

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**  
**IN AND FOR NEW CASTLE COUNTY**

JOSEPH M. JACHETTI and	)	
KENNETH R. SCHUSTER &	)	
ASSOCIATES, P.C.,	)	
Plaintiffs,	)	
	)	
v.	)	CA. No.: 08C-06-069 FSS
	)	<b>(E-FILED)</b>
MICHAEL J. TROIANI and	)	
STEIN & TROIANI, P.C., jointly	)	
and severally,	)	
Defendant.	)	

**ORDER**

**Upon Defendant’s Motion for Leave to Exceed Page Limit and  
Allow Full Briefing – *DENIED*;**  
**Upon Defendant’s Motions for New Trial – *DENIED*;**  
**Upon Defendant’s Motion for Stay of Execution –  
*DENIED without prejudice*;**  
**Upon Plaintiffs’ Motion for Costs and Prejudgment Interest – *GRANTED in  
an amount to be determined after a final submission.***

1. This is a contract dispute between lawyers over a legal fee. Defendant Troiani wrote to Plaintiff Jachetti, on Stein & Troiani, P.C.’s letterhead, “As for our fee agreement, I will agree to paying one third (1/3) of my agreed upon fee with the client.” Then, with Plaintiffs acting as Delaware counsel, Defendants won a substantial verdict, precipitating a large settlement. Claiming that Plaintiffs’

work did not justify Plaintiffs' cut, and so on, Defendants paid nothing.

2. Plaintiffs sued in June 2008. The court issued a trial scheduling order on March 27, 2009, setting the case for trial on December 14, 2009. The pre-trial conference was held on December 1, 2009.

3. On December 2, 2009, Defendants announced "displeasure" with their counsel, and requested "a short continuance." Defendants did not reveal the problem's cause, nor did they suggest how long it might actually take to find new counsel. After correspondence and hearings, the court denied the continuance request. And, Stein & Troiani found new counsel at the last moment.

4. The case went before a jury on December 14, 2009. At the close of Plaintiffs' case, Defendant Troiani, *pro se*, moved for a directed verdict. In response, without conceding its liability, Defendant, Stein & Troiani, P.C., through counsel, agreed that if the jury were to find liability, it would be on Stein & Troiani's part; Troiani was not personally liable. In light of that concession, Plaintiffs did not oppose the court's entering judgment for Troiani, individually.

5. In summary, at trial, Stein & Troiani admitted that they agreed in writing to pay Plaintiffs a third of their fee. But, as Troiani put it, that promise "was just one sentence in the letter." The defense was mostly that Stein & Troiani had "certain expectations" about the work Plaintiffs were to perform. If Stein & Troiani

had expected Plaintiffs “to merely file documents,” Troiani “could have just picked-up the Yellow Pages,” and found a Delaware lawyer whom they would have paid a flat fee or hourly. In order for Plaintiffs to earn their third, Stein & Troiani expected Plaintiffs to be “co-counsel.” Specifically, Troiani testified that he expected Jachetti “to work with me on the case.” If Plaintiffs had done the work Troiani expected, Plaintiffs would have been paid the amount demanded.

6. On December 17, 2009, the jury found for Plaintiffs in the amount demanded, \$163,371.74, plus \$1,377.78 for reimbursable expenses and costs. The total verdict was \$164,749.52, plus interest.

7. The parties timely filed the above-captioned motions. Because the court addressed Defendant’s arguments before and during trial, it will only summarize them briefly here. The court relies on the record, including its letter/orders and bench rulings.

8. **Full Briefing:** Defendant’s motion for full briefing, or to exceed the page limit, is **DENIED**. Having previously considered, and in many instances re-considered, Defendant’s claims, the court finds that full briefing will not be helpful; to the contrary, it is likely to result in unnecessary delay and needless expense.

9. **New Trial: DENIED.** Defendant's first reason for a new trial focuses on the court's having denied Defendant's December 2, 2009 "Motion for Continuance and/or in the Alternative Petition to Withdraw as Counsel." As mentioned above, the reasons for the court's exercise of discretion are already of record. In summary, the only basis for a continuance was because Defendants decided to dismiss their counsel less than two weeks before trial and after the court conducted a pre-trial conference. This, despite the long-standing Trial Scheduling Order and Superior Court Civil Rule 90.

10. As to Defendant's minimizing its request as merely for a "short continuance," the court will add here that Defendant never offered that it would be prepared for trial within a specific time frame. Of course, as Defendant had yet to retain new counsel, Defendant could not have been specific. So, Defendant's referring to its request as one for a "short continuance" was facile. Whatever Defendant's rhetoric meant, in this court, in a civil case, there is almost no such thing as a "short continuance." Civil trials are rarely continued, and only for good cause.

11. Had Defendant inquired before making the motion, it would have learned that the first date after December 14, 2009 when the assigned judge is available for a civil case is April 5, 2010, and five cases are already scheduled then. After that, in every week when the assigned judge is available to conduct a civil trial

through 2010 and well-into 2011, the court has at least three other cases already set for trial. A new trial date also would have precipitated another pre-trial conference. Accordingly, any trial continuance would have been disruptive to the court, to Plaintiffs, and to other litigants. Meanwhile, the court was available and Plaintiffs were ready for trial on the previously agreed upon and court-ordered trial date. Had the trial been continued, it would have left a courtroom dark on December 14, 2009.

12. Defendant's other reason for a new trial stems from the court's having denied Defendant's attempt to introduce evidence concerning two other cases where these parties split fees. Again, there is a record. In summary, the other cases were different. It could not be said that they established a pattern of dealing between the parties, and their limited probative value was outweighed by their risk of confusing the jury and needlessly prolonging the trial.

13. Finally as to the requests for a new trial, Defendant suggests that the verdict was against the great weight of the evidence. In order to decide whether that is so, the court does not re-weigh the evidence. Even so, the evidence came down heavily on Plaintiffs' side. This was a good trial. Jachetti and Troiani told their stories at length and they were vigorously cross-examined. The documents and circumstantial evidence supported Plaintiffs' testimony.

14. **Stay of Execution:** Defendant's Motion for Stay of Execution is **DENIED** without prejudice. If Plaintiffs attempt to levy on Defendant's property before the end of post-trial practice, including a timely appeal, the court will reconsider. Meanwhile, Plaintiffs are entitled to assurance that their judgment will be paid. The court is willing, at least, to let Plaintiffs begin the execution process without delay, including taking discovery.

15. **Plaintiffs' Motion for Prejudgment Interest and Costs:** Defendant opposes the motion for prejudgment interest because, according to Defendant, Pennsylvania's law controls. Alternatively, Plaintiffs' interest calculation allegedly is based on inflated rates.

16. Both law firms are Pennsylvania corporations. The contract was negotiated by Troiani and Jachetti. Troiani probably broached the contract by calling Jachetti in Delaware from Pennsylvania. That was followed by back-and-forth with Jachetti calling and writing from his firm's Delaware office to Troiani in Pennsylvania. The contract called for professional services to be performed in Delaware by Plaintiffs. Thus, the fee was earned in Delaware.

17. Both Delaware and Pennsylvania award prejudgment interest. To the limited extent that Pennsylvania and Delaware have a special concern about prejudgment interest, Delaware's is stronger. Prejudgment interest may have a bearing

on how litigation is conducted. If that is true, Delaware expects litigants in Delaware to be motivated by its prejudgment interest standards, while Pennsylvania has no interest in how Delaware cases are moving.

18. Taking everything into account, Delaware has the most significant relationship to this case. The contract was negotiated in Delaware, in part, and it was performed entirely here. Its subject matter, the litigation, was entirely in Delaware. And, Delaware's interest in the case is greater than Pennsylvania's. Thus, the contested fee agreement is subject to Delaware law, and Delaware's prejudgment interest statute<sup>1</sup> applies.

19. In general terms, Defendant challenges Plaintiffs' interest rate calculation. The parties shall confer about that. If they still cannot agree on the amount due under 6 *Del. C.* § 2301(a)<sup>2</sup>, they have leave, within two weeks of this

---

<sup>1</sup>6 *Del. C.* § 2301(a); *see also Baks v. Centra, Inc.*, 1998 WL 35249257, at \*5 n.7 (Del. Super. Aug. 31, 1998).

<sup>2</sup> *See* 6 *Del. C.* § 2301(a):

Any lender may charge and collect from a borrower interest at any rate agreed upon in writing not in excess of 5% over the Federal Reserve discount rate including any surcharge thereon, and judgments entered after May 13, 1980, shall bear interest at the rate in the contract sued upon. Where there is no expressed contract rate, the legal rate of interest shall be 5% over the Federal Reserve discount rate including any surcharge as of the time from which interest is due; provided, that where the time from which interest is due predates April 18, 1980, the legal rate shall remain as it was at such time.

order's date, to supply specific records showing the prime rate from the underlying settlement until the verdict. They shall also include, separately, the 5% calculation contemplated by § 2301(a). The court will award prejudgment interest in the total amount. If a hearing becomes necessary, the court will likely award sanctions to the prevailing party.

**IT IS SO ORDERED.**

Date: January 20, 2010

/s/ Fred S. Silverman  
Judge

cc: Prothonotary (Civil)  
Jeffrey M. Weiner, Esquire  
John G. Harris, Esquire