IN RE OIL SPILL BY THE AMOCO CADIZ
OFF THE COAST OF FRANCE ON MARCH 16, 1978
954 F.2d 1279 (7th Cir.1992)

Per curiam (Judges Bauer, Easterbrook, and Fairchild): . . . The district court awarded the French plaintiffs a principal amount of roughly 340 million francs, or about $61 million at the current rate of exchange, and the owners of the cargo approximately £11.2 million, or $19.8 million at the current exchange rate. [Total actual damages were $61 million + $19.8 million = $81 million.] Because the accident occurred so long ago, the largest issue in the case is prejudgment interest. This could be anywhere from nothing (Amoco's preferred position) to compound interest at the U.S. prime rate (the plaintiffs' preferred position), which implies a multiplier of more than 3.3.[1]

The district court first rejected Amoco's argument that "inequitable" conduct by the plaintiffs should lead to a denial of all interest. Next it briefly stated that an award of compound interest was appropriate under the law of the forum. Finally it explained the choice of a rate:

> This court notes recent legislation on the subject of post-judgment interest applicable in federal courts, and has utilized the same rule both for pre-judgment interest and post-judgment interest.
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> The federal statute on the subject of post-judgment interest, 28 U.S.C. § 1961, provides that interest shall be calculated from the date of the entry of the judgment at a rate equal to the coupon issue yield equivalent as determined by the Secretary of the Treasury of the average accepted auction price for the last auction of 52 week United States Treasury bills settled immediately prior to the date of the judgment. . . . [T]he current interest rate is 7.22%. While this amount is not binding on the federal courts in the area of pre-judgment interest, it does serve as a guide or benchmark suitable to the circumstances of this case and is adopted by the court as the pre-judgment interest rate.

When making recommendations on the motions for reconsideration, Special Master McGarr rejected a claim that inflation (in France or the United States) justified a higher rate. We reproduce his discussion of this question:

> France argues also that inflation in France has been great since the date of the oil spill and that the court should give consideration to the decline in the value of the franc. It is the function of the court to hear claims, in this case stated in francs, to adjudicate their validity and to fix judgment amounts based on the evidence. The external circumstances affecting the value of a currency are not relevant to the judgment amount. Had France experienced deflation and increased value of the franc, plaintiffs would have benefitted. Either way, it is a circumstance outside the control of the court and the parties, and outside the pale of relevance to the court's determinations.
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> Another aspect of this issue is whether inflation, although not recognized to vary

[1] The opinion is not entirely clear, but the concept of a "multiplier" appears to mean the factor by which the amount of damages is multiplied to determine the total amount owed (actual damages + pre-judgment interest). This multiplier was roughly 3.3 times actual damages. Thus, the total award, at the end of the prejudgment period, would be roughly 3.3 times actual damages. Ed.

> the amount of the judgment, should be recognized to affect the court's judgment as to the pre-judgment interest rate. France argues that high interest rates are a result of inflation and that inflation therefore justified a higher interest rate than the 7.22% the court allowed.
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> The court, having rejected the argument that inflation is a factor to be considered by the court, must reject this argument also, based as it is on an effect of inflation.

. . . We start with a discussion of principles. . . . "Prejudgment interest is an element of complete compensation." *West Virginia v. United States*, 479 U.S. 305, 310 (1987). Money today is not a full substitute for the same sum that should have been paid years ago. Prejudgment interest therefore is an ordinary part of any award under federal law.

By committing a tort, the wrongdoer creates an involuntary creditor. It may take time for the victim to obtain an enforceable judgment, but once there is a judgment the obligation is dated as of the time of the injury. In voluntary credit transactions, the borrower must pay the market rate for money. (The market rate is the minimum appropriate rate for prejudgment interest, because the involuntary creditor might have charged more to make a loan.) Prejudgment interest at the market rate puts both parties in the position they would have occupied had compensation been paid promptly.

To see this, consider what would have happened if the French parties had borrowed $60 million to finance the cleanup in April 1978, and Amoco had put that sum in trust to fund an award of damages (just as Amoco actually put 77 million francs in trust in France). The victims would have had to pay the market rate of interest, which at times during this case has exceeded 20% per annum. If they arranged to repay the debt in a single balloon payment at the end (when they recouped from Amoco), and if the rate of interest averaged 12%, then by April 1991 the victims would owe their creditors $262 million. Meanwhile the trust fund, lending out its assets at the market rate of 12%, would have grown to $262 million. Scores would be fully settled if Amoco tendered its interest in the fund: it would thus "pay" $60 million as of 1978, and the victims would receive $60 million as of 1978; the lenders who financed the cleanup would receive full payment for the use of their money. (We use these dates and rate only as illustrations; the periods and rates actually used in this case differ. We also disregard taxes.)

Victims who finance their own cleanup lend to themselves; forced to devote money to a project not of their own choosing (money they otherwise could have lent out at the market rate of interest), they are entitled to compensation for the "hire" of this capital. Tortfeasors who choose to reinvest their money in their business (as Amoco has done) rather than create a trust fund must believe that the returns in their enterprise exceed the market rate. Having earned this higher rate of return for the duration of the litigation, they are in no position to complain when called on to pay prejudgment interest. An injurer allowed to keep the return on this money has profited by the wrong. So we reiterate the holding . . . that compound prejudgment interest is the norm in federal litigation.

Interest at what rate? Surely the market rate. That is what the victim must pay -- either explicitly if it borrows money or implicitly if it finances things out of cash on hand -- and the rate the wrongdoer has available to it. To return to the trust fund example, if the market rate were 12% it would be unthinkable to set a prejudgment rate of interest at 7.5%, order Amoco to turn over $154 million to the victims (the value of $60 million invested at 7.5% compound interest for 13 years), and authorize Amoco to retain the other $108 million. The victims would owe their creditors $108 million, and the tortfeasor would be the wealthier. Yet that would be the upshot of computing pre-judgment interest at less than the market rate -- an effect that does not depend on the existence of an express trust but is as powerful if the victims and the tortfeasor both use internal financing. All of this is just the flip side of discounting to present value in a tort case for future loss. . . . As prepaid damages must be reduced at a market rate that takes account of inflation, so postpaid damages must be increased.

What, then, is the market rate? Some of the district judge's discussion, coupled with his use of the rate on Treasury securities as of the date of his opinion, implies that the court thought that the market rate is the rate for safe securities at the end of the case. Yet as we pointed out in *Gorenstein Enterprises v. Quality Care-USA, Inc.*, 874 F.2d 431, 436-37 (7th Cir.1989), when expressly disapproving use of the postjudgment rate for prejudgment interest, an involuntary tort creditor is not safe. The defendant may go out of business (or encounter less serious reverses), or hide assets, during the litigation.

Any market interest rate reflects three things: the social return on investment (that is, the amount necessary to bid money away from other productive uses), the expected change in the value of money during the term of the loan (i.e., anticipated inflation), and the risk of nonpayment. The best estimate of these three variables is the amount the defendant must pay for money, which reflects variables specific to that entity. Amoco has publicly traded notes and debentures; a court could draw an interest rate directly from them. As we suggested in *Gorenstein*, 874 F.2d at 437, unless it engages in such refined rate-setting, a court should use the "prime rate" -- that is, the rate banks charge for short-term unsecured loans to credit-worthy customers. This rate may miss the mark for any particular party, but it is a market-based estimate.

Although *Gorenstein* did not elaborate on this, it should be plain that the market rate in question is the one during the litigation -- when the defendant had the use of money that the court has decided belongs to the plaintiff -- not the going rate at the end of the case. . . . It is 13-½ years since the Amoco Cadiz ran aground. Market rates have been above 20% and below 10% for different portions of the period. As it would be inappropriate to award prejudgment interest at a 20% rate if that happened to prevail in the last week of a case (and the rate had been 5% for the preceding decade), so it is inappropriate to use a low rate such as 7% for which money may be rented at the conclusion, when higher rates persisted during the bulk of the case. The district court's remark (when denying the French parties' motion for reconsideration) that inflation is irrelevant to the choice of a rate of interest reflects a misunderstanding of the relation between inflation and interest rates. The market rate includes a prediction of inflation -- which is why it is necessary to use the rates in force during the case and not whatever rate prevails at the end. . . .

Amoco does not try to defend Judge McGarr's conclusion that the statutory postjudgment rate should be used as the prejudgment rate. It maintains, instead, that the French plaintiffs should count themselves lucky. Because the district court could (and in Amoco's view should) have declined to award any prejudgment interest, Amoco insists that the French plaintiffs are not entitled to an increase. . . .

According to Amoco, three equitable considerations support a denial of all interest -- and perforce a limitation of interest to 7.22%. First, this has been a lengthy case, so that interest has mounted dramatically. Much of that delay is attributable to the French plaintiffs, Amoco submits. Second, the French plaintiffs . . . submitted inflated, even fraudulent, claims. Third, French courts do not award compound prejudgment interest. . . .

None of the three considerations Amoco offers could support a denial of interest . . . . Start with the passage of time: this is a reason to award interest, not to deny it. Amoco does not contend that the plaintiffs delayed in filing suit, and although 13 years is a regrettably long time to reach final decision, it is not uncommon for a case of this magnitude.

As for exaggerated and fraudulent claims: these may be a basis of sanctions under Fed.R.Civ.P. 11 and 37, but sanctions must be proportioned to the wrong. No one would suppose that the appropriate sanction for filing even a bushel basket full of bogus claims is a $100 million fine. Yet that is Amoco's position. Return to the trust fund example: Amoco ponies up $60 million in April 1978, and by April 1991 the fund contains $262 million. The district court must apportion this fund between the parties. Could a court even think of saying: "Complete redress of the plaintiffs' injuries calls for an award of the entire $262 million, but because many of the claims during the course of the litigation were inflated, I shall award the plaintiffs $149 million and return the other $113 million to the defendant."? Not a chance. This is, however, the consequence of interest at the rate of 7.22% rather than 12% -- and Amoco's preferred position (no interest) implies a penalty of $202 million for exaggeration. . . . The right way to deal with exaggerated claims is to [exclude] those claims, not to deny interest on proven entitlements. . . .

The right way to deal with French law on prejudgment interest is to decide whether it governs. If it does, apply it; if it does not, then apply American law (as the district judge did) rather than attempt some compromise . . . .

We hold that the French plaintiffs are entitled to prejudgment interest at the market rates that prevailed during the 1980s. The district court started the interest period at the end of 1979; the French have not contested this delay on appeal. The French parties say that the average prime rate during the 1980s was 11.9%. Amoco does not contest this and does not suggest that it paid a lower rate on its own debt. Because Amoco has not challenged the proposed rate of 11.9%, we adopt it. Because Amoco has not challenged the computation that leads the French plaintiffs to conclude that [this] interest factor through the date of judgment creates a multiplier of 3.3162, we adopt that figure also. On remand the district court shall apply this multiplier to the judgment recomputed according to the decisions made elsewhere in this opinion.

Amoco has little reason to shed crocodile tears. Exxon reportedly spent $2 billion to clean up the oil the Exxon Valdez spilled off Alaska; it has agreed to pay another $1 billion as damages and to pay a criminal fine of $125 million. Amoco will be called on to pay only $61 million plus interest to redress a spill that not only was larger but also occurred in a more densely populated area. Calling the $61 million the result of inflated or fraudulent claims taxes credulity.