IN THE SUPREME COURT OF FLORIDA

CASE NO. SC00-565

AMERACE CORPORATION,
a Delaware corporation,

Petitioner,

v.

GARY E. STALLINGS and
VERA J. STALLINGS, his wife,

Respondents.

AMICUS BRIEF

submitted on behalf of the
FLORIDA DEFENSE LAWYERS' ASSOCIATION

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PRELIMINARY STATEMENT

Amicus Curiae, the Florida Defense Lawyers' Association ("FDLA"), submits this Amicus Brief on the conflict issue pertaining to post-verdict pre-judgment interest in personal injury actions. FDLA adopts the Statement of the Case and Facts, and the Argument, set forth in the Petitioner's Initial Brief, and submits this Brief as a supplement thereto.

TABLE OF AUTHORITIES

Cases

Statutes

SUMMARY OF ARGUMENT

The district court erred in awarding the plaintiff pre-judgment interest from the date of the verdict in this personal injury action.

This Court has held that pre-judgment interest should be awarded in cases of property damage or pecuniary loss. In such cases, there is a single fixed point in time when the loss occurred. Damages are measurable at that point in time, and interest can be calculated from that moment.

This Court has also held that pre-judgment interest should not be awarded in personal injury cases. The rationale is that there is no fixed single point in time when the damages start and end; accordingly, the damages are not measurable at the time of the injury-causing event, and there is no fixed date of loss from which interest can be calculated. Consequently, there is no basis to calculate pre-judgment interest.

The recent cases which hold otherwise, beginning with Palm Beach County School Board v. Montgomery, 641 So. 2d 183 (Fla. 4th DCA 1994), are in derogation of this Court's binding precedent. These cases also employ flawed reasoning. Montgomery ignored the well-settled differences between personal-injury claims and pecuniary-loss claims in finding no reason to differentiate between the two. Furthermore, while purporting to apply the same rule which applies to pecuniary-loss claims, Montgomery and its progeny award pre-judgment interest from the ***date of the***

verdict in personal injury cases, rather than from any purported date of loss, which is the rule in the pecuniary-loss cases.

There is no rational basis to award pre-judgment interest on a verdict. The plaintiff has no right to payment until a judgment is entered. Until a judgment is entered, the plaintiff has not been wrongfully denied any money; therefore, the plaintiff has no right to be compensated for non-payment.

Any fear that defendants will delay rendition of an executable judgment with meritless post-trial motions can be handled with appropriate sanctions when and if such circumstances arise. The mere possibility of bad faith litigation, however, does not justify a general rule of punitive interest on payments not yet due.

ARGUMENT

THE DISTRICT COURT ERRED IN AWARDING THE PLAINTIFF PRE-JUDGMENT INTEREST FROM THE DATE OF THE VERDICT IN THIS PERSONAL INJURY ACTION.

This Court has held that pre-judgment interest should be awarded in cases of property damage or out-of-pocket pecuniary expenditures, calculated from the date of loss and using the amount of the verdict as the principal. See Argonaut v. May Plumbing Co., 474 So. 2d 212 (Fla. 1985).

The rule is decidedly different, however, with respect to personal injury claims.

At least as far back as Farrelly v. Heuacker, 118 Fla. 340, 159 So. 24 (Fla. 1935), this Court has held that pre-judgment interest is not to be awarded on amounts liquidated by jury verdicts in personal injury cases:

> It is next contended that the trial court erred in charging the jury that, if they find for the plaintiff, then the plaintiff would be entitled to recover 8 per cent. per annum from the date of the injury on the amount assessed as damages.
>
> The general rule is that, in the absence of statute, interest cannot be awarded as damages in actions for personal injuries, because the amount and the measure of damages is largely discretionary with the jury and is in consequence unliquidated until the trial. Penny v. Atlantic Coast Line R. Co., 161 N. C. 523, 77 S. E. 774, Ann. Cas. 1914D, 992; Cochran v. City of Boston, 211 Mass. 171, 97 N. E. 1100, 39 L. R. A. (N. S.) 120, Ann. Cas. 1913B, 206; Jacobson v. United States Gypsum Co., 150 Iowa, 330, 130 N. W. 122; The Argo (C. C. A.) 210 F. 872; 17 Corpus Juris, 824, § 145.

In Cochran v. City of Boston, 97 N.E. 1100 (Mass. 1912)(cited in Farrelly), the Court discussed the rationale for treating personal injury claims differently than claims for property damage or pecuniary loss:

> The injury [to property] occurs and is finished in its results on a particular day, and can then best be ascertained, and exact justice would be done by a contemporaneous determination of the loss. An action for personal injuries is essentially different in its nature. The damages are not complete and ended on the day of the accident, but continue for a greater or less period thereafter. The extent and magnitude of the injury are not infrequently unappreciated and incapable of reasonable ascertainment on the day it is received. Its degree of permanence is often deceptive at the first, and commonly the determination of conditions requisite for recovery is materially assisted by the perspective of time. The most helpful aids in learning the nature and degree of actual injury may be

events occurring after the event complained of.

Cochran noted that "the great weight of authority" across the country is to deny pre-judgment interest on personal injury awards. See id. at 1101.

In an unbroken line of cases, this Court has stood by this principle, allowing pre-judgment interest in cases of property damage, but not in cases of personal injury. For example, in Parker v. Brinson Construction Co., 78 So. 2d 873, 874-75 (Fla. 1955), this Court explained:

> This Court has long recognized that in actions ex contractu it is proper to allow interest at the legal rate from the date the debt was due. Sullivan v. McMillan, 37 Fla. 134, 19 So. 340, 53 Am.St.Rep. 239; McMillan v. Warren, 59 Fla. 578, 52 So. 825. The fact that there is an honest and bona-fide dispute as to whether the debt is actually due has no bearing on the question. The rule is that if it is finally determined that the debt was due, the person to whom it was due is entitled not only to the payment of the principal of the debt but to interest at the lawful rate from the due date thereof. Sullivan v. McMillan, supra; Everglade Cypress Co. v. Tunnicliffe, 107 Fla. 675, 148 So. 192. ***In this State interest is not allowed in actions for personal injuries.*** Farrelly v. Heuacker, 118 Fla. 340, 159 So. 24. ***In such actions interest accumulates only from the date of the judgment and then by virtue of the applicable statute***, Section 55.03, F.S.1951, F.S.A. Skinner v. Ochiltree, 148 Fla. 705, 5 So. 2d 605, 140 A.L.R. 410. As to the allowance generally of moratory interest, see 15 Am.Jur., Damages, 583, Section 166 et seq. Our views on this particular phase of the question were summed up recently in Jackson Grain Co. v. Hoskins, Fla. 1954, 75 So.2d 306, 310, as follows:
>
> > 'In actions growing out of contract and in some actions in tort we have approved the recovery of interest from the time of accrual of the cause of action, ***but in personal injury cases we have consistently declined to approve interest before entry of judgment.*** Zorn v. Britton, 120 Fla. 304,

> 162 So. 879. * * *
> 'Apparently an exception to the allowance of interest has been made in personal injury cases because of the speculative nature of some items of damage, such as mental anguish, and the indefiniteness of items such as future pain and suffering. Farrelly v. Heuacker, 118 Fla. 340, 159 So. 24. See also Penny v. Atlantic Coast Line R. Co., 161 N.C. 523, 77 S.E. 774, ann. Cas.1914D, 992.' (Emphasis supplied.)

Then, in Palm Beach County School Board v. Montgomery, 641 So. 2d 183, 184 (Fla. 4th DCA 1994), the Fourth District departed from this precedent, and held that "[w]hen a jury returns a verdict in a personal injury case that remains undisturbed throughout the future proceedings in the case, the sum so fixed should be treated exactly the same as a liquidated breach of contract claim." The Second District *sub judice* cited Montgomery in awarding pre-judgment interest on the jury verdict in this personal injury case.

Montgomery relied, ironically, on this Court's Argonaut decision, which addressed pre-judgement interest in property damage cases, and which specifically noted that "prejudgment interest is not recoverable on awards for personal injury." See 474 So. 2d at 215 n.1 (citing Zorn v. Britton, 120 Fla. 304, 162 So. 879 (1935)). Montgomery acknowledged this language from Argonaut, but disagreed with this Court's interpretation of its own precedent. See Montgomery, 641 So. 2d at 183. Montgomery "corrected" this Court's reading of Zorn, pointing out that Zorn actually

stated that interest is not available on "unliquidated" claims for personal injuries, but that a verdict serves to liquidate the damages. See id. Montgomery also relied upon certain dicta in Sullivan v. McMillan, 37 Fla. 134, 19 So. 340 (1896), which was quoted in Argonaut, 474 So. 2d at 214, stating that "wherever a verdict liquidates a claim and fixes it as of a prior date, interest should follow from that date."

The flaw in Montgomery's reasoning is evident. Montgomery is undoubtedly correct that the verdict liquidates the total past and future personal injury damages; however, Montgomery overlooked that the verdict does ***not*** "fix" the personal injury damages "as of a prior date." The very reason why pre-judgment interest is not awarded in personal injury cases, as explained above, is that there is no single point in time when the damages start and end, and measurement of the damages is not possible at the time of the injury-causing event. See Farrelly v. Heuacker, 118 Fla. 340, 159 So. 24 (Fla. 1935); Cochran v. City of Boston, 97 N.E. 1100 (Mass. 1912).

Montgomery's holding is also ironic in that, contrary to the Court's statement, the interest it awarded was not "exactly the same" as the interest awarded in contract cases. Interest in contract cases does not run from ***the date of the verdict,*** like the interest awarded in Montgomery, but from ***the date the debt was due***, see Parker v. Brinson Construction Co., 78 So. 2d 873, 874 (Fla. 1955); see also Argonaut, 474 So. 2d at 215 (pre-judgment interest in property damage cases is calculated "from the date

of the loss").

In Argonaut, this Court explained that pre-judgment interest is an element of compensatory damages, designed to compensate the plaintiff for "the wrongful deprivation by the defendant of the plaintiff's property." See 474 So. 2d at 215. Accordingly, interest runs from the moment in time when the plaintiff was deprived of money or other property to which he had a legal right. For example, interest in a property-damage case runs from the moment the plaintiff is denied his right to possess or use his property. Similarly, interest accrues in a breach-of-contract case from the point when payment was due.

Unlike the aggrieved individuals in these examples, a plaintiff in a lawsuit has no legal right to payment until a judgment is entered. Until then, the plaintiff is not being deprived a property right, and he is not entitled to compensation (i.e., interest) for the deprivation of money to which he is not yet entitled.

The Court in Montgomery might have been concerned that defendants might pursue post-trial motions simply to delay the rendition of an executable judgment. However, plaintiffs and trial courts have adequate remedies should a defendant in a particular case litigate in bad faith. See, e.g., § 57.105, Fla.Stat. (2000)(authorizing the taxation of attorneys fees for litigation undertaken in bad faith or without legal or factual basis). The proper remedy is not to categorically punish defendants for

pursing their legal right to seek post-trial relief. As this Court has emphasized, pre-judgment interest in Florida is intended to ***compensate*** plaintiffs, not to ***punish*** defendants for disputing claims against them:

> In [Argonaut Insurance Co. v. May Plumbing Co., 474 So.2d 212 (Fla. 1985)], we concluded that prejudgment interest is merely another element of pecuniary damages. We also noted that Florida had rejected the traditional "penalty theory" of prejudgment interest, under which prejudgment interest was to be awarded as a penalty for a defendant's wrongful act of disputing a claim found to be just and owing.

Boulis v. Florida Dept. of Transportation, 733 So. 2d 959, 961 (Fla. 1999).

CONCLUSION

For the foregoing reasons, FDLA respectfully requests that this Court quash the decision of the district court.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Counsel for Petitioner, **FRANK H. GASSLER, Esquire, HALA A. SANDRIDGE, Esquire,** and **CHARLES TYLER CONE, Esquire**, Post Office Box 1438, Tampa, Florida 33601; and to Counsel for Respondents, **ROBERT FRASER, Esquire**, Post Office Box 3470, Brandon, Florida 33509, on this the 15th day of December, 2000.

Respectfully submitted,

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