

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION**

BRIAN ANDREAS, an individual,

Plaintiff,

vs.

VOLKSWAGEN OF AMERICA, INC.
d/b/a AUDI OF AMERICA, INC., a
New Jersey corporation, and
MCKINNEY & SILVER, INC., a
Delaware corporation,

Defendants.

No. C00-2021

ORDER

This matter comes before the court pursuant to plaintiff's September 25, 2003, motion to amend the judgment (docket number 131 as supplemented in docket number 134). The motion was resisted on November 18, 2003. The motion is granted in part and denied in part.

The facts and procedural history of this matter are accurately set forth in this court's order of April 24, 2002 (docket number 118). In that order, this court set aside the jury's award of Audi profits (paragraph 3 of the judgment filed in this matter on December 5, 2001). The court further clarified that prejudgment interest should be awarded from May 3, 2000, until December 5, 2001, and that post-judgment interest should be awarded beginning December 6, 2001. On appeal, the Court of Appeals restored that portion of the jury's verdict that this court set aside.

In his motion to amend the judgment, the plaintiff sought prejudgment interest from May 3, 2000, until September 12, 2003, the date that this court entered judgment following reversal by the Eighth Circuit Court of Appeals (docket number 130). In his brief, plaintiff also requests that the court specifically set forth the \$5,890.81 of costs awarded by the clerk on January 9, 2002.

In a supplemental motion filed by the plaintiff on October 20, 2003, the plaintiff now argues that in its April 24, 2002, order, this court should have awarded prejudgment interest from the date of infringement rather than from the date of filing of the case. The defendant objects to the timeliness of these motions.

Timeliness of These Motions

Plaintiff's request to have prejudgment interest run until entry of the September 12, 2003, judgment was timely filed on September 25, 2003. Until that judgment was entered, plaintiff could not request that it serve as ending date for computation of prejudgment interest. Plaintiff's request to modify the starting date for prejudgment interest is not timely filed. That matter could have been argued when the plaintiff challenged the calculation of interest following the December 5, 2001, judgment. The calculation of interest in this court's order of April 24, 2002, could have been appealed but it was not. The time for making the motion as to the starting date for prejudgment interest has long passed.¹

¹The court ran prejudgment interest from the date of filing of the case. The defendants concede that the court erroneously identified the filing date as May 3, 2000, rather than the correct date of March 3, 2000. The court can correct this clerical error pursuant to Fed. R. Civ. P. 60(a).

When Does Post-judgment Interest Begin To Run
Where Multiple Judgments Have Been Entered?

The plaintiff argues that prejudgment interest should run from the time of first infringement until September 12, 2003, the date on which judgment was entered following appeal. As noted above, the court finds that the request to modify the starting date for prejudgment interest is untimely. The court would not have exercised its discretion in any event to calculate the starting date for prejudgment interest prior to the filing of the complaint.

With respect to the date on which prejudgment interest stops and post-judgment interest begins, there are two choices. First, the court can run prejudgment interest until December 5, 2001, the date on which the jury returned the verdict that this court set aside and the Court of Appeals later restored. Second, the plaintiff argues that prejudgment interest should run until September 12, 2003.

Pursuant to 29 U.S.C. § 1961(a), post-judgment interest shall be allowed on any money judgment in a civil case recovered in the district court. Such interest shall be calculated from the date of the entry of the judgment. However, where there has been more than one judgment, § 1961 is silent as to which judgment post-judgment interest shall accrue from. The purpose of post-judgment interest is to compensate the successful plaintiff for being deprived of compensation for the loss from the time between the ascertainment of damages and the payment by the defendant. Kaiser Aluminum and Chemical Corp. v. Bonjorno, 494 U.S. 827, 835-36 (1990).

In Kaiser Aluminum, there were three trials. At the first trial, the district court entered a directed verdict for the defendant Kaiser. The Court of Appeals reversed and directed that the case be sent to the jury. In August of 1979, the second trial resulted in a jury verdict in the plaintiff's favor for \$5,445,000. Judgment was entered August 22, 1979. The district court held that the evidence did not support the jury's award of damages and granted Kaiser's motion for a new trial as to damages only. No one appealed

that decision and a third trial was held, limited to the issue of damages. On December 2, 1981, the jury returned a verdict in excess of \$9 million. Judgment was entered on December 4, 1981. The district court set aside a portion of those damages awarded by the jury. The Court of Appeals reversed the district court and reinstated the judgment entered December 4, 1981.

Thus, as plaintiff suggests, the Kaiser Aluminum case is very similar to what happened in the matter now before this court. Following the return of a verdict for the plaintiff, the district court set aside a portion of those damages and the Court of Appeals reversed the district court's post-judgment motion and reinstated the jury's verdict. In Kaiser Aluminum, the plaintiff argued that post-judgment interest should have been calculated from the date of the August 1979 judgment that was set aside and from which no one appealed. The United States Supreme Court held that because the 1979 verdict was not supported by the evidence, the damages had not been "ascertained" in any meaningful way. The Court found that it would be counter-intuitive to believe that Congress intended post-judgment interest to be calculated from such a judgment. Accordingly, post-judgment interest was calculated from the date of the judgment that was entered on December 4, 1981, that was restored by the Court of Appeals' decision. It was not calculated from a date following the Court of Appeals' decision.

In plaintiff's brief at page 3, he states the following with respect to the Kaiser Aluminum decision, "The Supreme Court held that post-judgment interest accrued from the entry of the judgment following reversal." This is incorrect. Post-judgment interest was determined to begin on December 4, 1981, the date judgment was entered on the \$9,567,939 jury verdict.

Accordingly, in this case, prejudgment interest shall be calculated from the filing of the complaint on March 3, 2000, until the date of the judgment on the jury's verdict, December 5, 2001. Post-judgment interest shall run thereafter.

Upon the foregoing,

IT IS ORDERED

That the Clerk of Court shall enter the following judgment:

1. That the claims of StoryPeople, Inc. and StoryPeople Graphics, Inc. are dismissed.

2. That plaintiff Brian Andreas shall recover from defendants Volkswagen of America, Inc. and McKinney & Silver, Inc., jointly and severally, the sum of One Hundred and Fifteen Thousand Dollars (\$115,000).

3. That plaintiff Brian Andreas shall recover from defendants Volkswagen of America, Inc. the sum of Five Hundred Seventy Thousand Dollars (\$570,000).

4. That plaintiff Brian Andreas shall recover from defendant McKinney & Silver, Inc. the sum of Two Hundred Eighty Thousand Dollars (\$280,000).

5. Costs are taxed in favor of the plaintiff and against the defendants in the amount of Five Thousand Eight Hundred Ninety Dollars and eighty-one cents (\$5,890.81).

6. That plaintiff shall recover from defendants prejudgment interest from March 3, 2000, until December 5, 2001, and post-judgment interest from December 6, 2001, until satisfaction of the judgment.

December 30, 2003.



JOHN A. JARVEY
Magistrate Judge
UNITED STATES DISTRICT COURT