

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: DAVOL, INC./C.R. BARD,
INC., POLYPROPYLENE HERNIA
MESH PRODUCTS LIABILITY
LITIGATION

Case No. 2:18-md-2846

JUDGE EDMUND A. SARGUS, JR.
Magistrate Judge Kimberly A. Jolson

This document relates to:
Stinson v. Davol, Inc., et al.
Case No. 2:18-cv-1022

ORDER

This matter is before the Court on Plaintiff’s Motion to Amend Judgment to Add Pre- and Post-Judgment Interest (ECF No. 386). Defendants oppose Plaintiff’s motion. (ECF No. 388.) For the reasons stated below, Plaintiff’s Motion is **GRANTED**.

I. Background¹

Plaintiff’s case is the third bellwether trial selected from thousands of cases in this multidistrict litigation (“MDL”) against Defendants. The Judicial Panel on Multidistrict Litigation described the cases in this MDL as “shar[ing] common factual questions arising out of allegations that defects in defendants’ polypropylene hernia mesh products can lead to complications when implanted in patients, including adhesions, damage to organs, inflammatory and allergic responses, foreign body rejection, migration of the mesh, and infections.” (No. 2:18-md-02846, ECF No. 1 at PageID #1–2.)

Plaintiff brought this action to recover for injuries sustained as a result of the implantation

¹ For a more complete factual background, the reader is directed to the Court’s summary judgment opinion and order in this case. (Dispositive Motions Order (“DMO”) No. 7, ECF No. 225.) All docket citations are to the *Stinson* case, 2:18-cv-1022, unless otherwise noted.

of a PerFix Plug hernia mesh device, alleging that Defendants knew of the risks presented by the device but marketed and sold it despite these risks and without appropriate warnings. Trial began on October 16, 2023, and lasted for about three and a half weeks. (ECF Nos. 337, 380.) Plaintiff rested his case on October 30, 2023. (ECF No. 366.) On November 8, 2023, the jury returned a verdict for Defendants on Plaintiff's design defect claim and returned a verdict for Plaintiff on his failure to warn and negligence claims, with an award of \$500,000. (ECF No. 381.) The jury did not award punitive damages. (*Id.*)

II. Legal Standard

“It is well established that prejudgment interest is a substantive remedy governed by state law when state-law claims are brought in federal court, while post-judgment interest, even on state-law claims, is governed by federal law.” *Tobin v. Liberty Mut. Ins. Co.*, 553 F.3d 121, 146 (1st Cir. 2009) (internal citations omitted). As to prejudgment interest Maine Rev. Stat. title 14, § 1602-B provides, in relevant part:

3. Other civil actions; rate. In civil actions other than those set forth in subsections 1 and 2, prejudgment interest is allowed at the one-year United States Treasury bill rate plus 3%.

A. For purposes of this subsection, “one-year United States Treasury bill rate” means the weekly average one-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the last full week of the calendar year immediately prior to the year in which prejudgment interest begins to accrue.

B. If the Board of Governors of the Federal Reserve System ceases to publish the weekly average one-year constant maturity Treasury yield or it is otherwise unavailable, then the Supreme Judicial Court shall annually establish by rule a rate that most closely approximates the rate established in this subsection.

“There is far less discretion under Maine law than Federal law regarding prejudgment interest.” *Lobster 207, LLC v. Pettegrow*, No. 1:19-CV-00552-LEW, 2023 WL 5604458, at *22 (D. Me. Aug. 30, 2023), *report and recommendation adopted*, No. 1:19-CV-00552-LEW, 2023 WL

7681700 (D. Me. Nov. 15, 2023) (citing *Packgen v. Berry Plastics Corp.*, No. 2:12-cv-80-NT, 2016 WL 878490, at *1 (D. Me. Mar. 7, 2016) (noting that under Maine state law, prevailing plaintiffs are generally entitled to prejudgment interest as a matter of right)). Prejudgment interest may be fully or partially waived “[o]n petition of the nonprevailing party and on a showing of good cause.” Me. Rev. Stat. tit. 14, § 1602-B(5). There is limited case law on what constitutes good cause. *Town of Anson v. Viles*, No. CV-15-020, 2018 WL 9814620, at *7 (Me.Super. Oct. 23, 2018). However, “unwarranted delays” caused by a prevailing party can overcome the presumption of entitlement to prejudgment interest. *Pierce v. Cent. Maine Power Co.*, 622 A.2d 80, 85 (Me. 1993).

Unlike prejudgment interest, “[i]n any federal case, postjudgment interest is determined according to federal statutory law.” *Lobster 207, LLC*, 2023 WL 5604458, at *22 (citing 28 U.S.C. § 1961; *Cummings v. Standard Reg. Co.*, 265 F.3d 56, 68 (1st Cir. 2001)). The applicable federal statute provides, in relevant part:

- (a) Interest shall be allowed on any money judgment in a civil case recovered in a district court. Execution therefor may be levied by the marshal, in any case where, by the law of the State in which such court is held, execution may be levied for interest on judgments recovered in the courts of the State. Such interest shall be calculated from the date of the entry of the judgment, at a rate equal to the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding the date of the judgment. The Director of the Administrative Office of the United States Courts shall distribute notice of that rate and any changes in it to all Federal judges.
- (b) Interest shall be computed daily to the date of payment except as provided in section 2516(b) of this title and section 1304(b) of title 31, and shall be compounded annually.

28 U.S.C. § 1961(a)–(b).

III. Analysis

Altering or amending a judgment is governed by Rule 59 of the Federal Rules of Civil Procedure. Defendants argue that Plaintiff has not met his burden under Rule 59. Given the

mandatory nature of the pre- and post-judgment interest in this case, the Court rejects that argument and proceeds to the substance of the Motion.

A. Pre-Judgment Interest

Plaintiff asks that the Court amend its judgment to add prejudgment interest pursuant to § 1602-B at the rate of 4.76% from when his complaint was filed on September 7, 2018, until November 9, 2023, when the judgment was issued, for a total prejudgment interest award of \$123,046. (ECF No. 386 at PageID #14560.) In response, Defendants first argue that Maine’s prejudgment interest statute is procedural, not substantive, and therefore should not be applied. This argument is not persuasive. Defendants’ own filing quotes caselaw that states “[i]t is well established that prejudgment interest is a *substantive* remedy governed by state law when state law claims are brought in federal court,” which is the case here. (ECF No. 388 at PageID #14769 (quoting *Tobin*, 553 F.3d at 146 (emphasis added)).)

Defendants next argue that if § 1602-B does apply, the Court should exercise its discretion and decline to award prejudgment interest. Subsection 5 of the statute provides that “[o]n petition of the nonprevailing party and on a showing of good cause, the trial court may order that interest awarded by this section be fully or partially waived.” Me. Rev. Stat. tit. 14, § 1602-B(5). Defendants point to the jury’s split verdict and rejection of Plaintiff’s request for punitive damages, as well as the prior dismissal or abandonment of five of Plaintiff’s claims prior to trial. (ECF No. 388 at PageID #14766.) They also claim that because the jury awarded only non-economic damages, “the rationale for prejudgment interest is absent.” (*Id.*) Defendants cite to no caselaw to support their arguments that prejudgment interest should not be awarded in a case with a split verdict or a case with only noneconomic damages. The Court “declines [Defendants’] invitation to write a significant exception into 14 M.R.S. § 1602-B that does not appear in the statute.” *Hearts*

With Haiti, Inc. v. Kendrick, 141 F. Supp. 3d 99, 117 (D. Me. 2015), *dismissed on other grounds*, 856 F.3d 1 (1st Cir. 2017).

Defendants further argue that the nature of this case does not support an award of prejudgment interest. They point to the length of time this case was pending because of the nature of multidistrict litigation. (ECF No. 388 at PageID #14767–68.) They also point to the COVID-19 pandemic and the delays it caused as a reason for denying or reducing an award of prejudgment interest. (ECF No. 388 at PageID #14767.) However, Defendants cite to no caselaw to support either argument. Additionally, other courts have considered and rejected similar arguments regarding COVID-19 delays. *See Ewing v. Carnival Corp.*, No. 19-20264-CIV, 2022 WL 17846578, at *2–3 (S.D. Fla. Dec. 22, 2022) (“Pre-judgment interest is typically only tolled where the party seeking pre-judgment interest has acted in bad faith to delay the action. Here, the COVID delay was not due to the fault of *either* party, so Ewing (the party seeking pre-judgment interest) is surely not responsible for the delay of the trial.” (internal citation omitted)); *Paragon Asset Co. Ltd. v. Gulf Copper & Mfg. Corp.*, 622 F. Supp. 3d 360, 424 (S.D. Tex. 2022) (finding no exceptional circumstances to warrant the denial of prejudgment interest when there were delays caused by “the COVID-19 pandemic that hindered discovery and the prosecution of all litigation.”).

Defendants also point to the delays caused by Plaintiff’s continuing medical issues and claim that it would be “illogical and unfair to allow Plaintiff to increase his damages (e.g., due to his orchiectomy) *and* the amount of prejudgment interest on them because he took actions requiring the trial date to move back by eight months.” (ECF No. 388 at PageID #14768.) However, the delays due to Plaintiff’s medical condition and ultimate surgery do not constitute good cause for waiving pre-judgment interest. Such delays were not caused by the Plaintiff’s bad

faith; the very fact that Plaintiff's surgery involved organ loss shows that his continuing medical treatment was not frivolous. "There is limited case law on what good cause is, other than the prevailing party requesting, and being granted, continuances." *Town of Anson*, 2018 WL 9814620, at *7. Here, in addition to not acting in bad faith, Plaintiff did not seek a continuance due to his medical treatment. Both parties and the Court agreed to move the trial date from February 2023 to May 2023 (Case No. 18-md-2846, ECF No. 696), and Plaintiff strongly objected to any further delay of the trial date (Case No. 18-md-2846, ECF Nos. 695, 703, 710). Accordingly, Defendants' arguments regarding trial delays are not well taken, and Plaintiff's Motion as it relates to prejudgment interest is granted.

B. Post-Judgment Interest

In his Motion, Plaintiff seeks post-judgment interest at the Maine statutory rate. (ECF No. 386 at PageID #14562.) Defendants' only responding argument is that post-judgment interest is governed by federal law and should therefore be governed by the applicable federal rate. (ECF No. 388 at PageID #14769–70.) In his reply, Plaintiff concedes that the federal post-judgment interest statute, 28 U.S.C. § 1961, governs. (ECF No. 407 at PageID #18357–58); *see Lobster 207, LLC v. Pettegrow*, No. 1:19-CV-00552-LEW, 2023 WL 5604458, at *22 (D. Me. Aug. 30, 2023), *report and recommendation adopted*, No. 1:19-CV-00552-LEW, 2023 WL 7681700 (D. Me. Nov. 15, 2023) ("In any federal case, postjudgment interest is determined according to federal statutory law."). Accordingly, post-judgment interest will be granted pursuant to 28 U.S.C. § 1961.

IV. Conclusion

For the reasons set forth above, Plaintiff's Motion to Amend Judgment to Add Pre- and Post-Judgment Interest (ECF No. 386) is **GRANTED**. Plaintiff will be granted prejudgment interest at the rate of 4.76% from the time the complaint was filed on September 7, 2018, until the

date of judgment, November 9, 2023. Plaintiff will be granted post-judgment interest at the rate of 5.38% from November 9, 2023, until the judgment is satisfied.

IT IS SO ORDERED.

1/10/2024
DATE

s/Edmund A. Sargus, Jr.
EDMUND A. SARGUS, JR.
UNITED STATES DISTRICT JUDGE