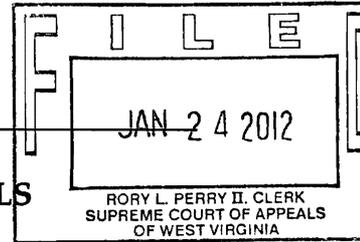


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No. 11-1325



IN THE WEST VIRGINIA SUPREME COURT OF APPEALS

RICHARD RINGER,
Defendant Below, Petitioner,

v.

JOSEPH F. JOHN,
Plaintiff Below, Respondent.

PETITIONER'S REPLY TO BRIEF OF RESPONDENT, JOSEPH F. JOHN

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IN THE WEST VIRGINIA SUPREME COURT OF APPEALS

RICHARD RINGER,
Defendant Below, Petitioner,

v.

JOSEPH F. JOHN,
Plaintiff Below, Respondent.

On Petition for Appeal
From the Circuit Court of
Preston County, West Virginia
Civil Action No. 09-C-225

PETITIONER'S REPLY TO BRIEF OF RESPONDENT, JOSEPH F. JOHN¹

I. W. Va. Code § 56-6-31 Mandates that Pre-Judgment Interest Begins to Run at The Rate in Effect When the Right to Bring a Cause of Action Accrues

W. Va. Code § 56-6-31(a) provides that pre-judgment interest "shall bear interest at the rate in effect for the calendar year in which the right to bring the same shall have accrued, as determined by the court and that established rate shall remain constant from that date until the date of the judgment or decree, notwithstanding changes in the federal reserve district discount rate in effect in subsequent years prior to the date of the judgment or decree." W. Va. Code § 56-6-31(a).

¹This Reply brief is simply filed to clarify various points raised in Respondent's brief. Petitioner does not wish to restate his arguments set forth in the "Brief of Petitioner, Richard Ringer, and Assignments of Error" which was previously filed with this Court in this case. However, Petitioner would like to make clear that he still relies on all of the law, arguments, and factual statements set forth in said brief, and that he reiterates his prior statements regarding Oral Argument in this case.

The “as determined by the court” portion of the above statute permits this Court to set the pre-judgment interest rate each year.² Unfortunately, Respondent has completely misconstrued this portion of the above noted statute. Respondent argues that the “as determined by the court” portion of the above statute somehow completely nullifies the portion of W. Va. Code § 56-6-31(a) which provides that pre-judgment interest “shall bear interest at the rate in effect for the calendar year in which the right to bring the same shall have accrued[.]” *Id.* Respondent fails to realize that the Administrative Orders³ set forth, each year, by this Court, merely establish the **rate at which interest** is to run. Such Administrative Orders do not, in any way, alter the law set forth in W. Va. Code § 56-6-31 regarding when prejudgment interest begins to run.

Contrary to arguments set forth in Respondent’s brief, the fact that the Administrative Order does not specifically state that interest begins to run as of the date of the accrual of one’s cause of action does not alter W. Va. Code § 56-6-31.⁴ Respondent fails to recognize that the Administrative Order does not mention accrual of one’s cause of action **because the Administrative Order does not alter the West Virginia Code in this regard.**

Ultimately, the Administrative Order merely alters the rate at which interest accrues, and, contrary to Respondent’s arguments, the Administrative Order does not,

²For example, on January 2, 2007, this Court determined that the interest rate in effect for calendar year 2007 was 9.75%. See page 12 of Petitioner’s Appendix.

³Such as the one set forth on page 12 of Petitioner’s Appendix.

⁴See Respondent’s brief at page 4.

in any way, alter or amend the portion of W. Va. Code § 56-6-31 which mandates that pre-judgment interest “shall bear interest at the rate in effect for the calendar year in which the right to bring the same shall have accrued[.]” *Id.*

II. A Cause of Action Accrues on the Date of Injury

Respondent argues that Petitioner’s right to bring a cause of action against Respondent did not accrue until the date of the final judgment.⁵ West Virginia law, and common sense, dictate that this cannot be the case. If Petitioner did not have a right to bring his cause of action against Respondent when such a cause of action was originally asserted by Petitioner, then Petitioner’s suit against Respondent would have been dismissed as a matter of law. Clearly, Petitioner had a right to bring suit against Respondent before the trial in the underlying matter began. In fact, as set forth previously by this Court, Petitioner had a right to bring suit against Respondent the moment he was injured by Respondent’s actions:

For a cause of action to accrue, one party must have breached a duty to the other, and the other must have been injured. At the moment the cause of action accrued, the injured party was entitled to be left whole and became immediately entitled to be made whole. Therefore, prejudgment interest runs from the time the cause of action accrues, that is, from the date of injury.

Grove By and Through Grove v. Myers, 181 W.Va. 342, 349, 382 S.E. 2d 536, 543 (W. Va. 1989) (internal citations omitted) (emphasis added).

Finally, although Grove By and Through Grove, was set forth prior to the 2007 Administrative Order, issued by this Court, the 2007 Administrative Order does

⁵See Respondent’s brief at Page 8.

NOT alter the law set forth above. As set forth above, the 2007 Administrative Order, and all subsequent similar Administrative Orders set forth by this Court, merely alter the rate upon which interest is to be calculated. Contrary to Respondent's arguments, the Administrative Order s do NOT alter W. Va. Code § 56-6-31, and Grove By and Through Grove, regarding when prejudgment interest begins to run.

III. The Jury Found in Favor of Petitioner

Respondent attempts to argue various points which are not at issue in this Appeal. For instance, Respondent attempts to argue that, somehow, Petitioner's damages should have been contingent upon the sale of a house. Unfortunately for Respondent, such an issue is not before this Court in this Appeal. As set forth in the Verdict Form,⁶ the jury awarded damages to Petitioner. Accordingly, any arguments set forth in Respondent's brief regarding the validity of the jury's verdict are improper and should be disregarded by this Court, as no such issue is before the Court in this Appeal.

IV. Conclusion

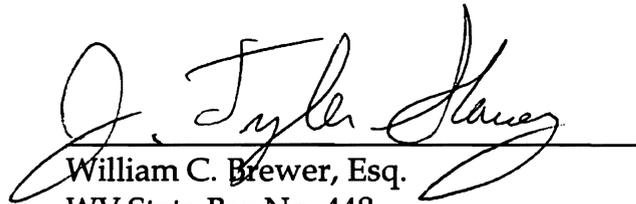
Accordingly, for the reasons set forth in Petitioner's Appeal brief and for the reasons set forth above, Petitioner Ringer respectfully requests that this Court hereby reverse the Circuit Court's August 18, 2011, Order Denying Petitioner's Motion to Amend Judgment Order, and that this Court rule that prejudgment interest runs from the time a cause of action begins to accrue, i.e. from the date of the injury, that this

⁶See Petitioner's Appendix at pages 1-3.

Court rule that the rate of prejudgment interest is that which is in effect when the cause of action begins to accrue, and that this Court rule that Petitioner Ringer is entitled to prejudgment interest at a rate of 9.75% per annum beginning on July 19, 2007.

Alternatively, Petitioner Ringer requests that this Court reverse the Circuit Court's August 18, 2011, Order Denying Petitioner's Motion to Amend Judgment Order, that this Court rule that prejudgment interest runs from the time a cause of action begins to accrue, i.e. from the date of the injury, that this Court rule that the rate of prejudgment interest is that which is in effect when the cause of action begins to accrue, and that this Court remand this case to the Circuit Court of Preston County, to determine the exact date on which Petitioner Ringer's claims against Respondent John began to accrue.

RESPECTFULLY SUBMITTED,
RICHARD RINGER
PETITIONER, BY COUNSEL.



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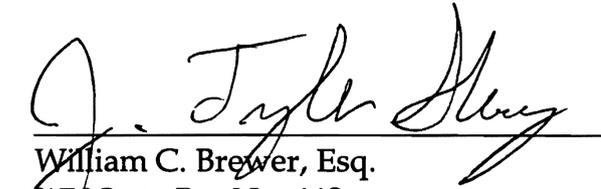
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&
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Of Counsel

CERTIFICATE OF SERVICE

The undersigned does hereby certify that he served a true copy of the within **PETITIONER'S REPLY TO BRIEF OF RESPONDENT, JOSEPH F. JOHN** on the 23rd day of January, 2012, via United States mail, postage prepaid, upon the following:

Peter D. Dinardi, Esq.
198 Spruce Street
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