the matter to them for further consideration." Respondent's May 17, 1989 Letter.

Although the language of my March 30, 1989 Opinion and Order may not have been clear, it was my intention to direct the American Arbitration Association to try to reconvene the original Panel. Karmen has failed to persuade me that my decision was ill-considered.

CONCLUSION

For the reasons stated above, the American Arbitration Association is directed to attempt to reconvene the panel of arbitrators that originally heard petitioner Steve Karmen's claim so that the remand of this matter may proceed.

SO ORDERED.

In the Matter of the Arbitration between REEFER EXPRESS LINES PTY., LTD., Petitioner,

and

GENERAL AUTHORITY FOR SUPPLY COMMODITIES (GASC), Respondent.

No. 88 Civ. 7833 (RWS).

United States District Court, S.D. New York.

June 19, 1989.

Prevailing party in arbitration sought award of prejudgment interest. The District Court, Sweet, J., held that currency control problems experienced by Government of Egypt in obtaining money to pay arbitration award did not constitute "exceptional circumstances" precluding award of prejudgment interest on award.

So ordered.

1. **Interest** ⇐39(2.20)

Prejudgment interest on arbitration award is at discretion of district court, but should be granted in absence of exceptional circumstances.

2. **Interest** ⇐39(2.20)

Currency control problems experienced by Government of Egypt in obtaining money to pay arbitration award did not constitute "exceptional circumstances" precluding prejudgment interest on award.

See publication Words and Phrases for other judicial constructions and definitions.

MEMORANDUM OPINION

SWEET, District Judge.

The General Authority for Supply Commodities ("GASC"), a department in the Ministry of Supply of the government of Egypt, opposes pre-judgment interest on an arbitrator's award rendered against it and in favor of Reefer Express Lines ("Reefer").

[1, 2] Pre-judgment interest on an arbitration award is at the discretion of the district court, but is usually permitted, and should be granted "in the absence of exceptional circumstances." *See Larsen v. A.C. Carpenter, Inc.*, 620 F.Supp. 1084, 1125 (E.D.N.Y.1985), *aff'd*, 800 F.2d 1128 (2d Cir.1986); *Mitsui & Co. v. American Export Lines, Inc.*, 636 F.2d 807, 823 (2d Cir.1981); *Waterside Ocean Navigation Co. v. International Navigation Ltd.*, 737 F.2d 150, 154 (2d Cir.1984). The GASC argues that there are exceptional circumstances here which preclude an award of prejudgment interest, for currency controls delayed it from obtaining the money to pay the award.

Courts that have considered the question of what constitutes "exceptional circumstances" have stated that cases where the party *requesting* interest has delayed the proceedings or has made a bad faith estimate of damages, exceptional circumstances exist which justify exclusion of pre-judgment interest. *See, e.g., Larsen*, 620 F.Supp 1084 (exceptional circumstances exist "where the party requesting the prejudgment interest has unreasonably delayed prosecuting its claim, has made a bad

faith estimate of its damages which precludes settlement or has not sustained any actual damage") (citing *United States v. Peavey Barge Line*, 748 F.2d 395, 402 (7th Cir.1984)); *Dow Chemical Pacific Ltd. v. Rascator Maritimes S.A.*, 640 F.Supp. 882, 886 (S.D.N.Y.1986) ("it is not the bad faith of the party from whom the interest is sought that is important, but rather, the bad faith of the party seeking the interest.").

Here, there is no charge of bad faith on the part of Reefer Express Lines, and the currency control problems of the Government of Egypt do not constitute exceptional circumstances by which the pre-judgment interest should be denied. Moreover, the purpose of pre-judgment interest is to compensate the party harmed, not to penalize the wrongdoer, *U.S. v. Seaboard Surety Co.*, 817 F.2d 956 (2d Cir.), *cert. denied*, — U.S. —, 108 S.Ct. 161, 98 L.Ed.2d 115 (1987), and part of the reasoning behind the presumption in favor of pre-judgment interest is that "[i]n these days in which all of us feel the effects of inflation, it is almost unnecessary to reiterate that only if such interest is awarded will a person wrongfully deprived of his money be made whole for the loss." *Waterside Ocean Navigation Co.*, 737 F.2d at 154.

Given this, it is appropriate to sign Healy & Baillie's judgment, which includes pre-judgment interest on the arbitration award.

It is so ordered.

Robert RITCHIE, Susan Ritchie and Paul Fialkin, Plaintiffs,

v.

CARVEL CORPORATION, Defendant.

No. 87 Civ. 8856(PNL).

United States District Court, S.D. New York.

June 20, 1989.

Action was brought by licensees under a retail manufacturer's license agreement alleging violations of the Racketeer Influenced and Corrupt Organizations Act as well as state law claims. Following transfer from the District of Arizona, plaintiffs filed amended complaint which omitted RICO allegations, defendant moved to dismiss under forum selection clause, and plaintiffs cross-moved for leave to file third-amended complaint to reallege RICO claim. The District Court, Leval, J., held that: (1) ruling by district judge in Arizona did not preclude reconsideration, as circumstances had changed, and (2) state courts have concurrent jurisdiction over civil RICO claims, so that adding RICO claim would not make the federal court the proper forum under the forum selection clause of the license agreements.

Motion to dismiss granted.

1. Federal Courts ⇐146

Fact that district judge in Arizona had ruled on question of proper venue when action was transferred to the Southern District of New York did not preclude New York district judge from reconsidering the question of proper venue under forum selection clause in license agreement, on motion to dismiss on ground that action could be brought only in New York state court, where the circumstances had changed in that, earlier, New York appellate courts had ruled that state courts lacked jurisdiction over RICO claims, while, subsequently, the New York Court of Appeals had ruled that New York courts had concurrent jurisdiction. 18 U.S.C.A. § 1961 et seq.

2. Federal Courts ⇐417

On motion to dismiss federal court action for improper venue on ground that, under forum selection clause in license agreement at issue, action could be brought only in state court, where it was argued that forum selection clause should not be enforced because license agreements were procured by fraud, enforceability of the forum selection clause was a matter of federal law.