

2020 WL 4559926

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United States District Court, D. Massachusetts.

Diane MCCARRON, Plaintiff,

v.

DELOITTE LLP and United  
Healthcare & Affiliates, Defendants.

Civil Action No. 15-cv-10243-IT

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Signed 05/07/2020

**Attorneys and Law Firms**

Diane McCarron, Andover, MA, pro se.

[John T. Seybert](#), Sedgwick LLP, [Michael H. Bernstein](#), Pro Hac Vice, Robinson & Cole LLP, New York, NY, [Julianne M. Charpentier](#), Robinson & Cole, Boston, MA, [Dana M. Horton](#), Robinson & Cole LLP, Hartford, CT, for Defendants.

**ORDER**

**TALWANI, D.J.**

\*1 On March 6, 2020, the court issued an [Order](#) [#86] denying Defendants' [Motion for Summary Judgment](#) [#81] and finding that Plaintiff Diane McCarron was entitled to prejudgment interest at the state rate of 12%, compounded annually, from the date of Defendants' denial of each of three unpaid claims for benefits through the date in 2016 when the claims were paid. Defendants have now submitted their calculations as to prejudgment interest, [see](#) Defs.' Notice [#87], and Plaintiff has filed her response, [see](#) Pl.'s Resp. [#88], setting forth her calculation as to prejudgment interest. Plaintiff's [Response](#) [#88] includes a further request for entry of final judgment, an award of postjudgment interest (at the 12% rate) on the prejudgment interest award from June 14, 2016 to the present, and costs. These matters are addressed in turn.

**1. Prejudgment Interest**

Ms. McCarron objects to Defendants' calculation of the prejudgment interest owed because Defendants calculated simple interest instead of compounding interest as ordered by

the court. Pl.'s Resp. 1 [#88]. The court calculates that Ms. McCarron is owed \$10,557 in prejudgment interest on the claims for benefits that were not paid until June 14, 2016, in the amount of \$2,450 for claim 1 (based on a claim of \$2,135, that was denied on September 17, 2009), \$4,861 for claim 2 (based on a claim of \$4,235, that was denied on September 17, 2009), and \$3,246 for claim 3 (based on a claim of \$3,990, that was denied on March 16, 2011).

**2. Postjudgment Interest**

Ms. McCarron also requests postjudgment interest. Pl.'s Resp. 2 [#88].

Unlike prejudgment interest, postjudgment interest is not within the discretion of the court but is set by statute. [Cottrill v. Sparrow, Johnson & Ursillo, Inc.](#), 100 F.3d 220, 224 (1st Cir. 1996) (referencing 28 U.S.C. § 1961(a)), abrogated in non-relevant part by [Hardt v. Reliance Standard Life Ins. Co.](#), 560 U.S. 242 (2010). Ms. McCarron's submission requests postjudgment interest at the Massachusetts state rate but postjudgment interest is set by law at the federal rate.<sup>1</sup>

Plaintiff seeks postjudgment interest commencing June 14, 2016.<sup>2</sup> However, Ms. McCarron is entitled to postjudgment interest only for the "time between the ascertainment of the damage and the payment by the defendant." [Kaiser Aluminum & Chem. Corp. v. Bonjorno](#), 494 U.S. 827, 835–36 (1990). As the First Circuit held in [Radford Tr. v. First Unum Life Ins. Co. of Am.](#), a finding of ERISA liability alone "without a corresponding determination on damages does not suffice to start the clock on postjudgment interest." 491 F.3d 21, 24 (1st Cir. 2007).

\*2 As of May 2016, no damages of any kind had been ascertained. Plaintiff requested that the court review Plaintiff's claims for benefits, and award her \$11,375 in benefits, prejudgment interest at the rate of 12%, and other fees and damages. Pl.'s Mem. [#51]. Defendants asserted that the court should remand the matter for Defendants to process her claims in the first instance, and noted that "[u]ntil and unless she can establish any entitlement to the benefits at issue, any discussion of interest was premature." Defs.' Mem. [#52].

On June 14, 2016, Defendants reported that they had processed Plaintiff's claims and paid \$10,360 of the \$11,375 requested. Defs.' Letter [#59]. Although Plaintiff could still have challenged that calculation through administrative

remedies, she did not, and accordingly, damages for unpaid benefits were ascertained as of that date. No postjudgment interest is due on those amounts, however, as they were paid at the same time the amounts were ascertained.

At the time that Defendants reported that claims had been paid, Plaintiff did not renew her request for prejudgment interest in this court. And because the award of prejudgment interest is discretionary, no amount was automatically due. Accordingly, as prejudgment interest was not yet determined, postjudgment interest on the prejudgment interest did not begin to run in 2016. See also Caffey v. Unum Life Ins. Co., 302 F.3d 576, 587 (6th Cir. 2002) (holding that postjudgment interest began accruing upon district court's order awarding prejudgment interest, which is when "plaintiff's unconditional legal entitlement to prejudgment interest was initially established").

### 3. Entry of Judgment and Costs

Finally, Ms. McCarron seeks entry of judgment and costs in the amount of \$745, reflecting a \$240 filing fee for

Massachusetts Superior Court and \$505 filing fee for her appeal to the First Circuit. Defendants have not responded to these requests. Entry of judgment is appropriate, and because Ms. McCarron had "some degree of success on the merits," she is entitled to an award of reasonable costs under ERISA's fee shifting provision, 29 U.S.C. § 1132(g)(1). Hardt, 560 U.S. 242, 255 (2010) (citing Ruckelshaus v. Sierra Club, 463 U.S. 680, 694 (1983)). The court finds the requested costs reasonable and thus awards them in full.

### 4. Conclusion

For the reasons stated above and in the court's March 6, 2020 Order [#86], the court will enter judgment, including \$10,557 in prejudgment interest, \$745 in costs, and postjudgment interest commencing today.

IT IS SO ORDERED.

### All Citations

Slip Copy, 2020 WL 4559926

### Footnotes

- <sup>1</sup> "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." 28 U.S.C. § 1961(a). Based on data collected by the United States District Court for the Northern District of Texas, that rate as applied here is 0.17%. See <http://www.txnd.uscourts.gov/post-judgment-rates>.
- <sup>2</sup> Plaintiff identifies June 14, 2016, as the date of the court's "first order." The court's only order in this case from June 2016 is dated June 21, 2016. Order [#62].

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