

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

CHARLES TIMOTHY WEST, APPELLANT
WEST QUALITY FOOD SERVICES, INC.,
COASTAL EXPRESS, INC., WEST LEASING
COMPANY, WEST BROTHERS LEASING
COMPANY, WEST FAMILY LEASING
COMPANY, AND WEST INVESTMENTS, LLC

VERSUS NO. 2008-CA-01700- SCT

DEBORAH GAYLE THORNTON WEST APPELLEE
Consolidated with:
2010-CA-00316-SCT

DEBORAH GAYLE THORNTON WEST APPELLANT
V.
CHARLES TIMOTHY WEST APPELLEE

Consolidated with:
2009-CA-01877-SCT

DEBORAH GAYLE THORNTON WEST APPELLANT
V.
WEST QUALITY FOOD SERVICES, INC. APPELLEE

Consolidated with:
2002-IA-01158-SCT

DEBORAH GAYLE THORNTON WEST APPELLANT
V.
CHARLES TIMOTHY WEST APPELLEE

APPEAL FROM THE CHANCERY COURT OF
JONES COUNTY, MISSISSIPPI
FIRST JUDICIAL DISTRICT
CAUSE NO. 94-0191

THE HONORABLE FRANKLIN C. MCKENZIE, JR. CHANCELLOR,
PRESIDING

SUPPLEMENTAL BRIEF OF APPELLANT

CAVES, CAVES & SHARP, PLLC
TERRY L. CAVES – MSB # [REDACTED]
JERRY D. SHARP – MSB # [REDACTED]
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IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

CHARLES TIMOTHY WEST, APPELLANT
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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of the Supreme Court and/or the Judges of the Court of Appeals may evaluate possible disqualification or recusal:

Charles Timothy West

Appellant

Terry L. Caves

Attorneys for Appellant

Jerry D. Sharp

Deborah Gayle Thornton West

Appellee

Patrick A. McAllister
William B. Pemberton, II

Attorneys for Appellee

Honorable Franklin C. McKenzie, Jr.

Chancellor

West Quality Food Services, Inc.

West Leasing, Inc.

Coastal Express, Inc.

West Family Leasing

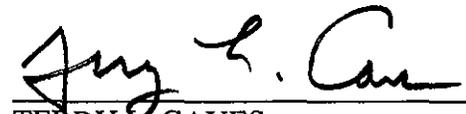
West Brothers Leasing

James Robert Sullivan, Jr.

Attorney for West Companies

This the 29th day of June, 2011.

Respectfully submitted,



TERRY L. CAVES
Attorney for Appellant

CAVES, CAVES & SHARP, PLLC
TERRY L. CAVES – MSB #5937
JERRY D. SHARP – MSB #101384
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I.

STATEMENT OF ISSUES ON APPEAL

1. What would be a fair rate of interest in the event the Court awards post-judgment interest on attorney's fees.

II.

STATEMENT OF THE CASE

The Chancellor in this case entered his Final Judgment on May 9, 2009 and among other relief, the Court awarded Debbie West the sum of \$262,468.53 for attorney's fees. The Chancellor held, "The fees awarded shall not bear interest in any amount from and after the date of judgment in this matter." (Appellant R. E. 25) Debbie raised as an error the Court's failure to award interest on the attorney's fee judgment. (Appellee Brief Page 36)

This Court entered its Order on June 6, 2011 ordering the parties to file simultaneous supplemental briefs to address the following issue:

"In the event the Court awards post-judgment interest on attorney's fees according to Miss. Code Ann. § 75-17-7 explain what rate will be a fair award of interest."

A. Summary of the Argument

In the event this Court determines that interest should accrue on the attorney's fee award judgment, Tim requests the Court set the interest rate at 2%.

B. Legal Argument

A fair rate of interest would be 2%.

Miss. Code Ann. § 75-17-7 provides for the Court to include interest on a judgment "at a per annum rate set by the judge hearing the complaint from the date determined by such judge to be fair..." In *Bluewater Logistics v. Williford*, 55 So. 3d 148, 164 (Miss. 2011), the Mississippi Supreme Court reversed the Chancellor's award of post judgment interest in what was called the "statutory rate." In this case, Debbie West requested 8% and the Court awarded 7% on the support arrearage.

Tim submitted a document prepared by James A. Koerber that outlined prevailing rates of interest. (Exhibits 176, 184) This exhibit shows the Prime Interest Rate – 6.21 Percent, One-

Year Treasury Notes – 3.32 Percent, Five-Year Treasury Notes – 4.24 Percent, Ten-Year Treasury Notes – 4.72 Percent, One-Month Certificates of Deposit – 3.27 Percent, and Six-Month Certificates of Deposit – 3.41 Percent.

In addition, Mr. Koerber prepared a document that showed the same prevailing rates for the month of March, 2008 from data provided by the Federal Reserve System (Release H. 15; www.federalreserve.gov). See Appendix A to this Brief. Mr. Koerber also prepared the same prevailing rates for May, 2011. See Appendix B attached to this Brief.

Tim has been unable to locate any case that provides guidelines or factors for trial judges to take into consideration in determining a “fair rate of interest” as contemplated by Miss. Code Ann. § 75-17-7.

Tim submits that the Court should use a blended rate taking into consideration the prime interest rate and the return on treasury notes and certificates of deposit. Based upon the prevailing rates in 2011, a fair rate of interest would be 2% based on the low being a six month certificate of deposit of .30% and the high being the prime interest rate of 3.25%.

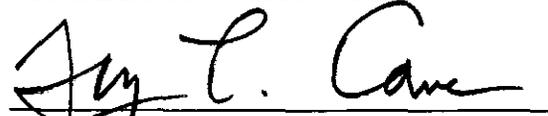
C. Conclusion

Although Tim submits that the attorney’s fee award should be reversed, in the event this Court upholds the attorney’s fee award, a fair rate of interest would be 2%.

Respectfully submitted,

CHARLES TIMOTHY WEST

BY:


TERRY L. CAVES

CERTIFICATE OF SERVICE

I Terry L. Caves, Attorney for Appellant, do hereby certify that I have this date sent via U. S. Mail, postage prepaid, a true and correct copy of the above and foregoing documents to the following:

Patrick A. McAllister, Esquire
Attorney for Appellee
Williford, McAllister & Jacobus, LLP
303 Highland Park Cove, Suite A
Ridgeland, MS 39157

William B. Pemberton, II, Esquire
Attorney for Appellee
Post Office Box 1483
Madison, MS 39130

Honorable Franklin C. McKenzie, Jr.
Chancery Court Judge
Post Office Box 1961
Laurel, Mississippi 39441

James Robert Sullivan, Jr.
Attorney for West Companies
Sullivan & Sullivan
Post Office Box 45
Laurel, MS 39441-0045

This the 29th day of June, 2011.



TERRY L. CAVES

THE KOERBER COMPANY, PA

Valuation & Litigation Services

James A. Koerber, CPA/ABV, CVA, CFE, CFF
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June 23, 2011

Terry L. Caves, Esquire
Caves & Caves
Post Office Drawer 167
Laurel, Mississippi 39441-0167

Re: *Deborah Gayle Thornton West v. Charles
Timothy West; Chancery Court, Jones County,
Mississippi; No. 94-0191
Interest Rates – March 2008*

Dear Mr. Caves:

Pursuant to your request, I have reviewed various interest rates for the month of March 2008 from data provided by the Federal Reserve System (Release H.15; www.federalreserve.gov). The purpose of this review was to compare prevailing rates of interest during this time. The rates of interest reviewed were:

- Prime Interest Rate
- One-Year Treasury Notes
- Five-Year Treasury Notes
- Ten-Year Treasury Notes
- One-Month Certificates of Deposit
- Six-Month Certificates of Deposit

During the month of March 2008, the Prime Interest Rate averaged 5.66 percent. It should be noted that the Prime Interest Rate is the rate charge on loans by financial institutions to their best customers.

I reviewed various risk-free rates of return for Treasury Notes and Certificates of Deposit for the month of March 2008. The One-Year Treasury Notes averaged 1.54 percent for March 2008, and the Five-Year Treasury Notes averaged 2.48 percent. The Ten-Year Treasury Notes averaged 3.51 percent. The One-Month Certificates of Deposit averaged 2.82 percent, while the Six-Month Certificates of Deposit averaged 2.70 percent in March 2008.

PROVIDING MORE THAN NUMBERS

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Appendix A

Terry L. Caves, Esquire
Caves & Caves
June 23, 2011
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For the month of March 2008, the average monthly rates of interest were as follows:

- Prime Interest Rate – 5.66 Percent
- One-Year Treasury Notes – 1.54 Percent
- Five-Year Treasury Notes – 2.48 Percent
- Ten-Year Treasury Notes – 3.51 Percent
- One-Month Certificates of Deposit – 2.82 Percent
- Six-Month Certificates of Deposit – 2.70 Percent

If you have any questions or require additional information, please contact me at your convenience.

Sincerely,

THE KOERBER COMPANY, P.A.



James A. Koerber
Certified Public Accountant
Accredited in Business Valuation
Certified Valuation Analyst
Certified Fraud Examiner

JAK/ekm

THE KOERBER COMPANY, PA

Valuation & Litigation Services

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June 23, 2011

Terry L. Caves, Esquire
Caves & Caves
Post Office Drawer 167
Laurel, Mississippi 39441-0167

Re: *Deborah Gayle Thornton West v. Charles
Timothy West; Chancery Court, Jones County,
Mississippi; No. 94-0191
Interest Rates – May 2011*

Dear Mr. Caves:

Pursuant to your request, I have reviewed various interest rates for the month of May 2011 from data provided by the Federal Reserve System (Release H.15; www.federalreserve.gov). The purpose of this review was to compare prevailing rates of interest during this time. The rates of interest reviewed were:

- Prime Interest Rate
- One-Year Treasury Notes
- Five-Year Treasury Notes
- Ten-Year Treasury Notes
- One-Month Certificates of Deposit
- Six-Month Certificates of Deposit

During the month of May 2011, the Prime Interest Rate averaged 3.25 percent. It should be noted that the Prime Interest Rate is the rate charge on loans by financial institutions to their best customers.

I reviewed various risk-free rates of return for Treasury Notes and Certificates of Deposit for the month of May 2011. The One-Year Treasury Notes averaged 0.19 percent for May 2011, and the Five-Year Treasury Notes averaged 1.84 percent. The Ten-Year Treasury Notes averaged 3.17 percent. The One-Month Certificates of Deposit averaged 0.16 percent, while the Six-Month Certificates of Deposit averaged 0.30 percent in May 2011.

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Appendix B

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June 23, 2011
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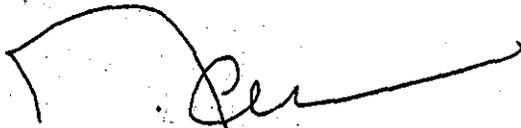
For the month of May 2011, the average monthly rates of interest were as follows:

- Prime Interest Rate – 3.25 Percent
- One-Year Treasury Notes – 0.19 Percent
- Five-Year Treasury Notes – 1.84 Percent
- Ten-Year Treasury Notes – 3.17 Percent
- One-Month Certificates of Deposit – 0.16 Percent
- Six-Month Certificates of Deposit – 0.30 Percent

If you have any questions or require additional information, please contact me at your convenience.

Sincerely,

THE KOERBER COMPANY, P.A.



James A. Koerber
Certified Public Accountant
Accredited in Business Valuation
Certified Valuation Analyst
Certified Fraud Examiner

JAK/ekm