

CLOSED

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

## CIVIL MINUTES - GENERAL

Case No.	CV 12-00900 RGK (SPx)	Date	June 13, 2014
Title	<i>LIBERTY INS. CORP. et al. v. LEDESMA &amp; MEYER CONSTRUCTION CO., et al.</i>		

Present: The Honorable	R. GARY KLAUSNER, U.S. DISTRICT JUDGE		
Sharon L. Williams (Not Present)	Not Reported	N/A	
Deputy Clerk	Court Reporter / Recorder	Tape No.	
Attorneys Present for Plaintiffs:		Attorneys Present for Defendants:	
Not Present		Not Present	
Proceedings:	<b>(IN CHAMBERS) Order Re: Plaintiff's Motion Requesting Entry of Final Judgment (DE 88)</b>		

**I. INTRODUCTION**

On January 23, 2013, the Court granted summary judgment for Plaintiffs Liberty Surplus Insurance Corporation ("LSIC") and Liberty Insurance Underwriters, Inc. ("LIUI") (collectively, "Liberty") against Defendants Ledesma & Meyer Construction Company, Inc. ("Ledesma"), Joseph Ledesma, and Kris Meyer (collectively, "L&M"). In its January 23, 2013 Order, the Court held that Liberty did not have a duty to defend or indemnify L&M and ordered L&M to reimburse Liberty in their defense of the underlying action.

Presently before the Court is Liberty's Motion Requesting Entry of Final Judgment. For the following reasons, the Court **GRANTS** Liberty's motion and enters judgment in the amount of \$854,575.10. The Court finds that Liberty is entitled to prejudgment interest calculated from July 2, 2013.

**II. FACTUAL BACKGROUND**

Plaintiffs allege the following facts:

In April of 2002, L&M entered into a construction contract with the San Bernardino County Unified School District for a project at a middle school. L&M's project at the school began in June 2003 and lasted until the end of 2006. L&M hired an employee to work on the project at the middle school. While the employee worked on the project in 2006, he sexually abused one of the students. In 2009 the employee was charged and convicted by a jury in State Court for lewd and lascivious acts with a child under the age of fourteen.

In May 2010, *Jane JS Doe, et al. v. Ledesma & Meyer Constr. Co., et al.* ("Doe action") was filed in San Bernardino County Superior Court. Liberty had issued L&M a general and umbrella insurance policy for the period of June 1, 2006 to June 1, 2007. The sexual abuse committed by L&M's employee occurred during this time. L&M requested a defense from Liberty in June 2010. Liberty responded in July 2010, agreeing to defend L&M in *Doe* action under a reservation of rights to recover defense fees and cost on uncovered claims.

On February 1, 2012 Liberty filed a complaint in this Court seeking a declaration that Liberty had no duty to defend or indemnify L&M and reimbursement for costs and fees in the defense of L&M in the *Doe* Action. On April 5, 2012, L&M filed an answer and counterclaim seeking relief for alleged breach of implied covenant of good faith, breach of contract, and a declaration that Liberty had a duty to defend and indemnify L&M in the *Doe* Action. On July 19, 2012, pursuant to a motion by Liberty, the Court dismissed L&M's bad faith and breach of contract claims.

On December 3, 2012, L&M moved for summary judgment on its remaining claim seeking declaratory relief on Liberty's duty to defend. Liberty responded on the following day with a Motion for Summary Judgment on its claim that it had no duty to defend and sought reimbursement for L&M's defense fees. The Court granted Liberty's motion and denied L&M's motion. The Court found that Liberty did not have a duty to defend or indemnify L&M and L&M was obligated to reimburse Liberty for the fees and costs it expended in the defense of the *Doe* action.

Following the Motion for Summary Judgment, Liberty filed a proposed judgment on March 4, 2013. The proposed judgment stated that Liberty had expended \$657,734.01 defending the *Doe* action. At the time the proposed judgment was filed, Liberty was still defending L&M and was unable to give a final calculation of the costs and fees expended. Liberty continued to defend L&M until it withdrew on July 2, 2013. Once Liberty had withdrawn it was able to calculate the total costs and fees associated with its defense in the *Doe* action.

On September 24, 2013, Liberty submitted a Motion for Entry of Final Judgment. Liberty calculated its defense costs at \$854,575.10. Liberty calculated prejudgment interest at ten percent per annum, for a total of \$951,283.70 that Liberty contends L&M is required to reimburse. On October 31, 2010 the Court denied the Motion for Entry of Final Judgment because Liberty failed to present any evidence substantiating the amount claimed.

### **III. JUDICIAL STANDARD**

The general rule in diversity actions is that state law determines the rate of prejudgment interest and federal law governs the rate of post-judgment interest. *Citicorp Real Estate, Inc. v. Smith*, 155 F.3d 1097, 1107 (9th Cir. 1998). California Civil Code §§ 3287 and 3289 govern a person's right to recover prejudgment interest, the time from which the interest runs, and the interest rate that is applied. Under federal law, section 1961 governs the rate of post-judgment interest. 28 U.S.C. § 1961 (2012).

"A person who is entitled to recover damages certain, or capable of being made certain by calculation, and the right to recover which is vested in the person upon a particular day, is entitled also to recover interest thereon from that day." Cal. Civ. Code § 3287(a). Damages are certain when the defendant actually knows the amount owed or when the defendant could calculate the amount from reasonably available information. *Childrens Hosp. & Med. Ctr. v. Bonta*, 118 Cal. Rptr. 2d 629, 654 (Cal. Ct. App. 2002). Once the defendant is certain of the amount of damages the plaintiff is "entitled to recover interest from that day." Cal. Civ. Code § 3287(a).

A Plaintiff may recover interest from a date prior to the date of judgement for a contract action in which damages were “unliquidated.” Cal. Civ. Code § 3287(b). A claim is unliquidated when damages may not be determined by reasonably ascertainable market values, the damages are uncertain, or they cannot be reasonably made by calculations. *Cassinos v. Union Oil Co.*, 18 Cal. Rptr. 2d 574, 585 (Cal. Ct. App. 1993).

#### **IV. DISCUSSION**

Liberty reports that L&M does not oppose the entry of judgment and that L&M agrees that judgment should be entered as a matter of procedure. Liberty’s proposed judgment requests a principal amount of \$853,534.14 for the reimbursement of legal fees and costs. Liberty also requests prejudgment interest in the amount of \$153,388.52. For the reasons that follow, the Court finds that entry of final judgment is appropriate, but that prejudgment interest should be calculated from July 2, 2013.

##### **A. California Civil Code Section 3287(a) Applies Rather Than Section 3287(b)**

Plaintiffs contend that California Civil Code § 3287(b) governs the award of prejudgment interest because this is a contract action where the claim is unliquidated. The Court disagrees. Damages are unliquidated when they are not capable of being made certain by calculation when referencing a fixed standard such as a payment schedule. *Marine Terminals Corp v. Paceco, Inc.*, 193 Cal. Rptr. 687, 689 (Cal. Ct. App. 1983). This is not an unliquidated claim because Liberty is capable of calculating the damages by referencing its accounting spreadsheets. Section 3287(b) “was designed to allow trial courts flexibility . . . where the exact amount of damage is in dispute.” *A & M Produce Co. v. FMC Corp.*, 186 Cal. Rptr. 114, 128 (Cal. Ct. App. 1982). Because the damages here are not in dispute and are liquidated § 3287(b) does not apply.

##### **B. Interest Should Be Calculated From July 2, 2013**

Instead, section 3287(a) applies because this is a liquidated claim. Under section 3287(a), a party can recover interest from the day the amount of the claim became certain. The damages are considered certain when a defendant could calculate the amount from reasonably available information. The Court must therefore determine when L&M could reasonably be expected to calculate the amount of damages. The Court holds that damages were not made certain to L&M until Liberty withdrew its defense on July 2, 2013. On that date, L&M was able to calculate its total damages by reviewing the payments Liberty made in L&M’s defense.

##### **C. California Civil Code Section 3289 Sets The Prejudgment Interest Rate At Ten Percent Per Annum For Breach Of Contract**

California Civil Code § 3289(b) is controlling when determining prejudgment interest rates in breach of contract actions. Section 3289(b) states that if a contract is breached and it does not stipulate an interest rate, the rate will be charged at ten percent per annum. Reimbursement of defense fees and costs is considered a quasi-contractual claim. *Buss v. Superior Court*, 939 P.2d 766, 776 (Cal. 1997). A quasi-contractual claim is considered a contract within the meaning of section 3287(b). *George v. Double-D Foods, Inc.*, 201 Cal. Rptr. 870, 878 (Cal. Ct. App. 1984). Therefore, a ten percent interest rate beginning on July 2, 2013 should be applied to determine the prejudgment interest.

##### **D. 28 U.S.C. § 1961 Sets The Post-Judgment Interest Rate**

The post-judgment interest is set by federal statute and “should be based on the date of an initial judgment or on the date of a later enforceable judgment.” *Am. Tel. & Tel. Co. v. United Computer Sys., Inc.*, 98 F.3d 1206, 1208 (9th Cir. 1996); 28 U.S.C. § 1961 (2012). The 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.” 28 U.S.C. § 1961 (2012).

**E. The Court Enters Judgment for Liberty**

The court has determined that judgment for Liberty is warranted. The Court will accordingly enter judgment for Liberty in the amount of \$853,534.14. The Court finds that Liberty is entitled to prejudgment interest calculated from July 2, 2013 to the date that final judgment is entered. Liberty is entitled to post-judgment interest according to the terms of 28 U.S.C. § 1961.

**V. CONCLUSION**

For the foregoing reasons, the Court **GRANTS** Plaintiffs’ motion.

**IT IS SO ORDERED.**

Initials of Preparer