

IN THE
SUPREME COURT OF PENNSYLVANIA

IN RE: Amendment of the
Rules of Civil Procedure :
Governing Post-Trial :
Practice :

No. 287
Civil Procedural Rules
Docket No. 5

O R D E R

PER CURIAM:

AND NOW, this 24th day of September, 1997, the Pennsylvania Rules of Civil Procedure are amended as follows:

1. Rule 238(c) is amended to read as attached hereto.
2. The Note to Rule 227.4(1)(b) is amended to read as attached hereto.

This Order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective January 1, 1998.

NOTE:

Underscored material is added.
Bracketed material is deleted.

Rule 227.4. Entry of Judgment upon Praecipe of a Party

...

(1) ...

(a) ...

(b) ...

NOTE: If a motion for delay damages has been filed [and is opposed], judgment may not be entered until that motion is decided or otherwise resolved. See Rule 238(c)(3)(i).

(2) ...

NOTE: ...

**Rule 238. Damages for Delay in an Action for Bodily Injury,
Death or Property Damage**

...

(c) Not later than ten days after the verdict or notice of the decision, the plaintiff may file a written motion requesting damages for delay and setting forth the computation. The motion shall begin with the following notice:

NOTICE

You are hereby notified to file a written answer to the attached motion for delay damages within twenty days from the filing of the motion or the delay damages sought in the motion may be added to the verdict or decision

against you.

(1) Within [ten] twenty days after the motion is filed, the defendant may answer specifying the grounds for opposing the plaintiff's motion. The averments of the answer shall be deemed denied. If an issue of fact is raised, the court may, in its discretion, hold a hearing before entering an appropriate order.

Note: An order of the court on the motion for delay damages shall not be subject to a motion for post-trial relief.

(2) If the defendant does not file an answer and oppose the motion, the [court] prothonotary upon praecipe shall add the damages for delay to the verdict or decision in the amount set forth in the motion.

(3)(i) If a motion for post-trial relief has been filed under Rule 227.1 and a motion for delay damages is [opposed] pending, a judgment may not be entered until disposition has been made of all motions filed under Rule 227.1 and this rule [have been decided].

(ii) If no motion for post-trial relief is filed within the ten-day period under Rule 227.1 but the defendant opposes the motion for delay damages, the plaintiff may enter judgment on the verdict or decision. Thereafter, upon deciding the motion for damages for delay, the court shall enter judgment for the amount of the delay damages, if any.

...

EXPLANATORY COMMENT

A party may enter judgment upon a verdict or decision under Rule 227.4(1)(b) when a motion for post-trial relief is not decided within a 120-day period. One court of common pleas has ruled that the entry of judgment under Rule 227.4 prior to the disposition of an unopposed motion for delay damages under Rule 238 precludes the award of such damages. This is a result that was not intended.

The following amendments remedy this problem. First, Rule 238(c) is revised by prescribing a form of notice to begin the motion for delay damages, advising the defendant to file an answer within twenty days or the damages for delay may be added to the verdict or decision. Second, Rule 238(c)(1) is amended to enlarge from ten days to twenty days the time in which to answer a motion for delay damages. Third, Rule 238(c)(2) provides that if the motion is not opposed by filing an answer, the prothonotary upon praecipe will add the delay damages as set forth in the motion. Finally, Rule 238(c)(3)(i) prohibits the entry of judgment until there has been disposition of a pending motion for delay damages by order of court, by praecipe pursuant to Rule 238(c)(2) or by other resolution.

The note to Rule 227.4(1)(b) is revised to conform to amended Rule 238(c)(3)(i).

**BY THE CIVIL PROCEDURAL
RULES COMMITTEE**

EDWIN L. KLETT

CHAIRMAN