

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

TITAN CONSORTIUM 1, LLC,

Petitioner,

v.

THE ARGENTINE REPUBLIC,

Respondent.

Civil Action No. 1:21-cv-02250 (JMC)

**MEMORANDUM OF LAW OF THE REPUBLIC OF ARGENTINA IN OPPOSITION
TO MOTION FOR SUMMARY JUDGMENT**

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The Republic of Argentina (the “Republic”) submits this memorandum in opposition to the motion for summary judgment filed by petitioner Titan Consortium 1, LLC (“Petitioner”) on October 4, 2024, ECF No. 25.

PRELIMINARY STATEMENT

Petitioner seeks the entry of summary judgment and submits a proposed judgment that overstates the amount to which it is entitled.¹ Specifically, Petitioner seeks interest on attorneys’ fees and costs from the annulment decision (the “Annulment Decision”), with interest calculated at the prime rate. Petitioner, however, is not entitled to any interest on these fees and costs, and even were this Court to determine that it is, such interest should not be calculated at the prime rate.

First, Petitioner is not entitled to interest on attorneys’ fees and costs from the Annulment Decision. The Annulment Decision, which specifically awarded Teinver S.A., Transportes de Cercanías S.A., and Autobuses Urbanos del Sur S.A. (the “Claimants”) less than they demanded in fees and costs, did *not* provide for interest on such fees and costs (even though Claimants had requested that such interest be awarded). When an arbitral decision does not expressly grant interest, this Court has declined to grant it in subsequent recognition proceedings. And for good reason. Recognition of an ICSID award is not meant to alter the award in such fashion. Indeed, if Claimants had wanted to amend the Annulment Decision to provide for interest, the ICSID

¹ The Republic notes that the Petitioner’s Motion for Summary Judgment, ECF No. 25, does not request the same relief that is reflected in Petitioner’s Proposed Judgment, ECF No. 25-3. For example, Petitioner requests in the Motion for Summary Judgment “prejudgment interest, compounded semi-annually at the six-month U.S. Treasury Bill rate,” but “[p]rejudgment interest . . . compounded semi-annually at the six-month U.S. Treasury Bill rate, from December 30, 2008, through the date of this judgment” on compensation and “[p]rejudgment interest . . . compounded semi-annually at the six-month U.S. Treasury Bill rate, from July 21, 2017, through the date of this judgment” on the fees and costs of the Award in the Proposed Judgment.

Convention sets forth the procedure for supplementing or rectifying an annulment decision. Titan should not be permitted to circumvent this and now seek here the award of interest previously rejected.

Second, were this Court to determine that Petitioner is entitled to such interest (it is not), the interest should not accrue at the prime rate—as Titan requests—but at a rate consistent with the underlying Award. Here, the Award (as opposed to the Annulment Decision) provided that interest on the attorneys’ fees and costs included in the Award, accrues at the six-month U.S. Treasury Bill rate as of the date of Award. If this Court does determine that Petitioner is entitled to interest on attorneys’ fees and costs awarded by the Annulment Decision, it should apply the rate set forth in the Award.

ARGUMENT

ANY JUDGMENT ISSUED SHOULD NOT INCLUDE INTEREST ON THE FEES AND COSTS AWARDED BY THE ANNULMENT DECISION

Petitioner’s Proposed Order and Final Judgment, ECF No. 25-3 (the “Proposed Judgment”) incorrectly includes language granting Petitioner interest to which it is not entitled, namely, interest on the attorneys’ fees and costs from the Annulment Decision. *See* Proposed Judgment at (vi). Even were this Court to determine Petitioner should be awarded such interest (it should not be), such interest should be calculated not at the prime rate, but at the rate set forth in the Award.

A. Petitioner Is Not Entitled To Interest On Attorneys’ Fees And Costs From The Annulment Decision

Where, as here, an arbitral decision does not expressly grant interest, this Court has declined to do so as part of an award recognition proceeding. *See Miminco, LLC v. Democratic Republic of the Congo*, 79 F. Supp. 3d 213, 218 (D.D.C. 2015) (declining to “graft new requirements onto the award’s plain terms given that a court’s confirmation of an ICSID award

should entail nothing more than ministerial verification that the award is genuine”). Here, the Annulment Decision did not award Claimants interest on attorneys’ fees and costs, so this Court should not grant such interest to Petitioner, as reflected in subparagraph (vi) of the Proposed Judgment.

In awarding Claimants \$1,017,512 in attorneys’ fees and costs, the Annulment Decision specifically notes the “significant disproportion between the representation costs of each party;” that is, that Claimants’ fees and costs amounted to nearly ten times those of the Respondent. *See* Annulment Dec. ¶ 257. After determining an award of fees and costs that was \$496,810 less than the \$1,514,322 Claimants had requested, Annulment Dec. ¶ 257, the Annulment Decision *declined* to include an award of interest on this amount. *Id.* Because the Annulment Decision plainly does not contemplate such interest, it would be inappropriate for this Court to award Petitioner interest, and particularly so in light of the Annulment Decision’s discussion of Claimants’ disproportionately high fee request.

The cases cited by Petitioner are inapposite; they address whether a court can grant requests for prejudgment interest on *foreign arbitral awards*, not on the fees and costs accompanying an annulment decision related to a foreign arbitral award. *See* Pet. Mot. for Summ. J. at 19 (collecting cases). The reasoning that Petitioner provides for why prejudgment interest would be appropriate here relates to prejudgment interest on the arbitral award itself, and not to the fees and costs awarded after an annulment proceeding. Pet. Mot. for Summ. J. at 20. Indeed, Petitioner cites to no case supporting the proposition that interest not contemplated by an Annulment Decision may or should be granted by this Court. That is because it cannot. The most analogous law here relates to a court awarding prejudgment interest on the award itself, and in that scenario, “whether to award pre-judgment interest is generally a matter of discretion.”

See Cont'l Transfert Tech. Ltd. v. Fed. Gov't of Nigeria, 932 F. Supp. 2d 153, 163 (D.D.C.2013).

When an award “does not expressly mention interest,” this Court expressly has declined to grant prejudgment interest. *See Miminco*, 79 F. Supp. 3d at 218 (“[C]ourts awarding post-award, pre-judgment interest on ICSID awards have done so when the award itself provided for such interest, unlike the award at issue here.”). While this Court has awarded prejudgment interest in instances where a tribunal could not award prejudgment interest due to foreign law limitations, *see Archirodon Constr. (Overseas) Co. Ltd. v. Gen. Co. for Ports of Iraq*, No. CV 22-1571 (JEB), 2024 WL 341066, at *7 (D.D.C. Jan. 30, 2024), the Annulment Committee was not so limited here, and decided not to grant interest on the attorneys’ fees and costs it awarded. *Cf. Abou Laoud v. Democratic Republic of Congo*, ICSID Case No. ARB 10/4, Annulment Decision ¶ 243 (Feb. 11, 2016) (awarding interest on attorneys’ fees and costs in the annulment decision); *Bolivarian Republic of Venezuela v. OI European Group B.V.*, ICSID Case No. ARB/11/25, Annulment Decision ¶ 397 (Nov. 19, 2018) (same); *Dogan v. Turkmenistan*, ICSID Case ARB/09/9, 2016 Annulment Decision ¶ 282 (Jan. 8, 2016) (same).

Here, however, the Annulment Committee chose not to grant Claimants interest, even after Claimants had requested it. *See Boccuzzi Decl., Ex. A* (excerpts of Counter-Memorial on Annulment, *Teinver S.A., Transportes de Ceranías S.A. v. Argentine Republic*, ICSID Case No. ARB/09/1, Counter-Memorial on Annulment ¶ 287 (July 30, 2018)); *Boccuzzi Decl., Ex. B* (excerpts of Rejoinder on Annulment, *Teinver S.A., Transportes de Ceranías S.A. v. Argentine Republic*, ICSID Case No. ARB/09/1, Rejoinder on Annulment ¶ 154 (Dec. 3, 2018)).

Accordingly, there is no basis to award such interest here. *See Miminco*, 79 F. Supp. 3d at 218. Indeed, to rule otherwise would violate basic principles of collateral estoppel. *See Century Int'l Arms, Ltd. v. Fed. State Unitary Enter. State Corp. “Rosvoorouzheinie”*, 172 F. Supp. 2d 79, 97

& n. 20 (D.D.C. 2001) (holding that certain claims “cannot be raised here, since they were in fact litigated before the Tribunal”). And Claimants could have requested that the Annulment Committee rectify the omission of interest in the Annulment Decision, but chose not to do so. *See* ICSID Convention, Regulations and Rules, ICSID/15/Rev. 3, Arts. 49, 52(4) (July 2022). Titan is thus not entitled to such interest now.

B. Were The Court To Award Petitioner Interest On Attorneys’ Fees And Costs From The Annulment Decision, The Rate Should Be That Set Forth In The Award

Although Petitioner is not legally entitled to such interest, were this Court to determine that Petitioner should be awarded interest on attorneys’ fees and costs from the Annulment Decision, such interest should not be awarded at the prime rate, as Petitioner requests. *See* Proposed Judgment at (vi). Courts assess whether to use the prime rate when an award does not specifically set forth an interest rate, but first and foremost, courts award interest “consistent with the underlying arbitration award.” *See BCB Holdings Ltd. v. Gov’t of Belize*, 110 F. Supp. 3d 233, 251 (D.D.C. 2015), *aff’d*, 650 F. App’x 17 (D.C. Cir. 2016).

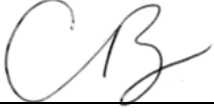
If interest were to be awarded on fees and costs from the Annulment Decision, it should be at the rate specified in the Award, *see* Award ¶ 1128, namely the rate corresponding to the “six-month US Treasury Bill rate as of the date of [the] Award.” *See id.* In its argument, Petitioner correctly states that any award of interest must be “consistent with the underlying arbitration award.” Pet. Mot. for Summ. J. at 19 (quoting *Ministry of Def. of the Islamic Republic of Iran v. Cubic Def. Sys., Inc.*, 665F.3d 1091, 1103 (9th Cir. 2011)). Courts assess whether to use the prime rate if there is no pre-defined prejudgment interest rate. *See, e.g., Cont’l Transfert Tech. Ltd.*, 932 F. Supp. 2d at 163; *BCB Holdings Ltd.*, 110 F. Supp. 3d at 251. Here, however, the underlying Award set interest at the rate corresponding to the “six-month US

Treasury Bill rate as of the date of [the] Award,” *see* Award ¶ 1128, and so that should be the limit of any interest awarded here.

CONCLUSION

For the foregoing reasons, the Republic respectfully requests that the Court decline to include in any judgment the provision (Proposed Judgment (vi)) providing for interest on attorneys’ fees and costs from the Annulment Decision.

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New York, New York

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