

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

B.F. GOODRICH CO., <i>et al.</i> ,	:	
Plaintiffs,	:	
	:	
-vs-	:	Civ. No. 3:87cv00052 (PCD)
	:	(All consolidated cases)
Harold MURTHA, <i>et al.</i> ,	:	
Defendants.	:	
<hr style="width: 50%; margin-left: 0;"/>		
CADBURY BEVERAGES, INC., <i>et al.</i> ,	:	
Plaintiffs,	:	
	:	
-vs-	:	
	:	
A.J. OSTER, <i>et al.</i> ,	:	
Defendants.	:	

RULING

On June 30, 2003, this case was remanded for a determination of an award of pre-judgment and post-judgment interest.

I. Background¹

“The shades of *Jarndyce & Jarndyce* stalk this litigation.” *Goodrich Corp. v. Town of Middlebury*, 311 F.3d 154, 159 (2d Cir. 2002) (*citing* CHARLES DICKENS, BLEAK HOUSE).² In October, 2002, the Second Circuit issued a ruling affirming this Court’s allocation of shares of the Coalitions’ response costs to the Municipal Defendants, and

¹ Familiarity with all previous rulings during the seventeen year history of this case is presumed.

² It is noted that neither party has complied with the Court’s June 22, 2004 Order, which ordered the parties to “set[] forth concisely and clearly” their interest calculations [Doc. No. 3252]. Instead, the parties merely incorporate generally their myriad earlier filings, and their disregard of the Order certainly does not aid the Court in resolving the matter.

vacating the award of pre-judgment and post-judgment interest regarding the LPC's claims. *Id.* at 179. The Second Circuit instructed that "the district court's judgment on the LPC's past response costs was ascertained in a meaningful way on August 2, 2000." *Id.* at 178. The parties attempted to resolve the remaining issues in a series of settlement conferences, and LPC and the Towns (Middlebury and Orange) could not reach a settlement.³ The parties agree that the total response cost allowed is \$13,795,944.67. Although LPC contends that the parties agree that the mandatory compound pre-judgment interest is \$2,979,082.87, LPC Resp. at 2 [Doc. No. 3256], the Municipalities contend that this figure should be either \$1,072,470.00, \$1,400,169.00, or \$983,097.00, Town Mem. at 7 [Doc. No. 3255]. The parties sharply dispute the proper method to calculate post-judgment interest.

II. Discussion

A. Pre-Judgment Interest—CERCLA § 107(a)

"Under § 107(a) [of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C.S. § 9601 et seq.,] pre-judgment interest is mandatory." *Goodrich Corp.*, 311 F.3d at 177 (citing 42 U.S.C. § 9607(a)(4) ("The amounts recoverable in an action under this section *shall* include interest on the amounts recoverable . . .") (emphasis added)). The Second Circuit has directed this court

to recalculate pre-judgment interest on LPC's response costs, at the rates specified by the Secretary of the Treasury compounded annually, accruing from the latter of the date LPC made its demand on the Municipal Defendants or the date of the

³ As a result of settlement proceedings with the Honorable Magistrate Judge Joan G. Margolis, LPC and the Town of Seymour recently reached a settlement [*see* Doc. Nos. 3248 and 3249], which is not included in the offset calculations.

expenditure concerned. *See* 42 U.S.C. § 9607(a) (“Such interest shall accrue from the later of (i) the date payment of a specified amount is demanded in writing, or (ii) the date of the expenditure concerned.”).

Goodrich Corp., 311 F.3d at 177. The parties agree that the “demand date” for such pre-judgment interest is August 18, 1995. LPC Suppl. Mem. (June 17, 2004) [Doc. No. 3251]. Although they disagree about the ultimate pre-judgment interest figures, the parties agree that the starting number is \$2,979,082.87, but they sharply dispute how any settlement proceeds should be deducted from the total response costs.

In the Order docketed on August 2, 2000, the Court stated that LPC’s costs were reduced by LPC’s receipt of the amounts paid in settlement to it. To accommodate that factor, a discount of the interest included in the RC proportionate to the amount received in settlement is in order. That pro ration, .63, is calculated by dividing the settlement received, \$8,768,387.90, by the allowed RC, \$14,005,975.27.

Order at 1-2. The Second Circuit did not reverse this pro-rationing methodology, and therefore it will be followed here.⁴ Because now the parties agree that the total response cost allowed is \$13,795,944.67, the pro ration factor is adjusted to 0.64, which is calculated by dividing the settlement received, \$8,768,387.90 by \$13,795,944.67. Accordingly, the figure of **0.36** represents the portion of LPC’s expenditures not covered by settlements.

As noted, the parties agree that \$2,979,082.87 is at least the starting point to calculate compounded pre-judgment interest. Multiplying this number times the pro-ration factor yields a result of \$1,072,469.83 of compounded pre-judgment interest to be

⁴ The Second Circuit found that “the district court erred in treating pre-judgment interest as a discretionary award under § 113(f)” and “was without discretion to grant anything other than compounded interest at the applicable rates set forth by the Secretary of the Treasury.” *Goodrich Corp.*, 311 F.3d at 177. The court did not address the method by which interest was computed.

allocated (\$2,979,082.87 times .36 equals \$1,072,469.83). The Towns' respective shares of this amount, representing compounded pre-judgment interest, are as follows:

Town of Orange (0.0363) **\$38,930.65**⁵

Town of Middlebury (0.048) **\$51,478.55**⁶

B. Post-Judgment Interest—28 U.S.C. § 1961

“Section 1961 of Title 28 provides a uniform rate at which post-judgment interest is to accrue on civil money judgments recovered in federal district court.” *Westinghouse Credit Corp. v. D’Urso*, 371 F.3d 96, 100 (2d Cir. 2004). Section 1961(a) provides that “Interest shall be allowed on any money judgment in a civil case recovered in a district court. . . . 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.” Such relief is “designed to compensate the plaintiff for the delay it suffers from the time damages are reduced to an enforceable judgment to the time the defendant pays the judgment.” *Andrulonis v. United States*, 26 F.3d 1224, 1230 (2d Cir. 1994).

1. Time of Post-Judgment Interest

“[P]ost-judgment interest should be calculated from whenever judgment was first ascertained in a meaningful way.” *Goodrich Corp.*, 311 F.3d at 178. “Here, the district

⁵ \$1,072,469.83 times 0.0363 equals **\$38,930.65**.

⁶ \$1,072,469.83 times 0.048 equals **\$51,478.55**.

court's judgment on the LPC's past response costs was ascertained in a meaningful way on August 2, 2000." *Id.* Accordingly, post-judgment interest begins on August 2, 2000.

2. Rate of Post-Judgment Interest

The parties dispute the rate of post-judgment interest. LPC argues that the version of 28 U.S.C. § 1961 that was in effect on August 2, 2000, should govern. LPC Reply at 3 [Doc. No. 3258]. The Towns argue that the version of the statute in effect when final judgment, after the remand, is entered should govern.

Generally, "a court is to apply the law in effect at the time it renders its decision, unless doing so would result in manifest injustice or there is statutory direction or legislative history to the contrary." *Bradley v. Richmond Sch. Bd.*, 416 U.S. 696, 711, 94 S. Ct. 2006, 40 L. Ed. 2d 476 (1974). The parties dispute the impact of *Kaiser Alum. & Chem. Corp. v. Bonjorno*, 494 U.S. 827, 840, 110 S. Ct. 1570, 108 L. Ed. 2d 842 (1990). *Kaiser Aluminum* involved the effects of an amendment to § 1961, whereby the pre-amendment version specified that post-judgment interest shall be calculated "at the rate allowed by State law," and the post-amendment version instructed that post-judgment interest shall be calculated "at a rate equal to the coupon yield equivalent . . . of the average accepted auction price for the last auction of fifty-two week United States Treasury Bills settled immediately prior to the date of the judgment." *Kaiser Alum.*, 494 U.S. at 831-32 (quoting 28 U.S.C. § 1961 (1976 ed.) & (1982 ed.)). In deciding that "amended § 1961 is not applicable to judgments entered before its applicable date," the Court considered the legislative history and noted that "on the date of judgment expectations with respect to interest liability were fixed, so . . . the parties could make

informed decisions about the cost and potential benefits of paying the judgment or seeking appeal.” *Id.* at 839-40. “Given Congress’ understanding of the expectation of the parties on the date of judgment and the plain language of the statute, we conclude that both versions of § 1961 fix the rate of interest as of the date of the entry of judgment and, therefore, amended § 1961 may not be applied retrospectively.” *Id.* at 840.

Here, on August 2, 2000, when judgment was meaningfully rendered, § 1961 provided that

[s]uch interest shall be calculated from the date of the entry of the judgment, at a rate equal to the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the average accepted auction price for the last auction of fifty-two week United States Treasury bills settled immediately prior to the date of the judgment.

Effective December 21, 2000, the statute was amended and the language “the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the average accepted auction price for the last auction of fifty-two week United States Treasury bills settled immediately prior to” was replaced by “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, Comments.

At the last auction of 52-week Treasury bills prior to August 2, 2000 (when judgment was first ascertained in a meaningful way), on May 31, 2000, the equivalent coupon issue yield rate was set at 6.375%. On July 28, 2000, the weekly average one-year constant maturity Treasury yield was 6.06%. Pursuant to *Kaiser Aluminum*, the rate shall be fixed as of the date of judgment of the statute in effect at that time. *See Kaiser*

Alum., 494 U.S. at 839-40.⁷ In accordance with *Kaiser Aluminum*, the **6.375%** rate shall apply in this case, as the Second Circuit has clearly instructed that judgment was meaningfully ascertained on August 2, 2000. *Goodrich Corp.*, 311 F.3d at 178.

3. Effect of Funds Deposited Into the Court Registry by the Towns

Not surprisingly, the inquiry does not end here, as the parties sharply dispute the effect of the funds deposited by the Towns into the Court registry. While LPC argues that these funds should have no effect at all, the Towns argue that the deposits should freeze the accrual of post-judgment interest.

The Towns argue that their deposits into the Court registry pursuant to FED. R. CIV. P. 67 serve “to relieve the depositor of responsibility for a fund in dispute and may suffice to stop the running of interest.” Middlebury Reply at 3 [Doc. No. 3240] (citing 12 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 2991 at 50-51 (1973)). Courts have discretion on whether to grant a Rule 67 motion, and a Rule 67 deposit is proper where there is a dispute over funds. *Gulf States Utilities Co. v. Alabama Power Co.*, 824 F.2d 1465, 1475 (5th Cir. 1987).

LPC argues that Rule 67 does not apply because the Towns have not submitted the exact amount of funds purportedly owed. However, it is the very amount of such funds that were in dispute, and there is no evidence that the Towns acted in bad faith when moving to make such deposits. By depositing the disputed funds into the Court the Towns have been deprived of using such funds. The Towns voluntarily relinquished the

⁷ This result is not inconsistent with the Towns’ argument that “‘a court is to apply the law in effect at the time it renders its decision.’” Towns Opp. at 12 [Doc. No. 3223].

funds, and accordingly interest on the amount deposited stops at the time the motion for deposit was granted. *See United States v. Midwest Constr. Co.*, 619 F.2d 349, 353 (5th Cir. 1980) (suggesting that the granting of a motion to deposit, and not “the mere filing of a motion to deposit,” stops the accrual of interest). Should there be any amount outstanding, such amount shall be subject to the continued accrual of interest.

Orange’s motion to deposit \$330,000 was granted on July 29, 2003 [Doc. No. 3192]. Middlebury’s motion to deposit \$313,000 was granted on January 15, 2004 [Doc. No. 3220]. Middlebury’s motion to deposit \$137,000 was granted on August 2, 2004 [Doc. No. 3259].

The amount of post-judgment interest owed by Orange is **\$44,930.82**. The amount of post-judgment interest owed by Middlebury is **\$71,596.57**. The calculations are set forth in Exhibit A.

III. Conclusion

As discussed herein, the following amounts are found to be owed by Orange and Middlebury. As of the date of this Ruling, both Towns have deposited funds into the Court registry sufficient to cover these costs.

Orange:

Share of net response costs:	\$182,500.67
Pre-judgment interest:	\$38,930.65
Post-judgment interest:	<u>\$44,930.82</u>
<i>Total:</i>	\$266,362.14

Middlebury:

Share of net response costs:	\$241,322.72
Pre-judgment interest:	\$51,478.55
Post-judgment interest:	<u>\$71,596.57</u>
<i>Total:</i>	\$364,397.84

SO ORDERED.

Dated at New Haven, Connecticut, August __, 2004.

Peter C. Dorsey
United States District Court Judge

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Exhibit A—Calculations for Post-Judgment Interest

I. _____ Net Response Costs

_____ The amount received in settlement (\$8,768,387.90) is subtracted from the total response cost (\$13,795,944.67), for a total of **\$5,027,566.77** for the net response costs.⁸

Orange’s percentage share of the net response costs is \$182,500.67,⁹ and Middlebury’s percentage share is \$241,322.72.¹⁰

⁸ \$13,795,944.67 minus \$8,768,387.90 equals **\$5,027,566.77**.

⁹ Orange’s share is determined by multiplying its percentage share (0.0363) times the net response cost (\$5,027,566.77): 0.0363 times \$5,027,566.77 equals **\$182,500.67**.

¹⁰ Middlebury’s share is determined by multiplying its percentage share (0.048) times the net response cost (\$5,027,566.77): 0.048 times 5,027,566.77 equals **\$241,322.72**.

II. Post-Judgment Interest Calculations—Orange

Step 1: The first step is to add the total net response costs to the total pro-rated prejudgment interest amount, which was calculated as set forth in the accompanying Ruling:

\$5,027,566.77 (total net response costs) plus \$1,072,469.83 (total prejudgment interest amount) equals **\$6,100,036.60**.

Step 2: As set forth in the accompanying Ruling, the post-judgment interest rate is found to be 6.375%. This rate is calculated for each annual period, as follows:

August 3, 2000 through August 2, 2001— \$388,877.33

This amount is calculated by multiplying \$6,100,036.60 times 6.375% (0.06375), which results in a total of \$388,877.33.

August 3, 2001 through August 2, 2002— \$413,668.26

This amount is calculated by first adding the previous year's interest amount (\$388,877.33) to the base amount of \$6,100,036.60, which results in a total of \$6,488,913.93.

Next, \$6,488,913.93 is multiplied by 6.375% (0.06375), which results in a total of \$413,668.26.

August 3, 2002 through July 29, 2003¹¹— \$435,217.99

This amount is calculated by first adding the previous year's interest amount (\$413,668.26) to the base amount of \$6,488,913.93, which results in a total of \$6,902,582.19.

Next, the post-judgment interest amount for the entire year (August 3, 2002 through August 2, 2003) is calculated: \$6,902,582.19 is multiplied by 6.375% (0.06375), which results in a total of \$440,039.61. Because Orange does not owe interest for the entire year, \$440,039.61 is divided by 365 days, for a total of \$1205.59 interest per day.

¹¹ As discussed in the accompanying Ruling, Orange's motion to deposit funds was granted on July 29, 2003.

Finally, \$1205.59 is multiplied by 361 days (the period of August 3, 2002 through July 29, 2003) which results in a total of \$435,217.99.

Step 3: Post-Judgment Total from August 2, 2000 through July 29, 2003

This amount is calculated by adding the post-judgment interest figures, as calculated above: \$388,877.33 plus \$413,668.26 plus \$435,217.99, for a total of **\$1,237,763.58**.

Step 4: Calculating Orange's Post-Judgment Share

This amount is calculated by multiplying the total post-judgment interest for the period of August 2, 2000 through July 29, 2003 (\$1,237,763.58) times Orange's percentage share (0.0363), which equals **\$44,930.82**.

III. Post-Judgment Interest Calculations—Middlebury

Step 1: The first step is to add the total net response costs to the total pro-rated prejudgment interest amount, which was calculated as set forth in the accompanying Ruling:

\$5,027,566.77 (total net response costs) plus \$1,072,469.83 (total prejudgment interest amount) equals **\$6,100,036.60**.

Step 2: As set forth in the accompanying Ruling, the post-judgment interest rate is found to be 6.375%. This rate is calculated for each annual period, as follows:

August 3, 2000 through August 2, 2001— \$388,877.33

This amount is calculated by multiplying \$6,100,036.60 times 6.375% (0.06375), which results in a total of \$388,877.33.

August 3, 2001 through August 2, 2002— \$413,668.26

This amount is calculated by first adding the previous year's interest amount (\$388,877.33) to the base amount of \$6,100,036.60, which results in a total of \$6,488,913.93.

Next, \$6,488,913.93 is multiplied by 6.375% (0.06375), which results in a total of \$413,668.26.

August 3, 2002 through August 2, 2003—\$440,039.61

This amount is calculated by first adding the previous year's interest amount (\$413,668.26) to the base amount of \$6,488,913.93, which results in a total of \$6,902,582.19.

Next, \$6,902,582.19 is multiplied by 6.375% (0.06375), which results in a total of \$440,039.61.

August 3, 2003 through January 15, 2004—\$225,643.80.

This amount is calculated by first adding the previous year's interest amount (\$440,039.61) to the base amount of \$6,902,582.19 which results in a total of \$7,342,621.80.

Next, the post-judgment interest amount for the entire year (August 3, 2003 through August 2, 2004) is calculated: \$7,342,621.80 is multiplied by 6.375% (0.06375), which results in a total of \$468,092.14. Because Middlebury does not owe interest for the entire year, \$468,092.14 is divided by 365 days, for a total of \$1282.44.30 interest per day.

Finally, \$1282.44 is multiplied by 166 days (the period of August 3, 2003 through January 15, 2004) which results in a total of \$212,885.04.

Step 3: Post-Judgment Total from August 2, 2000 through January 15, 2004

This amount is calculated by adding the post-judgment interest figures, as calculated above: \$388,877.33 plus \$413,668.26 plus \$440,039.61 plus \$212,885.04, for a total of **\$1,455,470.24.**

Step 4: Calculating Middlebury's Post-Judgment Share through January 15, 2004

This amount is calculated by multiplying the total post-judgment interest for the period of August 2, 2000 through January 14, 2004 (**\$1,455,470.24**) times Middlebury's percentage share (0.048), which equals **\$69,862.57.**

Step 5: Determine Middlebury's Total Amounts through January 15, 2004

This amount is calculated by adding Middlebury's share of the net response costs (\$241,322.72) plus Middlebury's share of pre-judgment interest (\$51,478.55) plus Middlebury's amount of post-judgment interest to date (\$69,862.57), which totals **\$362,663.84**.

Step 6: Determine Middlebury's Outstanding Amount Due as of January 15, 2004.

This amount is calculated by subtracting the Middlebury's Rule 67 Deposit, which was granted on January 15, 2004, of \$313,000, from its total amount owed as calculated above (\$362,663.84), which totals **\$49,663.84**.

Step 7: Determine the Interest Owed by Middlebury from January 15, 2004 through August 2, 2004.¹²

This amount is calculated by first multiplying the outstanding amount (\$49,663.84) times 6.375% (0.06375), for a total of \$3166.07 interest owed for the entire year (January 15, 2004 through January 14, 2004). Because Middlebury does not owe interest for the entire year, \$3166.07 is divided by 365 days, for a total of \$8.67 interest per day.

Finally, \$8.67 is multiplied by 200 days (the period of January 15, 2004 through August 2, 2004) which results in a total of **\$1734.00**.

Step 8: Calculate the Total Post-Judgment Interest Owed by Middlebury

This amount is calculated by adding the amount of post-interest due between August 2, 2000 through January 15, 2004 (\$69,862.57) plus the amount of post-interest due between January 15, 2004 through August 2, 2004 (\$1734.00), which results in a total of **\$71,596.57**.

¹² Middlebury's second motion to deposit funds was granted on this date.