

**IN THE CIRCUIT COURT OF SHELBY COUNTY, TENNESSEE FOR THE
THIRTIETH JUDICIAL DISTRICT AT MEMPHIS**

JON CHRISTOPHER BOCK	§	
Administrator of the Estate of	§	
James Michael Bock, Deceased.	§	
	§	
Plaintiffs,	§	No.CT-002341-07
	§	Division IX
vs.	§	
	§	
JOHN K. LAYTON	§	
NANNIE F. RICE	§	
	§	
Defendants.	§	

MOTION FOR PRE-JUDGMENT INTEREST

On June 11, 2010, this Court ordered that funds related to a settlement agreement between the parties be interpled into Court. Not resolved at that time was the resolution of interest earned on the funds between the date of settlement and the present. Plaintiff moves the Court for an order awarding pre-judgment interest to the Plaintiff for good cause shown. In support of the motion, Plaintiff states as follows:

1. On February 23, 2010, the parties to this litigation entered into a written settlement agreement, a copy of which is attached as Exhibit 1.
2. As part of the settlement of this case, Defendant Rice obligated itself, through her insurer, MetLife, to pay Plaintiff \$425,000. As of the date of the filing of this motion, that money has yet to be paid.
3. During the pending weeks and months that have and are passing, Defendant, through its insurer, MetLife, continues to possess and make use of the funds agreed upon to pay to the Plaintiff since February 23, 2010.

4. The settlement agreement obligated MetLife to pay the funds to Plaintiff within thirty (30) days of the agreement. Such deadline would have expired March 25, 2010.

5. The settlement agreement to which Defendant was a party did not condition payment of the money on any verification of the capacity or status of the Plaintiff. Had Defendant truly believed capacity was an issue, it would have moved under Rule 12 to challenge Plaintiff's capacity. Likewise, Defendant did not raise any questions as to the capacity of the Plaintiff until after the settlement agreement was reached, despite being personally present and advised by counsel during the mediation February 22-23, 2010. Detailed chronology of the events occurring after settlement is catalogued in Plaintiff's Brief in Support of Motion to Enforce Settlement, filed June 9, 2010, the substance and contents of which Plaintiff hereby incorporates into his motion.

6. Prejudgment interest is permitted in Tennessee based on equitable principles. *Fisher v. Klippstatter*, 689 S.W.2d 870 (Tenn. Ct. App. 1985). The allowance of prejudgment interest is within the sound discretion of the Court. *B. F. Myers & Son v. Evans*, 612 S.W.2d 912 (Tenn. Ct. App. 1980). The allowance of prejudgment interest is not a penalty imposed on the defendants, but is an element of damages to be allowed in accordance with the principles of equity. *Schoen v. J.C. Bradford & Co.*, 667 S.W.2d 97 (Tenn. Ct. App. 1984); *Otis v. Cambridge Mut. Fire Ins. Co.*, 850 S.W.2d 439 (Tenn. 1992).

7. The test for determining certainty of damages is whether the amount of damages can be ascertained by computation or by any recognized standard of valuation. *Int'l Flight Ctr v. City of Murfreesboro*, 45 S.W.3d 565 (Tenn. Ct. App. 2000). The plaintiff is generally awarded prejudgment interest when the existence of the obligation itself is not disputed on reasonable grounds. *Id.* The applicable settlement agreement sets forth a sum certain to be paid to the

Plaintiffs. Likewise, the settlement agreement does not condition payment of the funds on court approval, establishment of any probate proceedings, or other technical arrangements. The settlement agreement is the full agreement of the parties.

8. Cases ruling against prejudgment interest in personal injury and wrongful death cases are inapposite here, as all such cases have dealt with requests of parties to award interest during the pendency of litigation. This case is inapposite to such facts because the request here is for payment of prejudgment interest from the date of settlement agreement to the date Defendant pays the subject monies into Court.

9. During the pendency of these proceedings, Defendant has had full use of the monies owed to Plaintiff, and has had the opportunity to enrich itself with such funds, despite them becoming the property of the Plaintiff. This situation likewise prevents the Plaintiff from having the funds invested for the benefit of the beneficiaries of the estate, who have been deprived access to or use of the funds.

10. Defendant has had all legal right and ability to pay the funds to the Plaintiff. Instead, Defendant has voluntarily elected to raise issues concerning other terms of the settlement, all the while continuing to enrich itself with continued use of the funds, earning income for itself, at the expense of the Plaintiff. The issues raised by the Defendant are of the Defendant's own making, and are not essential to the terms of the settlement; they are only preferred for Defendant to feel comfortable minimizing its own risk.

11. Considering the balance of equities in this case, Plaintiff submits that it would be inequitable for Defendant to have enriched itself with the money it agreed to pay to the Plaintiff, only to then raise technical issues post-settlement, allowing it the opportunity to benefit to the detriment of the Plaintiff. There is no prejudice or harm to Defendant by granting this request.

12. Plaintiff requests that the Court use the statutory interest figure of ten percent (10%) found at Tenn. Code Ann. § 47-14-123 in computing interest to be paid, since the settlement agreement contains no specific statement of interest to be applied.

13. Prior to filing this motion, pursuant to Local Rule 5(H), counsel for Plaintiff contacted counsel for Defendant Rice by telephone to attempt to resolve the substance of this motion. After such consultation, counsel for the parties were unable to reach agreement.

Respectfully submitted this ____ day of _____, 2010.

R. Christopher Gilreath
GILREATH & ASSOCIATES
200 Jefferson Avenue, Suite 711
Memphis, TN 38103

W. Coleman Allen, Jr.
Allen, Allen, Allen & Allen
1809 Staples Mill Road
Richmond, VA 23230
(804) 353-1200

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the preceding Brief in Support of Plaintiff's Motion to Enforce Settlement was served upon:

Nicholas E. Bragorgos
McNabb, Bragorgos & Burgess, PLLC
81 Monroe Avenue, Sixth Floor
Memphis, TN 38103-5402

Attorney for Defendant Layton

Melanie M. Stewart
Stewart & Wilkinson, PLLC
9040 Green Arbor Drive, Suite 101
Germantown, TN 38138

Attorney for Defendant Rice

Richard D. Underwood
Terry P. Weill
Underwood/Thomas, P.C.
9037 Poplar Avenue, Suite 101
Memphis, TN 38138

Attorney for Met Life

Robert Hutton
Glankler Brown, PLLC
One Commerce Square, Suite 1700
Memphis, TN 38103-2566

Attorney for Nannie Rice and John Kyle Layton

by mailing, postage prepaid, or by delivery to the person or office of such counsel.

This the _____ day of _____, 2010.

By: _____
Attorney for Plaintiff