

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

**EXPLORACIONES Y PERFORADORA
CENTRAL, S.A. DE C.V.**

CIVIL ACTION

VERSUS

NO. 17-2833

AXXIS DRILLING

SECTION: "G"(2)

ORDER

The motion before the Court is Plaintiff Exploraciones y Perforadora Central, S.A. de C.V.'s ("EPC") "Motion to Confirm Arbitration Award," filed on April 19, 2017, wherein, in addition to requesting confirmation of the award, EPC requests that this court recognize an offset in favor of Defendant Axxis Drilling, Inc. ("Axxis") under the "doctrine of compensation," in confirming the award plus post-judgment interest of \$181.55 per day until the judgment is paid in full, beginning on the date the arbitration award was rendered.¹ Axxis agrees that the arbitration award should be confirmed, but argues that EPC is not entitled to post-judgment interest, or in the alternative, post-judgment interest does not accrue until the date of this Court's judgment.² Having considered the motion, the memorandum in support, and the applicable law, the Court will grant the motion and confirm the arbitration award, award post-judgment interest to both parties, to the extent each is entitled to legal interest on damages awarded by the arbitration award, at the rate set by 28 U.S.C. § 1961(a) from the date of this Court's judgment until the amount owed to the other

¹ Rec. Doc. 6; Rec. Doc. 6-1.

² Rec. Doc. 14.

is paid in full, and offset the obligations of both EPC and Axxis under the arbitration award as of the date of this Order.

Background

A. Factual Background

On April 1, 2012, EPC and Axxis entered into three bareboat charter agreements (the “Charter Agreements”), each containing a binding arbitration clause.³ On November 25, 2015, EPC commenced arbitration with Axxis, alleging that Axxis breached the “Charter Agreements” when it failed to properly maintain EPC’s drilling barges and failed to pay EPC all charter hire due pursuant to the Charter Agreements.⁴ EPC alleged that Axxis failed to fulfill its obligations under the Charter Agreements, thereby causing damages to EPC.⁵ Axxis answered EPC’s arbitration demand and asserted counterclaims against EPC for expenses it alleged to be due by EPC under the Charter Agreements.⁶ At arbitration, Axxis sought damages against EPC.⁷

Neither EPC nor Axxis at any time contested the jurisdiction of the American Arbitration Association (“AAA”) over the claims asserted, or otherwise objected to the claims being resolved in arbitration.⁸ EPC and Axxis agreed to arbitrate their claims under the AAA Commercial Arbitration Rules, and on November 7, 2016, an arbitration hearing was convened and proceedings

³ Rec. Doc. 6-2 at 2.

⁴ Rec Doc. 6-1 at 1–2.

⁵ *Id.* at 2.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 3.

were conducted through November 15, 2016.⁹ Both parties submitted post-hearing briefs in accordance with the arbitrator's Post-Hearing Report.¹⁰

On March 1, 2017, the arbitrator rendered an arbitration award in favor of both EPC and Axxis, which states, in pertinent part, as follows:

As to legal interest, under Section 7(e) of the Charter Agreements, any amounts required to be paid by either party pursuant to the provisions of this Charter shall bear interest from the due date until such amounts are actually paid at a rate of 12% per annum or the maximum non-usurious amount rate permitted by applicable law, whichever is less. (It is noted that Ms. Tuthill, in her analysis of monthly payments which were to be paid by Axxis, but were not, included interest in her calculations; to that extent no "double recovery" for legal interest should be allowed.) Otherwise, it would appear to the Arbitrator that legal interest on the sums awarded, which have involved the resolution of disputes through the process of this arbitration proceeding, should accrue from the date of judicial (or arbitral) demand, with the exception of expenses incurred by Axxis during the redelivery period which post-date the date or demand.

Accordingly, the Arbitrator AWARDS the following damages in favor of Claimant, Exploraciones y Perforadora Central, S.A. de C.V., and against Axxis Drilling, Inc.:

1. The sum of \$130,000, plus legal interest, arising out of the A-frame/Mast incident of November 12, 2014;
2. The sum of \$5,000,000, plus legal interest, for Respondent's failure to maintain the vessels and return them in the same condition as delivered, excepting normal wear and tear; and
3. The sum of \$2,000,000, plus legal interest, for Respondent's failure to pay charter hire.

Further, the Arbitrator AWARDS the following damages in favor of Counter-Claimant, Axxis Drilling, Inc., and against Exploraciones y Perforadora Central, S.A. de C.V.:

1. The sum of \$1,000,000, plus legal interest, for its CounterClaim for re-delivery and other expenses.

⁹ *Id.*

¹⁰ *Id.* at 3–4.

The administrative expenses of the International Centre for Dispute Resolution pursuant to Rule 53 of the Commercial Arbitration Rules, totaling \$38,230.75 are to be borne equally.

The Neutral Arbitrator's compensation totaling \$83,815.70 is to be borne equally. Therefore, Axxis Drilling, Inc. must pay Exploraciones y Perforadora Central, S.A. de C.V., the amount of \$4,415.38.

This Award is in full settlement of all claims and counterclaims submitted to this Arbitration. All claims not expressly granted herein are hereby denied.¹¹

B. Procedural Background

On April 3, 2017, EPC filed a complaint in this Court against Axxis, in the form of a "Petition to Confirm Arbitration Award."¹² On April 20, 2017, EPC filed a "Motion to Confirm Arbitration Award."¹³ On May 16, 2017, Axxis filed an opposition to EPC's motion,¹⁴ and on May 26, 2017, EPC filed a reply.¹⁵

I. Parties' Arguments

A. EPC's Motion to Confirm

First, EPC asserts that federal law governs post-judgment interest in federal cases. Citing *Tricon Energy Ltd. v. Vinmar Int'l, Ltd.*, a case in the Fifth Circuit, EPC contends that "post-judgment interest is not discretionary, but shall be calculated from the date of the entry of the judgment, at a rate equal to the weekly average 1-year constant maturity Treasury yield."¹⁶

¹¹ Rec. Doc. 6-1 at 4-5 (citing Rec. Doc. 6-8 ("Exhibit 7")).

¹² Rec. Doc. 1.

¹³ Rec. Doc. 6.

¹⁴ Rec. Doc. 14.

¹⁵ Rec. Doc. 17.

¹⁶ *Id.* (citing *Tricon Energy Ltd. v. Vinmar Int'l, Ltd.*, 718 F.3d 448, 456 (5th Cir. 2013) (internal citation and quotation marks omitted)).

According to EPC, the Federal Arbitration Act (the “FAA”) provides United States district courts with jurisdiction to confirm arbitration awards if any party to the arbitration applies for an order to confirm.¹⁷ EPC asserts that the Fifth Circuit has held that when parties agree to submit to the rules of the AAA, they consent to a federal court’s jurisdiction to enforce the arbitration award.¹⁸ EPC further asserts that under the FAA, the district court may only vacate an arbitration award (1) if the award was procured by corruption, (2) if the award was based upon partiality or corruption of the arbitrators, (3) if the arbitrators were guilty of misconduct that prejudiced the rights of a party, or (4) if the arbitrators exceeded their powers.¹⁹

EPC acknowledges that Axxis is not seeking to vacate or otherwise modify the arbitration award, and there is no impediment to this Court confirming the arbitration award.²⁰ Accordingly, EPC asks this Court to enter an order confirming the arbitration award.²¹ However, EPC asks this Court to recognize the offset in favor of Axxis, under the doctrine of compensation, in confirming the arbitration award.²²

In sum, EPC avers that the arbitrator awarded it the sum of \$7,134,415.38, plus prejudgment interest, for a total award of \$7,913,613.18, and awarded Axxis the sum of \$1,000,000, plus prejudgment interest, for a total award of \$1,151,890.41.²³ EPC requests that this Court recognize both awards and the offset, and enter a final judgment against Axxis, in favor of

¹⁷ *Id.* at 7 (citing 9 U.S.C. § 9).

¹⁸ *Id.* at 7 (citing *McKee v. Home Buyers Warranty Corp.*, 45 F.3d 981, 983 (5th Cir. 1995)).

¹⁹ *Id.* at 8 (citing 9 U.S.C. § 10).

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at 9.

²³ *Id.* at 10.

EPC, in the amount of \$6,761,722,77, plus post-judgment interest of \$181.55 per day until the judgment is paid in full.²⁴

B. Axxis' Opposition to the Motion to Confirm

Axxis argues that EPC is not entitled to post-judgment interest from the date of the arbitration award, and that EPC admitted that the arbitrator did not award post-judgment interest.²⁵ Axxis asserts that in *Tricon Energy v. Vinmar International, Ltd.*, the Fifth Circuit case cited by EPC, the arbitration panel had specifically awarded post-judgment interest, unlike in this case.²⁶ Axxis alternatively argues that if EPC is entitled to post-judgment interest, it is only due on the judgment confirming the arbitration award and must be calculated from the date of the judgment of confirmation by this Court.²⁷ However, Axxis argues, “there is no support for EPC’s claim that it is owed post-judgment interest from the date of the arbitration award, which did not include an award of post-judgment interest.”²⁸

C. EPC's Reply

In response to Axxis’ assertion, EPC avers that it did not admit that the arbitrator did not award post-judgment interest.²⁹ Rather, EPC explains, it stated that the arbitrator did not make a specific finding that the contractual interest rate of 12% will accrue post-judgment.³⁰ Specifically, EPC explains, “this was an acknowledgment that EPC could not claim post-judgment interest at

²⁴ *Id.*

²⁵ Rec. Doc. 14 at 1.

²⁶ *Id.* (citing *Tricon Energy*, 2012 WL 176438 at *4 (S.D. Tex. Jan. 20, 2012)).

²⁷ *Id.*

²⁸ *Id.* at 2.

²⁹ Rec. Doc. 17 at 1.

³⁰ *Id.*

the 12% contractual rate for pre-judgment, and is only entitled to post-judgment interest at the lesser rate equal to the weekly average one-year constant maturity treasury yield.”³¹ According to EPC, absent a specific finding that post-judgment interest accrues at a contractually higher rate, interest accrues at the statutory rate.³² EPC further avers that it is only seeking post-judgment interest at the lesser statutory rate.³³

EPC asserts that the arbitration award specifically states that EPC is awarded damages against Axxis for specified sums “plus legal interest.”³⁴ Furthermore, EPC contends, post-judgment interest is awarded as a matter of right.³⁵

Regarding Axxis’ alternative argument, that if EPC is entitled to post-judgment interest, it does not accrue until this Court enters a judgment affirming the arbitration award, EPC argues that if Axxis is correct, then pre-judgment interest should continue to accrue at the higher 12% contractual interest rate until this Court enters judgment.³⁶

II. Law and Analysis

A. *Legal Standard*

The Federal Arbitration Act provides United States district courts with jurisdiction to confirm arbitration awards if any party to the arbitration applies for an order to confirm.³⁷ The

³¹ *Id.* at 1–2.

³² *Id.* at 2.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.* (citing *Meaux Surface Protection, Inc. v. Fogleman*, 607 F.3d 161, 173 (5th Cir. 2010)).

³⁶ *Id.*

³⁷ 9 U.S.C. § 9 (“If the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration, and shall specify the court, then at any time within one year after the award is made any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title. If no court is specified in the agreement of the parties, then such application may be

Fifth Circuit has held that when parties agree to submit to the rules of the American Arbitration Association, the “arbitration will be deemed both binding and subject to entry of judgment unless the parties expressly agree otherwise.”³⁸ The district court’s review of an arbitration award is “extraordinarily narrow”³⁹ and “exceedingly deferential.”⁴⁰ Moreover, a “district court should enforce an arbitration award as written—to do anything more or less would usurp the tribunal’s power to finally resolve disputes and undermine the pro-enforcement policies of the New York Convention.”⁴¹

9 U.S.C. § 10(a) provides the statutory bases for vacatur of an arbitration award. According to the statute, the district court has the authority to vacate an arbitration award if: (1) the award was procured by corruption, fraud, or undue means; (2) there is evidence of partiality or corruption among the arbitrators; (3) the arbitrators were guilty of misconduct which prejudiced the rights of one of the parties; or (4) the arbitrators exceeded their powers. Additionally, the Fifth Circuit “has adopted the ‘manifest disregard of the law’ standard as a non-statutory ground for vacating an arbitration award.”⁴² 9 U.S.C. § 11 permits a United States district court to modify or correct an arbitration award in any of the following cases, in order to “effect the intent of the award and promote justice between the parties:” (a) where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award; (b) where the arbitrators have awarded upon a matter not submitted to them, unless

made to the United States court in and for the district within which such award was made.”).

³⁸ *McKee*, 45 F.3d at 983.

³⁹ *Prestige Ford v. Ford Dealer Computer Servs., Inc.*, 324 F.3d 391, 393 (5th Cir. 2003).

⁴⁰ *Am. Laser Vision, P.A. v. Laser Vision Inst., L.L.C.*, 487 F.3d 255, 258 (5th Cir. 2007).

⁴¹ *Wartsila Finland Oy v. Duke Capital L.L.C.*, 518 F.3d 287, 292 (5th Cir. 2008).

⁴² *Id.*

it is a matter not affecting the merits of the decision upon the matter submitted; or (c) where the award is imperfect in matter of form not affecting the merits of the controversy. “Under the terms of § 9, a court must confirm an arbitration award unless it is vacated, modified, or corrected as prescribed in §§ 10 and 11.”⁴³

“Because a district court's confirmation of an arbitration award is equivalent, in every respect, to any other judgment entered by the court, it is also subject to post-judgment statutory interest under § 1961.”⁴⁴ Post-judgment interest “shall be allowed on any money judgment in a civil case recovered in a district court.”⁴⁵ “Such interest shall be calculated from the date of the entry of the judgment, at a rate equal to the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding the date of the judgment.”⁴⁶ Despite that mandatory language, it is well-settled that parties may contract for a different rate consistent with state usury and other applicable laws.⁴⁷ “But to do so, they must specifically contract around the general rule that a cause of action reduced to judgment merges into the judgment and the contractual interest rate therefore disappears for post-judgment purposes.”⁴⁸

⁴³ *Hall St. Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576 (2008).

⁴⁴ *McVay v. Halliburton Energy Servs., Inc.*, 688 F. Supp. 2d 556, 564–65 (N.D. Tex. 2010), *aff'd*, 608 F. App'x 222 (5th Cir. 2015); *see also Tricon*, 718 F.3d at 457 (“A judgment confirming an arbitration award – like any other civil judgment – is subject to § 1961”).

⁴⁵ 28 U.S.C. § 1961(a).

⁴⁶ *Id.*

⁴⁷ *Tricon Energy*, 718 F.3d at 47 (citing *Hymel v. UNC, Inc.*, 994 F.2d 260, 266 (5th Cir. 1993) (internal citation and quotation marks omitted)).

⁴⁸ *Id.* (citing *Johnson v. Riebesell*, 586 F.3d 782, 794 (10th Cir. 2009)).

Post-judgment interest accrues from the date of judgment until the date the award is paid.⁴⁹ If interest is generally included as part of an arbitration award from a date that predates judgment through the date of payment in full, district courts in the Fifth Circuit have found that prejudgment and post-judgment interest were effectively awarded.⁵⁰

Under Louisiana law, “compensation takes place by operation of law when two persons owe to each other sums of money or quantities of fungible things identical in kind, and these sums or quantities are liquidated and presently due.”⁵¹ In such a case, compensation extinguishes both obligations to the extent of the lesser amount.⁵² When money judgments are awarded to opposing parties pursuant to a judgment in resolution of claims and counterclaims, compensation is applicable.⁵³

B. Analysis

Neither party contests the arbitration award, nor asserts that the award should be vacated, modified, or corrected.⁵⁴ As stated above, “[u]nder the terms of § 9, a court must confirm an arbitration award unless it is vacated, modified, or corrected as prescribed in §§ 10 and 11.”⁵⁵

⁴⁹ *Id.*

⁵⁰ *See, e.g., Tamimi Glob. Co. v. Kellogg Brown & Root L.L.C.*, No. CIV.A. H-11-0585, 2011 WL 1157634, at *1 (S.D. Tex. Mar. 24, 2011) (holding that where “the arbitration panel awarded [awardee], inter alia, \$34,675,583.00, plus interest at the rate of 4% per annum from February 1, 2008, to the date of payment, and a fixed amount, plus 4% per annum interest, for costs and legal fees,” the arbitration panel awarded prejudgment and post-judgment interest.”). *See also, e.g., Washington Mut. Bank v. Crest Mortg. Co.*, 418 F. Supp. 2d 860, 862 (N.D. Tex. 2006) (holding that where “the arbitrator awarded [awardee] ‘interest at the statutory rate from the date of this Award until paid in full,’ but did not specify the interest rate,” awardee was entitled to prejudgment and post-judgment interest).

⁵¹ LA. CIV. CODE. ANN. art. 1893; *Worldwide Remediation, Inc. v. Onebane, Bernard, Torian, Diaz McNamara & Abell Law Firm*, 211 F.3d 948, 949 (5th Cir. 2000).

⁵² LA. CIV. CODE. ANN. art. 1893; *Worldwide Remediation, Inc.*, 211 F.3d at 949.

⁵³ *Worldwide Remediation, Inc.*, 211 F.3d at 949.

⁵⁴ Rec. Doc. 6-1 at 8.

⁵⁵ *Hall St. Assocs., L.L.C.*, 552 U.S. at 582.

Accordingly, having no grounds to vacate, modify, or correct the arbitration award, the Court will confirm the arbitration award.

The arbitration award states that “amounts required to be paid by either party pursuant to the provisions of this Charter shall bear interest from the due date until such amounts are actually paid at a rate of 12% per annum or the maximum non-usurious amount rate permitted by applicable law” and that “legal interest on the sums awarded, should accrue from the date of judicial (or arbitral) demand.”⁵⁶ Since legal interest is included as part of the arbitration award from a date that predates the date of this Order, the arbitrator effectively awarded prejudgment interest in the amount of “12% per annum or the maximum non-usurious amount rate permitted by applicable law” from “the date of judicial (or arbitral) demand.”⁵⁷ Neither party argues that 12% is not the applicable prejudgment interest rate or is greater than the maximum non-usurious amount rate permitted by applicable law. Accordingly, both parties are entitled to prejudgment interest in the amount of 12% per annum to the extent each is entitled to legal interest on damages awarded by the arbitration award.

EPC argues that it is also entitled to post-judgment interest. Axxis argues that the arbitrator did not award post-judgment interest, and therefore, EPC is not entitled to it. As previously stated, “a district court's confirmation of an arbitration award is equivalent, in every respect, to any other judgment entered by the court,” and therefore, “it is also subject to post-judgment statutory interest under § 1961.”⁵⁸ 28 U.S.C. § 1961(a) provides that post-judgment interest “shall be allowed on

⁵⁶ Rec. Doc. 6-1 at 4.

⁵⁷ *Id.*

⁵⁸ *McVay v. Halliburton Energy Servs., Inc.*, 688 F. Supp. 2d 556, 564–65 (N.D. Tex. 2010), *aff'd*, 608 F. App'x 222 (5th Cir. 2015); *see also Tricon*, 718 F.3d at 457 (“A judgment confirming an arbitration award – like any other civil judgment – is subject to § 1961”).

any money judgment in a civil case recovered in a district court.”⁵⁹ Accordingly, both parties are entitled to post-judgment interest as a matter of law, which will accrue as of the date of this Order, to the extent they are entitled to legal interest on damages awarded by the arbitration award.

Post-judgment interest accrues from the date of judgment until the date the award is paid.⁶⁰ Considering the parties did not “specifically contract around the general rule,” the statutory rate of post-judgment interest applies.⁶¹ Accordingly, the “legal interest” awarded by the arbitrator constitutes prejudgment interest at the rate of 12% until the date of this Order. As of the date of this Order, the arbitration award “merges into the judgment,” and the legal interest rate set by the arbitrator “disappears for post-judgment purposes.”⁶² Thus, from the date of this Order until the “amounts are actually paid,” post-judgment interest will accrue at the rate set by 28 U.S.C. § 1961(a).

EPC asks the Court to recognize the offset of money judgments rendered in favor of both EPC and Axxis by the arbitration award under the doctrine of compensation.⁶³ Axxis does not oppose the request. When money judgments are awarded to opposing parties pursuant to a judgment in resolution of claims and counterclaims, compensation is applicable.⁶⁴ Accordingly, the obligations of both EPC and Axxis under the arbitration award as of the date of this Order are offset under the doctrine of compensation and hereby extinguished to the extent of the lesser amount.

⁵⁹ 28 U.S.C. § 1961(a).

⁶⁰ *Id.*

⁶¹ *Tricon Energy*, 718 F.3d at 47.

⁶² *Id.*

⁶³ Rec. Doc. 6-1 at 9.

⁶⁴ *Worldwide Remediation, Inc.*, 211 F.3d at 949.

III. Conclusion

For the reasons stated above, the Court will confirm the arbitration award. Both parties are entitled to prejudgment interest in the amount of 12% per annum to the extent each is entitled to legal interest on damages awarded by the arbitration award until the date of this Order. As of the date of this Order, both parties are entitled to post-judgment interest as a matter of law, which will accrue as of the date of this Order at the rate set by 28 U.S.C. § 1961(a), to the extent they are entitled to legal interest on damages awarded by the arbitration award. Finally, the obligations of both EPC and Axxis under the arbitration award as of the date of this Order are offset under the doctrine of compensation and hereby extinguished to the extent of the lesser amount.

Accordingly,

IT IS HEREBY ORDERED that EPC's Motion to Confirm Arbitration Award⁶⁵ is **GRANTED**.

IT IS FURTHER ORDERED that both parties are entitled to pre-judgment interest in the amount of 12% per annum, to the extent each is entitled to legal interest on damages awarded by the arbitration award, until the date of this Order.

IT IS FURTHER ORDERED that both parties are entitled to post-judgment interest at the rate set by 28 U.S.C. § 1961(a), to the extent each is entitled to legal interest on damages awarded by the arbitration award, from the date of this Order until the amount owed to the other is paid in full.

⁶⁵ Rec. Doc. 6.

IT IS FURTHER ORDERED that the obligations of both EPC and Axxis under the arbitration award as of the date of this Order are offset under the doctrine of compensation and hereby extinguished to the extent of the lesser amount.

NEW ORLEANS, LOUISIANA, this 4th day of October, 2017.


NANNETTE JOLIVETTE BROWN
UNITED STATES DISTRICT JUDGE