IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN THE MATTER OF TRANSAMERICA AIRLINES, INC.	)	
HARRY A. AKANDE, Petitioner/Plaintiff,	)	
v.	)	Civil Action No. 1039-VCP
TRANSAMERICA AIRLINES, INC., a Delaware corporation, f/k/a, TRANS-INTERNATIONAL AIRLINES, INC., a Delaware corporation, BURTON E. BROOME, SHIRLEY H. BUCCIERI, EDGAR H. GRUBB, and TRANSAMERICA CORPORATION, a Delaware Corporation, Respondents/Defendants.	)	

MEMORANDUM OPINION

Submitted: April 9, 2009
Decided: July 22, 2009

James S. Green, Esquire, George H. Seitz, III, Esquire, Patricia P. McGonigle, Esquire, SEITZ, VAN OGTROP & GREEN, P.A., Wilmington, Delaware, *Attorneys for Petitioner/Plaintiff*

David E. Wilks, Esquire, WILKS, LUKOFF & BRACEGIRDLE, LLC, Wilmington, Delaware, *Attorneys for Respondents/Defendants*

PARSONS, Vice Chancellor.

This action involves a decades-old dispute between Chief Harry Akande and Transamerica Airlines ("Transamerica"), regarding enforcement of a 1999 Nigerian judgment in favor of a company in which Akande was a 50% owner. On May 25, 2007, this Court recognized the judgment and granted Akande's request for enforcement with respect to the portions of the judgment relating to a breach of a 1976 contract.[1] Since May 2007, numerous disputes have arisen regarding the meaning of the Nigerian judgment and the appropriate procedure to implement this Court's decision to recognize that judgment. This memorandum opinion addresses the last of those issues that remain outstanding.

The open issues involve the precise parties to be named in the judgment in this Court, the nature and amount of various monetary awards in the Nigerian judgment, whether prejudgment interest was awarded and, if so, at what rate, similar questions regarding postjudgment interest, whether any interest awarded was simple or compound, the proper currency for the judgment and what dates should be used to determine the appropriate exchange rates. If I were to accept Akande's position on all of these issues, the judgment would be in favor of his company in the approximate amount of $19,307,796. If I ruled in favor of Transamerica on all the outstanding issues, the amount of the judgment would be in the range of $54,000. For the reasons stated herein, I will

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[1] Having recited the background facts in detail in two previous opinions, I describe here only the salient facts relevant to the remaining issues before me. *See Akande v. Transam. Airlines, Inc.* (*Akande I*), 2007 WL 1555734 (Del. Ch. May 25, 2007); *Akande v. Transam. Airlines, Inc.* (*Akande II*), 2008 WL 509817 (Del. Ch. Feb. 25, 2008).

enter a judgment in favor of Akande's company and against Transamerica that, by my unofficial calculation, will exceed $2.2 million.

I. BACKGROUND

A. Procedural History

This case involves a contract between Trans-International Airlines ("TIA") and New Africa Technical and Electrical Company Limited ("NAFTECH") to transport Nigerian pilgrims between Jeddah, Saudi Arabia, and Kano, Nigeria, for the Hadji Movement in 1976 (the "Commission Agreement for 1976"). NAFTECH was composed of two partners, Plaintiff Akande and Michael A. Omisade. TIA retained NAFTECH to secure pilgrims for transport and agreed to pay NAFTECH a 5% commission for these services.

In 1976, when TIA owed commissions to NAFTECH, Omisade falsely represented to TIA that NAFTECH was being dissolved, and contracted to have his new company, New Africa Development Company ("NADCO"), perform services in place of NAFTECH. When Akande learned about this, he promptly informed TIA that NAFTECH was still in existence. TIA responded that they would continue to work with NADCO and that Akande and Omisade would need to settle their dispute themselves. Akande then filed suit on NAFTECH'S behalf in 1976 in Nigeria's High Court of Lagos State to enforce NAFTECH's rights.

In 1999, after twenty-three years of on-again, off-again litigation, Akande obtained a judgment in Nigeria against Omisade, TIA, and NADCO.[2] Eight years later, after Akande failed to collect on the Judgment elsewhere, he commenced this action in Delaware under the Uniform Foreign Money-Judgments Recognition Act (the "UFMJRA").[3] After discovery, both parties moved for summary judgment. Upon considering the parties' cross motions, I granted them in part and denied them in part. Among other things, I recognized the Judgment, granted Akande's request for enforcement as to the portions related to the Commission Agreement for 1976, and found that Transamerica assumed TIA's liabilities under the Judgment.[4]

Thereafter, when the parties and the Court focused on an appropriate form of judgment or order to implement the rulings on the motions for summary judgment, material disputes developed as to the proper interpretation of the Judgment and the exact amount due to NAFTECH under the Judgment. To address these issues, both sides undertook to obtain experts on Nigerian law and to submit a stipulated list of questions for these experts to answer. On February 25, 2008, after the parties could not agree on a stipulated list, the Court issued an opinion, *Akande II*, enumerating the questions the

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2 *Akande v. Omisade*, No. FHC/L/77/88, Oct. 20, 1999 (Nig. F.H.C.) (the "Nigerian Judgment" or the "Judgment"), *available at* Pl.'s Mem. in Supp. of the Op. of Justice E.O. Sanyaolu's Op. on Nigerian Law Applicable to These Proceedings and in Opp'n to Defs.' Experts' Ops. App. ("Pl.'s Mem. App.") at A1-14.

3 10 *Del. C.* §§ 4801 to 4808.

4 *Akande I*, 2007 WL 1555734, at *19-20. For the sake of brevity, I refer to Transamerica in colloquial terms as TIA's successor, and TIA as Transamerica's predecessor.

Court sought to have the experts in Nigerian law address.[5] The *Akande II* opinion contemplated that the parties would exchange Nigerian expert reports, take expert depositions, and present evidence at a hearing to be held in July 2008 regarding the enumerated questions. In May 2008, the parties exchanged opening expert reports.[6] On June 25, 2008, however, Transamerica informed the Court that one of its experts, Justice Ejiwunmi, had passed away unexpectedly. At Transamerica's request and based on its professed commitment "to moving this matter toward a final resolution as swiftly as possible,"[7] I then granted it a continuance to obtain another expert.

Despite obtaining an extension,[8] as of October 15, 2008, Transamerica had yet to identify a new expert. Two months later, Transamerica finally produced an expert report from a new expert, retired Justice Samson O. Uwaifo. The parties then exchanged expert reports, and the Court scheduled a new hearing for February 6, 2009. Before the hearing, however, Transamerica reported that one of its experts was ill and would be unable to attend the hearing on the date scheduled. At that point, to avoid further delay, I canceled the hearing and ordered both sides to submit written reports and memoranda. Akande timely filed its memorandum and the expert opinion by Justice Sanyaolu, dated May 6, 2008.

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5 *Akande II*, 2008 WL 509817, at *6-7.

6 Plaintiff submitted one expert report from retired Justice E.O. Sanyaolu; Defendants submitted two expert reports, one from retired Justice M.B. Belgore and one from retired Justice A.O. Ejiwunmi.

7 Letter from David E. Wilks, Esq. to Court (June 25, 2008).

8 Letter from David E. Wilks, Esq. to Court (July 30, 2008).

Pursuant to the Court's scheduling order, Transamerica was to file its report and memorandum by February 6, 2009, but it failed to do so. Although Transamerica later undertook to file its submissions by February 17, it missed that deadline, as well. I then ordered Transamerica to file its memorandum by February 27, or be deemed to have waived its right to file one. Transamerica finally filed its memorandum and expert reports on February 27, 2009 — seven months after the original hearing date.

Transamerica ultimately submitted reports from two experts, Justices Belgore and Uwaifo. It had served Akande with a report by Justice Uwaifo on or about December 12, 2008, but it was unsigned. On December 18, 2008, Akande's counsel wrote to Transamerica's counsel, noting that Justice Uwaifo's report was not signed and inquiring whether Transamerica intended to provide a signed copy. Mr. Wilks responded that Transamerica intended to rely on Uwaifo's unsigned report, because he was going to be deposed. Nevertheless, Transamerica filed with its February 27, 2009 memorandum of law a different Uwaifo expert report, which apparently was signed on October 24, 2008. More importantly, the signed Uwaifo report differs from his unsigned report transmitted to Akande in December 2008 in certain respects that Akande characterizes as material. Although these discrepancies render the later report procedurally problematic, I have considered both of Justice Uwaifo's reports in analyzing the issues addressed in this opinion and assessed the differences between the reports, where relevant, in terms of the reliability of, and weight due to, those opinions.[9]

[9] In a letter dated March 5, 2009, Akande moved to strike the signed report of Justice Uwaifo as untimely and otherwise improper. Akande also pursued that

B. Issues Presented

This memorandum opinion addresses a number of issues regarding the proper interpretation of the Nigerian Judgment and the appropriate form of an order in this Court for the recognition and enforcement of that Judgment. The key paragraph of the Judgment, which essentially was entered by default, reads as follows:

> The ultimate issues for consideration are the reliefs sought by the plaintiff. After a sober reflection on the whole case, I have no difficulty whatsoever granting the plaintiff the declaration sought in paragraph 33(i) of the Amended Statement of Claim in addition to all the reliefs contained in subparagraphs (ii), (iii), (iv) and (v). Similarly the relief contained in subparagraph (vi) is also granted subject to the qualification that the rate of interest shall be 5% with effect from the date of this judgment. This must inevitably be so because the present suit is governed by the old rules of this court, and in terms of Order XLV rule 7 of the Federal High Court (Civil Procedure) Rules 1976 the rate of interest must not exceed 5%. Furthermore, the prayers in subparagraphs (vii) and (viii) are hereby granted and a sum of eight million naira (N8 million) apiece is awarded as claimed in subparagraphs (ix), (x) and (xii) while the relief sought in subparagraph (xi) ought to be and is hereby refused for the

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request at argument. On behalf of Defendants, Mr. Wilks asserted that Uwaifo had signed the report in October 2008 and that Mr. Wilks and his firm were responsible for the inadvertent production of the unsigned report in December 2008 and the belated production of the signed version in late February 2009. The carelessness reflected in these actions is troubling. The additional fact that Akande's counsel promptly noted the lack of a signature to Transamerica's counsel, who then blithely (and incorrectly) disclaimed any intent to obtain a signed report, only to submit a substantively different signed report weeks after Akande filed its memorandum, however, renders this conduct vexatious and sanctionable. Therefore, I hereby order Mr. Wilks and his firm during the relevant time period, Reed Smith LLP, to pay Akande $2,000 to reimburse at least partially his attorneys' fees and costs associated with the filing of the March 5, 2009 letter to the Court and preparation for the related portion of the argument on April 9, 2009.

> reasons earlier given above. Finally, the 1st defendant's [Omisade's] Counterclaim is hereby dismissed as baseless and entirely lacking in merit. That will be the order of this court.[10]

Based on the Judgment and the proceedings in this Court since the decision in *Akande I*, the following issues remain in dispute:

(1) In whose favor should the judgment in this Court be granted?

(2) Under the portion of the Nigerian Judgment pertaining to the breach of the Commission Agreement for 1976, what monetary compensation did the Nigerian court award?

(3) Were multiple monetary awards granted?

(4) Can a Nigerian court award prejudgment interest? And if so, did the court award prejudgment interest in this case, and at what rate?

(5) Can a Nigerian court award postjudgment interest? And if so, did the court award postjudgment interest in this case, and at what rate?

(6) Should the interest awarded be simple or compound? and

(7) In which currency, and at which rate of exchange, should the Judgment be enforced?

II. ANALYSIS

In *Akande I*, I recognized the Nigerian Judgment and held that Akande could enforce it in Delaware against Transamerica, as the successor in interest to TIA. Specifically, I found that, "Delaware law provides for recognition of Akande's judgment

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[10] Nig. J. at 14. Omisade reportedly is deceased.

for breach of a commission agreement for 1976 and that the various defenses raised by Defendants do not bar the judgment's recognition in this state."[11]

In *Akande II*, after hearing oral argument of the parties, I denied Plaintiff's Motion to Supplement the Record with an Enrolled Order and supporting papers. At that time, Akande had gone back to the Nigerian court to have it clarify the Judgment. I denied Plaintiff's motion to supplement for three reasons: (1) the Enrolled Order was not material to the issues then before this Court; (2) Akande could have obtained and presented the Enrolled Order before or at the trial of this action; and (3) it resulted from an ex parte proceeding. Having denied Akande's motion to supplement, I also denied a related motion by Defendants to strike. When the parties could not agree on a proposed form of order or judgment in this Court based on alleged ambiguities in the Nigerian Judgment, I directed them to develop a list of stipulated questions for their respective experts. Because the parties could not agree in that regard, I ultimately developed a list of questions for the experts and included them in *Akande II*.

In this opinion, I have undertaken to ascertain the meaning of the Nigerian Judgment in terms of the relief awarded. Throughout, I have used an objective or contract-based approach to interpreting the Judgment. Under this paradigm, I view the Nigerian Judgment as a binding legal document, much like a contract, that must be adhered to and enforced in accordance with its language as it would be understood by a reasonable person familiar with such documents. Under Delaware Court of Chancery

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[11] *Akande I*, 2007 WL 1555734, at *1.

Rule 44.1, "the Court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under Rule 43." To that end, I have considered, among other things, the language of Akande's Amended Statement of Claim in the underlying Nigerian action, the Nigerian Judgment, the opinions and reports of the three experts in Nigerian law, and their answers to various questions posed by the Court. In addition, I have taken judicial notice of currency exchange rates.[12]

Against this backdrop, I now turn to the questions that remain outstanding. Based on my answers to those questions, it should be possible to enter promptly an order of final judgment in this action.

Issue 1: In whose favor should the judgment be granted?

The parties and the experts agree that this Court should award any judgment to NAFTECH in that Akande brought the underlying action in Nigeria derivatively on behalf of NAFTECH. Akande had standing to bring a derivative suit on behalf of NAFTECH because he was a 50% shareholder in the company when the contract dispute arose. Additionally, all parties agree that Transamerica assumed all liabilities of the defendant TIA in the Nigerian action. Much of the Nigerian Judgment was against TIA and, to that extent, the judgment in this action should be entered against Transamerica.

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12 *See* D.R.E. 201.

Issue 2: Under the portion of the Nigerian Judgment pertaining to the breach of the Commission Agreement for 1976, what monetary compensation was awarded?

Akande argues that a commission of USD $255,580 is due to NAFTECH.[13] Akande argues that $255,580 is the proper amount because the Judgment states that "the Plaintiffs main complaint is that [NAFTECH] was hijacked by . . . [Omisade] and commission of USD $225,580 [sic] payable to . . . [NAFTECH under the Commission Agreement for 1976] was paid to [NADCO]."[14] Akande sought this relief in paragraph 33(v) of the Amended Statement of Claim he submitted to the Nigerian court. In the Nigerian Judgment, the court stated that it had "no difficulty whatsoever in granting the Plaintiff the declaration sought in paragraph 33(i) of the Amended Statement of Claim in addition to all the reliefs contained in sub-paragraphs (ii), (iii), (iv) and (v)."[15] Thus, Akande argues that he explicitly asked for relief pursuant to the Commission Agreement for 1976 in United States dollars and the Nigerian court granted such relief on the last page of the Judgment.

Justice Uwaifo[16] avers, however, that the Judgment pursuant to claim (v) of the Amended Statement of Claim (Akande's claim under the Commission Agreement for

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13 The Judgment was awarded in both U.S. dollars and the Nigerian currency, naira. I will refer to any amounts in U.S. dollars with the traditional notation ($). All naira awards will be referred to simply as "naira" or with the notation "N."

14 Nig. J. at 9.

15 Nig. J. at 14.

16 Akande relies on only one expert, Justice Sanyaolu. I, therefore, will refer to his opinion using the party he represents, Akande. Transamerica submitted reports from two different experts, Justices Uwaifo and Belgore. These two opinions, however, often differ; thus, I refer to them by the corresponding expert's name.

1976) did not include an award of $255,580 because under Nigerian law an accounting procedure would be required to receive such a judgment. According to Justice Uwaifo, no accounting was performed to determine the exact damages; thus, the Judgment could not have granted a commission award. Uwaifo also asserts that all awards granted are listed on the last page of the Judgment and no $255,580 award appears there. That fact, he contends, further supports his opinion that there was no $255,580 award.

Justice Belgore avers that the "Judgment provides for a single award of 8,000,000 naira for breach of the Commission Agreement for 1976." But, his opinion has little persuasive force, because it is largely conclusory and bereft of any supporting citations or legal reasoning.

I find the positions of both Transamerica experts untenable. Akande's claim (v) requests "an Order directing payment over to the 5th Defendant [NAFTECH] by the other Defendants of all and any sums found due to the 5th Defendant [NAFTECH] arising from any of the transactions referred to in this Amended Statement of Claim . . . ."[17] In the Judgment, the court states that "[t]he damage suffered by the 5th defendant is the commission of USD $255,580 and other subsequent commissions which have accured [sic: accrued] to . . . [NAFTECH] under the agreements . . . ."[18] This illustrates that the

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[17] Nig. J. at 2 (quoting Akande's Am. Statement of Claim ¶ 33(v)). The reference to multiple transactions and "subsequent commissions" presumably denotes the commission agreements for the years after 1976, as well as 1976. In *Akande I*, however, I granted summary judgment in favor of Defendants on the aspects of that claim unrelated to the Commission Agreement for 1976.

[18] *Id.* at 10.

award for the breach of the Commission Agreement for 1976 includes the commission of $255,580. At the end of the Judgment, the court held that it had "no difficulty whatsoever" in granting the Plaintiff all the reliefs sought in subparagraph 33(v), among other things.[19] Claim (v) sought relief of $255,580 for breach of the 1976 contract and the Nigerian Judgment awarded at least that amount. As the Judgment explains, the $255,580 figure is the amount of the commission lost as a result of the 1976 breach. Now, Transamerica disputes this conclusion, emphasizing that the court did not mention any precise dollar amount sought in its reference to claim (v) at the end of the Judgment. Yet, Transamerica provides no logical or legal explanation as to why the Nigerian court would have to repeat the amount of the award in that part of the Judgment, when it had discussed the $255,580 figure earlier and also described the way it was calculated.

Similarly, I reject Transamerica's argument that the court failed to conduct an accounting, because Transamerica failed to cite any case law or statutory authority for its position or to articulate what more would be required for an "accounting" as to the 1976 commissions. The discussion in the Nigerian Judgment of the amount of the commissions NAFTECH lost in 1976 amply satisfies the requirements for an accounting as to the specific damages caused by Defendants' breach of the Commission Agreement for 1976.

Assuming *arguendo* that a Nigerian court must account for damages, the Judgment sufficiently calculates damages in this situation. The Judgment states that "the total

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19 *Id.*

contract value is $5,111,160 and 5% of that amount is what is due to . . . [NAFTECH] for 1976. However, this sum was not paid to [NAFTECH]."[20] The court then applied the 5% commission to $5,111,160 to arrive at the awarded figure of $255,580.00. Thus, the court logically awarded the lost commission (5% of $5,111,160) to NAFTECH and presented basic calculations in support of its award. Therefore, even if an accounting procedure were necessary, I find that the Nigerian court's calculations would satisfy that requirement. Transamerica attempts to downplay the importance of the calculation in the Judgment by arguing that the court simply reiterated what is stated in Akande's Amended Statement of Claim. That is hardly surprising, however, in that Transamerica and the other defendants failed to participate in the hearing. For these reasons, I find that the Judgment awarded $255,580 to NAFTECH for the breach of the Commission Agreement for 1976.

Issue 3: Were multiple monetary awards granted?

I answer this question in the affirmative. In addition to the $255,580 award, the court also awarded eight million naira pursuant to Akande's conspiracy claim. Further, although the parties vigorously contest the issue, I find that the Nigerian court separately awarded eight million naira to NAFTECH under claim (ix) as general damages against TIA, and hence Transamerica, "for breach of contract, (and/or in the alternative),

[20] *Id.* at 5.

damages for breach of constructive trust . . . ."[21] I turn now to the grounds for these findings.

Under Nigerian law, damages are divided into two categories: special and general damages. Special damages "connote specific items of loss which the plaintiff alleges are the result of the defendant's breach of the contract."[22] "General damages are those damages which the law implies in every breach and in every violation of a legal right."[23] To calculate general damages, Nigerian courts use a "reasonable man" standard.[24] Under Nigerian law, "[s]pecial and general damages can be awarded following a breach of contract," but courts try to avoid double compensation.[25] Moreover, "if a plaintiff recovers in full under special damages, for an injury he will not be entitled to recover under general damages for the same injury."[26] According to Akande, in the underlying Nigerian action, the $255,580 award represents special damages, and any additional naira awards would constitute general damages. Transamerica disagrees, contending the Judgment granted no U.S. dollar damages and only a single eight million naira award.

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21 *Id.*

22 *Nicon Hotels Ltd. v. Nene Dental Clinic Ltd.*, CA/A/68/97 237, 269 (Ct. of Appeal, Abuja), *available at* Pl.'s Mem. App. Ex. B.

23 *Id.* at 269-70.

24 *Id.* at 270.

25 *Id.* at 269.

26 *Id.*

Akande argues that in addition to the U.S. dollar award, the Judgment awarded three separate eight million naira general damage awards, totaling twenty-four million naira, for: (1) breach of contract, (2) fraudulent misrepresentation, and (3) conspiracy to procure a breach of contract. As noted in the Judgment, the last four of twelve prayers for relief in Akande's Amended Statement of Claim requested the following, which Akande characterizes as general damages:

> (As against the 4th Defendant [TIA])
>
> (ix) the sum of N12 million only, being damages for breach of contract, (and/or in the alternative), damages for breach of constructive trust;
>
> (And As Against the 1st, 2nd and 3rd Defendants [Omisade, Lawrence Ademola Okunola, and NADCO]):
>
> (x) the sum of N12 million only, being damages for fraudulent misrepresentation;
>
> (xi) the said sum of N12 million only, being damages for breach of trust and breach of fiduciary duty.
>
> AND/OR IN THE ALTERNATIVE
>
> (xii) the said sum of N12 million only, being damages for conspiracy to procure a breach of contract, and damages for wrongfully procuring the same.[27]

Akande then relies on a passage at the end of the Judgment, which states:

> [T]he prayers in subparagraphs (vii) and (viii) are hereby granted and a sum of eight million naira (N8 million) apiece is awarded as claimed in subparagraphs (ix), (x) and (xii) while the relief sought in subparagraph (xi) ought to be and is hereby refused for the reasons earlier given above.[28]

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[27] Nig. J. at 3.

[28] *Id.* at 14.

Akande argues, therefore, that the Nigerian court separately granted each of the three awards under subparagraphs (ix), (x), and (xii), for a total award of twenty-four million naira, over and above the $255,580 discussed *supra*.

Transamerica takes issue with that assertion. Justice Belgore argues that the Judgment provides for a single award of eight million naira and that Nigerian law prohibits the entry of multiple awards for one injury. He avers that eight million naira is the sole relief due NAFTECH and denies that the Nigerian court made a separate award to NAFTECH of $255,580. Regarding the eight million naira, Justice Belgore asserts that the term "apiece" in the statement that "a sum of eight million naira (N8 million) apiece is awarded as claimed in subparagraphs (ix), (x) and (xii)" signifies a single eight million naira award. A Nigerian court, per Justice Belgore, could not construe the award otherwise.[29] He further states that to make multiple awards, a Nigerian court would have to set forth a proper basis for the awards in terms of their purpose and the justification for multiple awards. These requirements were not met in this instance, according to Justice Belgore, but he generally failed to cite any Nigerian law in support of his opinion.

Justice Uwaifo's opinion is less clear, especially when I consider the differences between his signed and unsigned reports as highlighted in the letter of Akande's counsel, dated March 5, 2009. As I understand him, Justice Uwaifo construes the Judgment as having reduced Akande's claim for 12 million naira in subparagraphs (ix), (x), and (xii) of his request for relief to an award of eight million naira each against Defendants

[29] Expert Report of Justice M.B. Belgore ("Belgore Report"), 4/9/2008, at 4.

Omisade, NADCO, and TIA (now Transamerica). Justice Uwaifo, like Justice Belgore, therefore avers that the total damages to which NAFTECH is entitled against Transamerica under the Nigerian Judgment is only eight million naira.[30]

I find neither Akande's nor Transamerica's experts' positions completely convincing, but generally consider Akande's expert's, Justice Sanyaolu's, opinion to be more persuasive and reliable. First, I agree with Akande that the Judgment provides for multiple awards. These awards, however, are not as large as Akande argues. All the experts agree that Nigerian law, like Delaware law, does not authorize double compensation. Thus, a party cannot be compensated twice for the same injury. As discussed above, the Nigerian court entered a judgment in favor of NAFTECH for $255,580 for the loss of its 1976 commissions — this award amounts to special damages and corresponds to the specific amount that was due to NAFTECH for the defendants' breach of the Commission Agreement for 1976. The question remains, however, whether the Judgment also granted certain additional amounts as general damages for the various enumerated claims.

Akande claims that the Judgment awarded an additional twenty-four million naira, because the court granted a portion of the compensation requested (*i.e.*, eight million

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[30] Justice Uwaifo acknowledges that the total amount awarded to NAFTECH under subparagraphs (ix), (x), and (xii) is N24 million. Still, he does not seem to view the defendants' liability under those subparagraphs as joint liability. Hence, Justice Uwaifo asserts that Transamerica's liability is limited to N8 million. *See* Unsigned Expert Report of Justice Samson O. Uwaifo ("Unsigned Uwaifo Report"), served 12/12/08, at 10; Signed Expert Report of Justice Uwaifo ("Signed Uwaifo Report"), 10/24/08, at 9-11.

naira) in each of claims (ix), (x), and (xii) of his Amended Statement of Claim. Akande, however, fails to note that claim (x), for fraudulent misrepresentation, does not apply to the 4th Defendant, TIA, or its successor, Transamerica.[31] Thus, even assuming the

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[31] The structure of Akande's request for relief in paragraph 33 of his Amended Statement of Claim is important in understanding the effect of the Judgment as to subparagraphs 33(ix), (x), and (xii) on TIA and Transamerica. That structure can be seen in the following quotation of the pertinent part:

> 33. WHEREFOR the Plaintiff claims against the 1st-4th Defendants [(1) Omisade, (2) Okunola, (3) NADCO, and (4) TIA] (jointly and/or in the alternative severally, save where otherwise specifically indicated), and for the benefit of the 5th Defendant [NAFTECH] as follows:
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> ****
>
> (i) a Declaration [of rights as to the Commission Agreement for 1976] . . . ;
>
> (As to the 1st, 2nd, 3rd and 4th Defendants):
>
> [(ii) – (viii)]
>
> ****
>
> IN ADDITION TO (i) – (viii) ABOVE
> (As against the 4th Defendant)
>
> (ix) the sum of N12 million only, being damages for breach of contract, (and/or in the alternative), damages for breach of constructive trust;
>
> (And As Against the 1st, 2nd and 3rd Defendants)
>
> (x) the sum of N12 million only, being damages for fraudulent misrepresentation;
>
> (xi) the said sum of N12 million only, being damages for breach of trust and breach of fiduciary duty.
>
> AND/OR IN THE ALTERNATIVE

Nigerian court granted a separate award of eight million naira based on claim (x), the fraudulent misrepresentation award would not impact Transamerica, the only Defendant in this action against which Akande seeks to have this Court recognize the Nigerian Judgment.

The two claims left to consider, both under the general damages rubric, are claim (ix) for breach of contract (and/or in the alternative) breach of constructive trust, and claim (xii) for conspiracy to procure a breach of contract.[32] I address each of these claims separately.

Beginning with claim (ix) for breach of contract or of a constructive trust, I assume *arguendo* that under Nigerian law double recovery is impermissible. Akande submits that the N8 million awarded as to claim (ix) represents general damages and simply should be added to the special damages of $255,580. Defendants appear to contend that the Judgment could not mean that, because awarding NAFTECH N8 million plus $255,580 for breach of the Commission Agreement for 1976 would amount to a double recovery. Having carefully considered the evidence, I conclude that Defendants' argument lacks merit. Conceivably, the Nigerian court could have mistakenly rendered a double recovery on the breach of contract claim. But, that is not the only reasonable

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> (xii) the said sum of N12 million only, being damages for conspiracy to procure a breach of contract, and damages for wrongfully procuring the same . . . .

Pl.'s Am. Statement of Claim at 9, 11, quoted in large part in the Nig. J. at 2-3.

[32] Nig. J. at 3, 14.

construction of the Judgment. Defendants' own expert, Justice Uwaifo, stated that there is no relationship between the N8 million award under subparagraph 33(ix) and the $255,580 award for lost commissions under subparagraph 33(v).[33] That statement alone supports an inference that the general damages awarded under claim (ix) were not simply duplicative of the dollar award for lost commissions. In addition, Akande's expert opined that the N8 million award for breach of contract was not barred by double recovery in that it represented an award of general damages, as opposed to the special damages award of $255,580. Neither of Transamerica's experts offered a meaningful response to the case law Justice Sanyaolu cited in support of his position or directed this Court to any contrary authority.

Moreover, the question before me is not whether the Nigerian Judgment improperly may have provided for a double recovery. Any such collateral attack on the validity of the Judgment should have been pursued a decade ago by way of an appeal or other contemporaneous request for relief. Rather, I must decide what the Nigerian Judgment means. In that regard, I agree with Akande that the Judgment awarded both $255,580 in special damages and N8 million in general damages to NAFTECH under claim (ix).

Likewise, I find that the Nigerian court could and did award eight million naira to NAFTECH for its conspiracy claim against all the defendants, including Transamerica's predecessor, TIA. A conspiracy claim sounds in tort and differs from a claim for breach

[33] Unsigned Uwaifo Report at 9, ¶ 4.02(c); Signed Uwaifo Report at 9, ¶ 4.02(c).

of contract. Because claim (xii) referred to in the Judgment is for conspiracy, and not for breach of contract, the Nigerian court's award of eight million naira based on the conspiracy claim does not represent a double recovery.[34] The Nigerian court found that TIA participated in and is liable for the conspiracy.[35] Hence, the final award in the Judgment against TIA (now Transamerica), independent of interest, is $255,580 for the breach of the Commission Agreement for 1976 and sixteen million naira in general damages for breach of contract or constructive trust and for conspiracy.[36]

Issue 4: Can a Nigerian court award prejudgment interest? If so, did this Judgment award prejudgment interest? At what rate?

In terms of the size of the Judgment, whether the Nigerian court awarded prejudgment interest is a significant issue. Unfortunately, the Judgment does not squarely and explicitly address that issue. As a result, I must consider the language of the Judgment as a whole and the context in which it was entered in discerning whether or not the court awarded prejudgment interest. Moreover, because the crux of the issue before me is what the Judgment means, not what it should have said or whether it would have

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[34] Nig. J. at 14. Based on the language and structure of paragraph 33 of Akande's Amended Statement of Claim, quoted in relevant part *supra* note 30, I understand subparagraph 33(xii) to have asserted a claim "against the 1st – 4th Defendants (jointly and/or in the alternative, severally . . .)" for general "damages for conspiracy to procure a breach of contract and damages for wrongfully procuring the same . . . ." Pl.'s Am. Statement of Claim ¶ 33, at 9-11.

[35] *See* Nig. J. at 13.

[36] I need not address the claims against Omisade and NADCO. For purposes of this opinion, TIA and its successor, Transamerica, are the only relevant parties on the defense side.

been vulnerable to challenge on appeal in Nigeria, had an appeal been taken, I answer the second and third questions posed in Issue 4 first.

As to whether the Judgment awarded prejudgment interest, I note at the outset that the Nigerian court essentially entered the Judgment by default. Defendant TIA had notice of the proceedings, but failed to appear or offer any evidence in defense of its position. Next, I focus on the relief Akande asked for on behalf of NAFTECH. In paragraph 33(v) of the Amended Statement of Claim, as quoted in the Judgment, Akande sought, among other things, an order directing payment to NAFTECH by the defendants, including TIA, of the commissions due under the Commission Agreement for 1976. Further, the court stated in the Judgment that it had "no difficulty whatsoever" in granting the plaintiff all the relief contained in subparagraph (v), which, as discussed *supra*, regarding Issue 3, amounted to $255,580 for the 1976 commissions.

In paragraph 33(vi) of the Amended Statement of Claim, Akande requested interest on the damages he sought in Subparagraph (vi):

> a further Order directing payment to [NAFTECH] by the other Defendants of interest (to be computed at the rate of 18 per centum per annum, or at such other rate as the Court may direct) upon said sums found due to [NAFTECH] as aforesaid with effect from the 3rd day of September 1976 (or with effect from such other date as the Court may direct) until payment . . . .

Regarding that aspect of Akande's claim, the Nigerian court ruled as follows directly after its ruling on the commissions sought in subparagraph (v):

> Similarly the relief contained in subparagraph (vi) is also granted subject to the qualification that the rate of interest shall be 5% with effect from the date of this judgment. This

> must inevitably be so because the present suit is governed by the old rules of this court, and in terms of Order XLV rule 7 of the Federal High Court (Civil Procedure) Rules 1976 the rate of interest must not exceed 5%.[37]

Akande reads this portion of the Judgment to mean the court awarded NAFTECH prejudgment interest at the rate of 18% from September 3, 1976 to the date of the Judgment in 1999, and postjudgment interest thereafter at the rate of 5%. Defendants and their experts, Justices Belgore and Uwaifo, construe the Judgment to mean the court rejected Akande's claim for prejudgment interest in its entirety and granted, at most, postjudgment interest at the rate of 5%.[38]

Having carefully reviewed the Amended Statement of Claim, the Judgment, the memoranda of the parties, and the reports of the various experts on Nigerian law, I find the interpretation of the Judgment advanced by Akande to be the correct one. As previously discussed, the Nigerian court granted the relief sought in subparagraph (v) by making an award to NAFTECH of $255,580 in lost commissions on the Commission

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[37] Nig. J. at 14. Order XLV, entitled "Judgment," includes a number of rules. Rule 7 reads as follows:

> The Court at the time of making any judgment or order, or at any time afterwards, may direct the time within which the payment or other act is to be made or done, reckoned from the date of the judgment or order, or from some other point of time, as the Court thinks fit, and may order interest at a rate not exceeding five *per centum per annum* to be paid upon any judgment, commencing from the date thereof or afterwards.

[38] Ultimately, Justices Belgore and Uwaifo go even further to assert that no interest of any kind is due under the Judgment, because subparagraph (vi) is related to subparagraph (v), which required an accounting to determine the exact amount of the claimed damages, and no such accounting ever occurred.

Agreement for 1976. Defendant TIA would have owed those funds to NAFTECH in 1976. In that context, I understand the statement in the very next sentence of the Judgment that the court also was granting the relief contained in subparagraph (vi) "subject to the qualification that the rate of interest shall be 5% with effect from the date of this judgment," to mean the court granted Akande's claim for 18% prejudgment interest from September 3, 1976 until the date of the judgment, but reduced the rate of interest thereafter to 5%.[39] If, as Transamerica argues, the court intended, instead, to deny any interest whatsoever for the twenty-three year period between the time of the wrongful injury and the Judgment, the most reasonable inference is that the court would have said so directly and provided a more fulsome explanation. This is especially true here because the defendants did not appear at the hearing or otherwise offer any evidence or argument in support of their position.

Turning next to the first question posed under Issue 4, I find from the evidence presented that Nigerian courts do have authority to award prejudgment interest. Akande's expert avers that Nigerian courts can award prejudgment interest, and this Judgment granted such interest at a rate of 18% on the $255,580 award.

On behalf of Transamerica, Justice Uwaifo opines that Nigerian courts can only order interest after delivering judgment, not before, and any interest that would be

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[39] Although 18% interest may be considered high, Nigerian courts have previously awarded double digit interest. *See National Bank of Nigeria Ltd. v. Savol West Africa Ltd.*, No. CA/L/48/88 435, 463 (Ct. of Appeal, Lagos) (stating that an award of 13% interest per annum is "quite reasonable"; the court awarded prejudgment interest of 13%, and postjudgment interest at 4%).

granted could not exceed 5% per annum. Uwaifo failed, however, to cite any case law or reasoning for his conclusory statements. His basic premise is that interest could not be awarded until after the entry of judgment. Thus, according to Uwaifo, the Judgment did not grant any prejudgment interest and, if it did, that purported grant would be void. Similarly, Justice Belgore avers that prejudgment interest could not have been properly awarded. He states that prejudgment interest can only be awarded after an evidentiary showing of: (1) a contractual right to its recovery, and (2) a stipulation of the interest to be awarded. Justice Belgore concludes that the Nigerian court properly declined to award prejudgment interest as there was no evidentiary showing of either of these prerequisites in the underlying Nigerian action.

For the reasons outlined below, I agree with Akande's expert that prejudgment interest could be, and was, granted in the circumstances of this case. At a minimum, a Nigerian court's authority to grant prejudgment interest is arguable. That is, Defendants' position that Nigerian law precluded an award of prejudgment interest in the underlying action is not so clearly established as to foreclose the possibility the Judgment reasonably might have included such an award. Whether the Nigerian court may have erred in awarding prejudgment interest at the rate of eighteen percent is no longer relevant.

In *National Bank of Nigeria v. Savol West Africa Limited*, Justice Uwaifo (one of Transamerica's experts) stated that "[i]t is not necessary for a plaintiff to claim interest in

his pleadings before the court can award it in deserving cases."[40] Justice Uwaifo then added: "I think in the present case, 13% interest per annum on the debt between November 1, 1986 when the cause of action accrued and 23 December, 1987 when judgment was delivered is quite reasonable. . . . I think the learned Judge should have awarded it there being no support in law for the reason he gave for refusing to do so."[41] The *National Bank* case further states that "[t]he Act of 1934 . . . now provides for interest on any debt or damages from *the date between when the cause of action arose and the date of judgment* at a rate the court may think fit."[42]

Justice Uwaifo's opinion in *National Bank* appears to contradict his position here that interest may not exceed 5%. In his expert report, Justice Uwaifo asserted that prejudgment interest cannot be provided at any amount over 5%. Yet, in his *National Bank* opinion, he provided for prejudgment interest at 13%. Moreover, Akande's expert's rebuttal report pointed out the apparent conflict between Justice Uwaifo's ruling

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40 *Nat'l Bank of Nig. v. Savol W. Africa Ltd*., CA/L/48/88 435, 443 (Ct. of Appeal, Lagos). Justice Uwaifo stated that it would be "desirable" for a party to claim interest, but not necessary. *Id.*

41 *Id.*

42 *Id.* (quoting *Thirwell v. Oyewumi*, 4 NWLR (Pt. 144) 384, 406 (1990)). At argument, Transamerica's counsel attempted to distinguish the *National Bank* case by noting that it constituted a decision of a state, as opposed to a federal, court and relied on the "Act of 1934," which is a British statute. That argument may cast some doubt on Akande's position as to prejudgment interest, but it is hardly compelling. Despite having notice for over three months before the argument of Akande's reliance on the *National Bank* case by Justice Uwaifo, Transamerica did not submit any evidence from either of its experts on that case or cite to any contrary Nigerian case law in support of its position.

in the *National Bank* case and his position here. Yet, neither Justice Uwaifo nor Justice Belgore rebutted that argument. Because the *National Bank* case provides for prejudgment interest and corroborates the position advanced by Akande's expert and because Transamerica has not identified any contrary case law, I find that Nigerian courts could award prejudgment interest during the time period relevant to this action. For all these reasons, I reject Transamerica's argument that prejudgment interest could not have been awarded in the Judgment and find that the Nigerian court did award prejudgment interest on the $255,580 portion of the Judgment at 18% per annum from September 3, 1976 until the date of the Judgment, October 20, 1999.

Issue 5: Can a Nigerian court award postjudgment interest? If so, did the Judgment award postjudgment interest? At what rate?

On the first of these questions, I find the Nigerian courts do have the authority to award postjudgment interest. All three experts agree that postjudgment interest can be awarded at a rate not to exceed 5% pursuant to Nigerian law and the relevant court rules.[43] The only disagreement concerns whether the Nigerian court awarded postjudgment interest in the underlying action here.

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[43] Order XLV Rule 7 of the Federal High Court Civil Procedure Rules (1976). *See also Ekwunife v. Wayne W/A Ltd.* (1989), 5 N.W.L.R. part 122, page 423, 430 (Nig.) (regarding postjudgment interest, the court stated that "[i]t is at the discretion of the court to award it or not, on pronouncing the judgment and with effect from that date and therefore from the nature of judgment debt").

Transamerica and their experts argue that no postjudgment interest was granted because the award of 5% interest applies only to subparagraph (v) of Akande's claim.[44] Moreover, they argue that no principal damages award was ever entered for subparagraph (v) because that would have required an accounting and no proper accounting ever took place. Thus, according to Transamerica, there is no damages award to which the 5% postjudgment interest could apply.

Akande argues that postjudgment interest should apply to both the $255,580 and the various eight million naira awards because the Judgment states that "the relief contained in subparagraph (vi) [Akande's request for pre- and postjudgment interest] is also granted subject to the qualification that the rate of interest shall be 5% with effect from the date of judgment."[45] Akande interprets these words as meaning the Judgment provided Akande with postjudgment interest on the entire damages award.

As discussed above, the purported requirement for an accounting under subparagraph (v) of the Judgment was satisfied as to the breach of the Commission Agreement for 1976. Thus, Transamerica's "failure to account" argument as to that Agreement lacks merit. In paragraph 33(vi) of Akande's Nigerian claim, he avers that

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44 Paragraph 33(v) of Akande's Amended Statement of Claim sought, as damages, the amount due to NAFTECH under the Commission Agreement for 1976, among other things. By attempting to limit postjudgment interest to this aspect of Akande's claim, Transamerica seeks to preclude an award of interest of any kind on the portion of the Judgment that Akande contends also awards N8 million apiece as to subparagraphs (ix), (x), and (xii).

45 Expert Report of Justice E.O. Sanyaolu ("Sanyaolu Report"), 5/6/2008, at 29 (citing Nig. J. at 14).

interest should be calculated on the "said sums found due to the 5th Defendant [NAFTECH]."[46] I have found the Nigerian court awarded to NAFTECH and against TIA or Transamerica both $255,580 and sixteen million naira. The court also awarded relief pursuant to subparagraph (vi) "subject to the qualification that the rate of interest shall be 5% with effect from the date of this judgment."[47] I interpret this language to mean that the court awarded NAFTECH 5% postjudgment interest on all the damages awarded to it – *i.e.*, the $255,580 in special damages plus prejudgment interest on that amount and the sixteen million naira in general damages.[48] I hold, therefore, that Transamerica must pay 5% interest on both those amounts from October 20, 1999 until the Judgment is paid.

Issue 6: Should simple or compound interest be awarded?

This issue also has a major effect on the amount of the Judgment. I would have no hesitation in awarding compound interest on the facts of this case, and believe the Nigerian court could have done so. Unfortunately for Akande, the question is whether in the Judgment itself, the Nigerian court actually did award compound interest. For the

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46 Nig. J. at 3.

47 *Id*. at 14.

48 Unlike the $255,580 award, which is for commissions due to NAFTECH in 1976 and, therefore, provides a definite amount and time on which to base a computation of prejudgment interest, the award of general damages in the amount of N16 million is neither linked to a specific date nor based on a specified method of calculation that might provide a comparable basis for an interest computation. Accordingly, I find that as to the N16 million award, the Judgment awarded only postjudgment interest.

reasons that follow, I conclude that it did not. Accordingly, I find that the Judgment provided for only simple, not compound, interest.

Transamerica and its experts argue for the use of simple interest. Justice Belgore states that "Nigerian law requires that post-judgment interest be calculated as simple interest in the absence of a specific finding of extraordinary circumstances justifying the imposition of compound interest."[49] Similarly, Justice Uwaifo states that simple interest applies on the principal sums due.[50]

Adopting the opposite view, Akande characterizes simple interest as outdated and cites three policy reasons why compound interest should apply: (1) simple interest does not fully restore the plaintiff to the position it would have been in without the defendants' wrongful conduct; (2) using simple interest would undermine the Nigerian courts' theory of placing the plaintiff in the same position as if it had to borrow the money; and (3) simple interest does not provide full indemnity.[51] Akande concedes that Nigerian case law does not directly address the issue of when compound interest applies; however, he cites various English cases (which, generally speaking, Nigerian courts use as persuasive authority) finding that compound interest is the correct measure.[52]

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49 Belgore Report at 8.

50 Signed Uwaifo Report at 10, ¶ 4.04; Unsigned Uwaifo Report at 10, ¶ 4.04.

51 Sanyaolu Report at 26.

52 *A-G of Ogun State v. Aberuagba*, No. SC 20/1984, [1985] (Nigeria S.C.) (citing American, English, Canadian, and Australian case law in deciding a constitutional law question).

Additionally, Akande's claim asks for 18% interest "per annum." This claim was granted in full in the Judgment except for the reduction of the rate to 5% for postjudgment interest. Akande argues that the Judgment, therefore, implicitly includes the *per annum* language, which he asserts implies interest is to be compounded annually. Transamerica contests that argument on the ground that "per annum" does not necessarily connote either simple or compound interest. Rather, it qualifies the interest rate in terms of its period – *e.g.*, whether the rate is a monthly, quarterly, or annual rate. In this regard, I agree with Transamerica. An interest rate of 10% per annum could be either simple or compound.[53] Thus, unlike some of the other issues, nothing in Akande's Amended Statement of Claim indicates that the relief he sought then coincides with what he seeks now. The Judgment itself sheds no further light on the issue.

In such circumstances, it is relevant to consider whether there was any default or routine practice under Nigerian law regarding the imposition of simple or compound interest that would apply, even in the absence of a claim or request. The evidence suggests that the normal practice was to apply simple interest. Akande's expert concedes that there is no Nigerian case law on the subject of compound interest, and argues that the Nigerian courts would look to the laws of other jurisdictions, such as the United Kingdom, for persuasive authority. In that regard, Justice Sanyaou cites some English cases that would support an award of compound interest. He also convincingly asserts

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[53] Per annum is defined as "by, for, or in each year; annually." *Black's Law Dictionary* 1171 (8th ed. 2004); *see also Merriam-Webster's Collegiate Dictionary* 918 (11th ed. 2003) (defining *per annum* as "in or for each year").

that, as a policy matter, compound interest would be more appropriate in a case like this one. Transamerica's expert Justice Belgore acknowledges that a Nigerian court could have awarded compound interest in 1999, but only upon a showing of extraordinary circumstances justifying it.[54] But, the Judgment at issue here does not mention the need for such a showing or otherwise indicate that the court even considered awarding compound interest.

Similarly, Akande's policy arguments in favor of compound interest might be sufficient to prove that the court could, or even should, have awarded compound interest in this case, but they, too, beg the question. As on the other issues, the question is not what the underlying Judgment could or should have ordered, but what it did order.

In sum, based on all the evidence, I find that the Nigerian Judgment did not address the issue of compound interest, and that, in such circumstances, the Judgment would be understood in Nigeria to have awarded only simple interest. Therefore, I find that the interest awarded by the Judgment is simple interest.

Issue 7: In which currency, and at which rate of exchange, should the Judgment be enforced?

The Judgment rendered a two-part award. The first part, the $255,580 in special damages for breach of contract, was issued in U.S. dollars and will be enforced in U.S.

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[54] Justice Sanyaolu does not dispute Justice Belgore's statement of Nigerian Law, but argues that the facts of this case supply the necessary extraordinary circumstances. That may well be true, but it is largely beside the point. Without any indication that the Nigerian court considered this issue, or even that Akande requested compound interest as part of his claim, I have no basis to infer from the Judgment that the court intended the interest to be compounded.

dollars, with applicable pre- and postjudgment interest. The second part of the Judgment, the N16 million for breach of contract and conspiracy, is more complex. The experts for both sides, as well as this Court, agree that the Nigerian court made that award in naira. In this enforcement action in Delaware, however, I must decide which currency the judgment recognizing the foreign judgment should be in and what exchange rate or rates should be used. The need to bring this seemingly never-ending saga to an end also motivates me to address now any additional potential issues that might further delay enforcement of the Judgment against Transamerica.

American courts will only render a judgment in U.S. dollars.[55] Therefore, I am converting the N16 million award into dollars. That raises the question of which date to use for purposes of the exchange rate. It is a generally accepted principle in American law that, "if the obligation to pay in foreign currency arose in the foreign country and the nondefaulting party would get damages in that country in the foreign currency, the currency will be valued as of the date of judgment . . . ."[56]

Therefore, I will apply the exchange rate prevailing on October 20, 1999, when the Nigerian Judgment was rendered. The average exchange rate on that date was N96.80/$1.[57] Using that exchange rate, I find that the dollar value of N16 million was $165,289.25 on the date of the Nigerian Judgment. Postjudgment interest on this sum has

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55 22 Am. Jur. 2d Damages § 83.

56 *Id.* §§ 84, 121.

57 Pursuant to D.R.E. 201, the Court takes judicial notice of the average daily exchange rate provided by www.oanda.com for October 20, 1999.

and will continue to accrue at a rate of 5% until paid. To date, the amount owed to NAFTECH based on the N16 million award is $245,873.13, which includes 5% postjudgment interest from October 20, 1999 to July 22, 2009.

Regarding the $255,580 award, the current amount of that award with interest to NAFTECH is $1,962,957.70. This calculation represents 23.129 years[58] of prejudgment simple interest at 18% and 9.75 years[59] of postjudgment simple interest at 5%.

Like my Nigerian colleague before me, "[a]fter a sober reflection on the whole case, I have no difficulty"[60] with recognizing the enforceability of this Judgment against Defendant Transamerica. Contrary to the protestations of its counsel that Transamerica is merely an innocent victim in these circumstances, the Nigerian court found that Transamerica's predecessor, TIA, participated in a tortious conspiracy and should be held jointly and severally liable to NAFTECH for the damages it suffered. Thus, as of July 22, 2009, the aggregate amount owed to NAFTECH by Transamerica under the Nigerian Judgment is $2,208,831.13.

III. CONCLUSION

For the foregoing reasons, I find that under the Nigerian Judgment entered on October 20, 1999, NAFTECH is entitled, by my rough calculation, to a judgment against Transamerica for an unofficial total of $2,208,831.13. This total reflects the following break-down of the two types of damage awards in the Nigerian Judgment. The first

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58 September 3, 1976 through October 20, 1999.

59 October 21, 1999 through July 22, 2009.

60 Nig. J. at 9.

damage award was denominated in dollars and represented the special damages (the "Specific Damages Figure"). The second damage award was originally denominated in naira and represented the general damages (the "General Damages Figure").

First, the Nigerian Judgment included the Specific Damages Figure of $255,580, plus 18% simple prejudgment interest from September 3, 1976 until October 20, 1999. Thus, as of October 20, 1999, the Specific Damages Figure, $255,580, would have grown to $1,319,605.05. The $1,319,605.05 then would be subject to postjudgment simple interest under the Nigerian Judgment at a rate of 5% from October 20, 1999 to July 22, 2009, the date of this memorandum opinion. As of July 22, 2009, therefore, the Specific Damages Figure would have grown from $1,319,605.05 to $1,962,957.70.

Second, the Nigerian Judgment included a General Damages Figure, after converting from naira into dollars, in the amount of $165,289.25. The General Damages Figure, $165,289.25, is not subject to any prejudgment interest, but would be subject to the Nigerian postjudgment simple interest of 5% from October 20, 1999 until July 22, 2009. As of July 22, 2009, the General Damages Figure would have grown from $165,289.25 to $245,873.43. Transamerica is responsible for the entire amount of both these liabilities to NAFTECH under the Judgment, which totals $2,208,831.13 as of July 22, 2009.[61]

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[61] The parties did not address in this action the extent of the liability to NAFTECH of the other defendants in the Nigerian action. In terms of the recognition of the Nigerian Judgment under the UFMJRA, therefore, I have focused solely on Defendant Transamerica.

Akande's request in its letter to the Court of March 5, 2009 to strike the belatedly filed, signed expert report of Justice Uwaifo is denied. Defendants' counsel Mr. Wilks and his former law firm, Reed Smith LLP, however, are ordered to pay to Akande the sum of $2,000 in at least partial reimbursement for the attorneys' fees and costs Akande incurred in connection with that request to strike.

Counsel for Plaintiff Akande shall file, on notice, a proposed form of order and final judgment to implement the rulings in this matter within ten days of the date of this memorandum opinion. The unofficial dollar amounts reflected herein shall be recomputed as of the anticipated date of the order and final judgment. I further order that postjudgment interest on the entire amount due under that order and final judgment in this action in Delaware shall accrue at the legal rate under 6 *Del. C.* § 2301(a), compounded quarterly.[62]

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[62] *See Underbrink v. Warrior Energy Servs. Corp.*, 2008 WL 2262316, at *19 n.173 (Del. Ch. May 30, 2008).