clerk of the Circuit Court
of Morgan County, West Virginia
By 

MAR 5 2014 10:02 AM
JUDGE FRYE