

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

WILLIE MCCRARY and CHARLENE)	
MCCRARY,)	
)	Case No. 13-CV-507-JED-PJC
Plaintiffs,)	
)	
v.)	
)	
COUNTRY MUTUAL INSURANCE)	
COMPANY d/b/a COUNTRY FINANCIAL,)	
)	
Defendant.)	

ORDER

Following a jury trial, the jury returned verdicts in favor of the plaintiffs and against the defendant, awarding the plaintiffs \$22,000.00 in actual damages and \$25,000.00 in punitive damages on plaintiffs' claims of breach of contract and bad faith (Doc. 78), and the Court entered Judgment on the verdicts (Doc. 79). Pursuant to Fed. R. Civ. P. 59(e), the plaintiffs timely moved to amend the Judgment to include prejudgment interest. (Doc. 83).

Plaintiffs' insurance contract and bad faith claims were premised upon Oklahoma law. The Oklahoma statute upon which plaintiffs' request for prejudgment interest is based provides in relevant part:

It shall be the duty of the insurer, receiving a proof of loss, to submit a written offer of settlement or rejection of the claim to the insured within ninety (90) days of receipt of that proof of loss. Upon a judgment rendered to either party, costs and attorney fees shall be allowable to the prevailing party. For purposes of this section, the prevailing party is the insurer in those cases where judgment does not exceed written offer of settlement. In all other judgments the insured shall be the prevailing party. If the insured is the prevailing party, the court in rendering judgment shall add interest on the verdict at the rate of fifteen percent (15%) per year from the date the loss was payable pursuant to the provisions of the contract to the date of the verdict.

Okla. Stat. tit. 36, § 3629.

Defendant argues that plaintiffs are not entitled to the 15% interest rate under § 3629 because the defendant made a \$35,000.00 offer to allow judgment that exceeded the actual damages (\$22,000.00) awarded to the plaintiffs, such that the plaintiffs are not the “prevailing party” under the statute. (Doc. 87). The defendant’s argument is unavailing, for several reasons. The statute requires the insurer, within 90 days of receipt a proof of loss, to submit a written offer of settlement or a rejection of a claim. *Okla. Stat. tit. 36, § 3629(B)*. The proof of loss at issue here was submitted on May 22, 2013, and 90 days thereafter fell in August 2013. The defendant argues that its Offer to Allow Judgment, submitted over two and one-half years later on April 4, 2016 (see Doc. 87-1 at 2), was the “offer of settlement” within the meaning of the statute. The Court disagrees, as the timing of an “offer of settlement” is clear on the face of the statute. Even assuming that the Offer to Allow Judgment was a timely “offer of settlement” under the statute, it was exceeded by the award to the plaintiffs, because the defendants’ offer to allow judgment was “for *all* claims and [was] inclusive of costs, interest and attorney fees.” (See Doc. 87-1 at 1, emphasis added). The total of the jury’s verdicts was \$47,000.00, which plainly exceeded the \$35,000.00 offer that did not exclude punitive damages claims from the calculation. (See *id.*). Moreover, the Court recently awarded attorneys’ fees in the amount of \$64,132.50. The attorneys’ fees award, alone, well exceed the defendant’s Offer to Allow Judgment, which offered only \$35,000.00, inclusive of such fees.

The defendant further opposes the motion based on its arguments that the amount of the Judgment was not ascertainable prior to the jury’s verdicts and the insurance policy does not allow prejudgment interest because the parties did not reach an agreement on loss payment and the defendant had no obligation to make a payment until the “entry of a final judgment.” (Doc. 87). Alternatively, the defendant argues (1) that the “earliest date upon which the loss was

payable was March 31, 2016, the date the Court issued its ruling on [defendant's] Motion for Summary Judgment," rather than from the date of defendant's denial of plaintiffs' May 22, 2013 claim; and (2) that, if the Court determines prejudgment interest to be appropriately awarded as of June 16, 2013 – the date upon which defendant denied plaintiffs' May 22, 2013 claim – plaintiffs have proposed an inaccurate calculation. (*Id.* at 8-9).

Contrary to defendant's argument, the amount of plaintiff's actual loss was ascertainable prior to verdict. Under Oklahoma's general prejudgment interest statute, "any person who is entitled to recover damages certain, or capable of being made certain by calculation, and the right to recover which is vested in him upon a particular day, is entitled also to recover interest thereon. . . ." *Okla. Stat. tit. 23, § 6*. Had defendant not rejected the plaintiffs' May 2013 loss claim, the loss would have been ascertained, and it was ascertainable, even though defendant disputed that any additional loss was recoverable under the policy. The day after the plaintiffs provided their notice of loss in May 2013, the defendant's adjuster, Corey Carr, inspected the plaintiffs' home with Dunrite Plumbing, LLC, and Dunrite provided an invoice to the plaintiffs in the amount of \$22,000.00 (*see* Joint Exhibit 27; *see also* Doc. 74-2 at 3, ¶ 23-24), which corresponds to the jury's actual damage verdict (Doc. 78). After the \$22,000.00 invoice, the defendant issued its notice of denial of the plaintiff's claim, based upon defendant's argument that the loss occurred prior to the policy's termination, which occurred before the May 2013 claim was made. "Under Oklahoma law, a dispute over whether a party is entitled to recover an amount that is calculable based on undisputed evidence does not render the amount uncertain or unascertainable." *Yousuf v. Cohlmia*, 741 F.3d 31, 47 (10th Cir. 2014) (citing *Stickney v. Kansas City Life Ins. Co.*, 149 P.3d 1048, 1055 (Okla. Civ. App. 2006)).

Defendant's contention that the policy language does not require payment of any loss until the entry of a final judgment is nonsensical in light of Oklahoma law, § 3629(B), and the stipulated fact that defendant sent plaintiffs a Notice of Denial of the claim on June 16, 2013, contending that the loss was not payable at any time. (Doc. 74-2 at 3, ¶ 24). The Court also rejects defendant's alternative request that the computation of prejudgment interest run from the denial of defendant's summary judgment motion in April 2016, rather than from the June 16, 2013 date of the notice of denial.

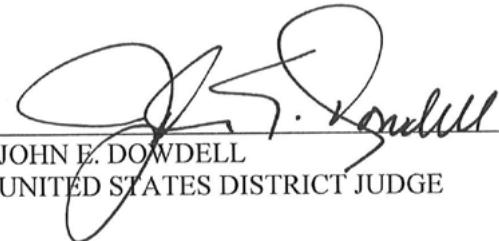
The Court agrees with the defendant's argument that prejudgment interest should not be compounded in this case, because the statutory 15% interest rate under § 3629(B) sufficiently compensates the plaintiffs for the loss of the use of the money they would have had absent denial of their claim. Neither party provided authority that directly addresses whether prejudgment interest under § 3629(B) should be compound or simple interest, and the statute itself does not identify the proper method of calculation; it simply references a 15% per year interest rate.

For the foregoing reasons, the plaintiff's motion (Doc. 83) to amend the Judgment to include prejudgment interest is **granted in part**. Pursuant to § 3629(B), the insureds, Mr. and Mrs. McCrary, are the prevailing parties, entitling them to "interest on the verdict at the rate of fifteen percent (15%) per year from the date the loss was payable pursuant to the provisions of the contract to the date of the verdict." *Okla. Stat. tit. 36*, § 3629(B). As noted, the Court finds the date the loss was payable under the contract to be the date the defendant denied plaintiff's claim – June 16, 2013. The jury's actual damages verdict was returned on April 20, 2016. (Doc. 78). Accordingly, the Court will enter an Amended Judgment, inclusive of prejudgment interest, calculated as simple interest on the jury's actual damages award of \$22,000.00, between June 16, 2013 and April 20, 2016, which amounts to total prejudgment interest of \$9,393.70. This

amount was calculated by determining a daily interest amount upon an annual 15% percentage rate of interest applied to the actual damages verdict of \$22,000.00 – which resulted in daily interest of \$9.04 – and multiplying the daily amount by 1,039 days, the number of days between June 16, 2013 and April 20, 2016.

In light of the fact that the Court has also recently determined the amount of attorneys' fees and costs to be awarded, the Amended Judgment will include the jury verdicts, prejudgment interest on the actual damages verdict, and the attorneys' fees and costs that have been awarded. The Amended Judgment will also include the statutorily-mandated post-judgment interest rate.

SO ORDERED this 24th day of August, 2016.



JOHN E. DOWDELL
UNITED STATES DISTRICT JUDGE