

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED VACCINES, INC.,

Plaintiff,

v.

DIAMOND ANIMAL HEALTH, INC.,

Defendant.

OPINION AND ORDER

05-C-0604-C

In this civil case arising out of a contract dispute, the jury found that plaintiff United Vaccines, Inc. owed defendant Diamond Animal Health, Inc. \$406,000.00 for failing to meet the “take or pay” provision specified in the parties’ agreement and \$28,777.46 for a shipment of a product referred to as C.Bot that defendant delivered to plaintiff. Judgment was entered in favor of defendant on October 18, 2006. The case is before the court on defendant’s motion to amend the judgment to add an award of pre-judgment interest in the amount of \$42,687.86, which represents interest at the rate of 5% a year on the 2005 “take or pay” shortfall and on the money owing for the C.Bot. delivery.

Plaintiff does not contest either the amount of damages sought or defendant’s characterization of those damages as liquidated, complete and measurable at the time of the

breach of contract. Its only objection is that the motion is untimely. That objection is unsupported by both federal law and the law of Iowa, whose law applies to this diversity case.

In a case decided in 2004, I held that it was permissible for a party to request prejudgment interest in a post-trial motion. Latino Food Marketers, LLC v. Ole Mexican Foods, Inc., No. 03-C-0190-C, 2004 WL 1254027, *1 (W.D. Wis. June 3, 2004). In that case, I relied on Fed. R. Civ. P. 54(c), which provides in part: "Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which a party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings." I noted that in Williamson v. Handy Button Machinery Co., 817 F.2d 1290, 1298 (7th Cir. 1987)), the court of appeals had held that "Rule 54(c) was designed to divorce the decision what relief to award from the pleadings and arguments of counsel; the court is to determine, and award, the right relief in each case even if the complaint is silent on the question." Id. In turn, Williamson relied on West Virginia v. United States, 479 U.S. 305, 706 (1987), and on General Motors Corp. v. Devex Corp., 461 U.S. 648, 655-56 (1983), in which the Supreme Court held that "[p]rejudgment interest is an element of complete consideration."

Under Iowa law, interest accrues at the rate of 5% from the time money becomes due and payable. Schimmelpfennig v. Eagle National Assurance Corp., 641 N.W.2d 814, 816

(Iowa 2002); Iowa Code § 535.2. An award of interest is mandatory. Iowa State Commerce Comm'n v. Manilla Grain Terminal, Inc., 362 N.W.2d 562, 565 (Iowa 1985); Rowen v. LeMars Mutual Insurance Co. of Iowa, 347 N.W.2d 630, 641 (Iowa 1984).

Plaintiff has cited Uphoff v. Elegant Bath, Ltd., 176 F.3d 399 (7th Cir. 1999), for the proposition that prejudgment interest must be requested before judgment is entered. This case offers plaintiff no support because it holds only that awarding prejudgment interest in addition to liquidated damages would give the prevailing party a double recovery. Id. at 406. It says nothing about the timing of the filing of a motion for prejudgment interest. Plaintiff has also cited Havoco of America, Ltd. v. Sumitomo Corp., 971 F.2d 1332 (7th Cir. 1991), as holding that a Rule 59(e) motion cannot be used to raise new arguments that could have been raised before judgment was entered. That case offers no more support than Uphoff. Defendant is not raising a new argument on the merits of the case. Instead, it is simply seeking the prejudgment interest that is due a prevailing party whose damages were liquidated and measurable before final judgment.

I conclude that defendant has shown its entitlement to an award of prejudgment interest in the amount of \$42,687.86, calculated at the rate of 5% a year on the past due amounts of \$406,000.00 and \$328,777.46.

ORDER

IT IS ORDERED that the clerk of court is to amend the judgment in this case to add an award to defendant Diamond Animal Health, Inc. of prejudgment interest in the amount of \$42,687.86.

Entered this 30th day of November, 2006.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge