

citizens. The court viewed the accumulation of interest on outstanding expert reports as part of the “financing” of such a suit. It was concluded that such interest was a recoverable cost.

[3] Although there was a dearth of evidence as the actual financial circumstances of the plaintiffs, certain observations could be made. Gary Muir was a retired secondary school history teacher. This mishap on the recreational trail in question rendered him a quadriplegic. The court observed that his spouse accompanied him during his presence at trial, and attended to his physical needs. One of his sons testified as to the apparent shape of Mr. Muir’s bicycle after the fact.

[4] The Muir family presented as an atypical modest professional family. Mr. Muir would no doubt have had a pension. His physical condition post event would require a tremendous amount of energy and attention from his spouse. It would have had a significant impact on the family finances. His offspring were of an age where they would be pre-occupied with launching themselves career wise and economically.

[5] The expert accounts upon which interest had accrued dated back to the latter part of 2007. The bulk of the accounts were generated between the spring and fall of 2008. The approximate total was \$42,000. That amount would have, in all likelihood been in excess of a half of Mr. Muir’s pension. It would have been difficult, if not impossible for the Muir’s to address this indebtedness as the litigation evolved.

[6] The difference of opinion between counsel is with respect to the rate of interest that can be applied to all augment these costs. Counsel for the defence comes from the point of view that there should be a standard approach comparable to the prevailing post judgment interest. Counsel for the plaintiffs advances paying interest according to the rate charged by the particular expert.

[7] As the cost judgment itself demonstrated, the costs of an expert report is accepted as unique to the expert. No doubt this is a reflection of such factors as; the degree of training required, the experience acquired, and the uniqueness of the area of expertise.

[8] The actual annual fixed interest rate charged by one of the experts is not unreasonable given prevailing interest rates when the account was generated.

[9] What is at first blush attention getting is the application of a monthly interest rate compounded monthly. The range was from one percent to two percent, presumably a compound interest charge is set with the hope that the indebtedness will be quickly addressed. The higher rate of two percent was apparently provided with respect to overdue payment of Statutory Accident Benefits pursuant to the former section 46 of regulation 403/96. The current section provides for a lower monthly rate, namely one percent. In any event, the regulations demonstrate that compounded monthly interest per se is not an unusual phenomena. This reflects that the absence of a payment economically is not just the face amount of the payment, it is also the cost of replacing the payment after the fact.

[10] The particular compounded monthly interest rates are not exceptional. Unfairness is not evoked. The rates are not of the magnitude that a court would have to intervene to guard against abuse. One cannot fault the experts for addressing the realities of having expended the effort and becoming indirectly financiers of the litigation.

[11] For all of the above, the actual rates of interest and the method of computation on the individual expert reports is allowed.

Whitten, J.

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ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

CLARA HERBERT, INFANT, Under the age of 18 years by her Litigation guardian, EVERILL MUIR, the said EVERILL MUIR, GARY MUIR, KIRI LYNN MUIR, KEVIN MUIR and KELLY BAIRD

Plaintiffs

- and -

THE CITY OF BRANTFORD

Defendent

REASONS FOR JUDGMENT

WHITTEN, J.

Released: June 28, 2011