Compounding Interest in Interest: The Global Economy, Deflation, and Interest

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INTRODUCTION

In recent years, perhaps no area of private international law has undergone more significant changes than the awarding of interest. In the not too distant past, tribunals were awarding simple interest, typically at fixed rates set forth in domestic statutes that did not reflect current economic conditions. By contrast, today there is a growing trend among international tribunals, particularly investment tribunals, to award interest at floating rates and on a compound basis. These changes reflect the impact of modern economics and finance, and the desire to more accurately compensate parties for the loss of the use of money. The significance of these changes should not be underestimated. Transnational disputes today frequently involve millions of dollars. Because a lengthy period may elapse between the origin of the dispute and the final award, the interest award may run into the millions of dollars and, from a monetary standpoint, may be as important as the principal claim itself.¹


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Despite these developments, awards of interest remain erratic and unpredictable. In many cases, interest awards are not governed by international law and are left to domestic laws, which can be highly inconsistent. Moreover, recessionary pressures have driven interest rates to historic lows and have exacerbated problems of interest awards by either undercompensating or overcompensating parties.

In this article, I will examine developments in four areas concerning interest: (1) national laws relating to interest, (2) the impact of the global recession on interest awards, (3) the awarding of interest at floating rates, and (4) compound interest in international law. I will then offer some suggestions for parties and tribunals to make awards of interest more accurate and more predictable, and offer some thoughts on the future of interest awards in international law.

DISCUSSION

A Brief Background

Interest is a sum of money paid or payable as compensation for the temporary withholding of money. There are several reasons for requiring respondents to pay interest to claimants who have succeeded on their damages

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