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January 12, 2001

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Re: *Smith v. Nu- West Indus., et al.*
Civil Action No. 15442

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DIANE M. KEMPSKI
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Dear Counsel:

This is my decision on plaintiffs motion to alter or amend this Court's judgment order dated October 25, 2000, to include an award for prejudgment interest at ten percent compounded monthly from December 13, 1996, until the date of judgment. Defendants do not oppose plaintiff's request for prejudgment interest at the rate of ten percent, but they do oppose plaintiffs request for compound interest. For the reasons that follow, I grant plaintiffs request for prejudgment interest at the rate of ten percent, as well as his request for compound interest.

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In the absence of a contractually agreed upon rate, the appropriate interest rate is the legal rate of five percent over the federal discount rate as of the time from which interest is due. Since the federal discount rate was five percent on December 13, 1996, the date the interest was due in this case, the prejudgment interest rate is ten percent. Delaware’s legal rate of interest statute, 6 *Del. C.* § 2301(a), has been interpreted as providing for simple interest only. *See Brandin v. Gottlieb*, Del. Ch., C.A. No. 14819, Strine, V.C. (July 13, 2000), mem. op. at 73 n.79 (citing cases).

As Vice Chancellor Strine recognized in *Brandin v. Gottlieb*,¹ the Court of Chancery has broad discretion to fix the rate of prejudgment interest and the legal rate is a “mere guide, not the inflexible rule.”² Vice Chancellor Strine went on to conclude that fairness dictated an award of compound interest in *Brandin*, explaining as follows:

In view of the market realities, [plaintiffs] financial sophistication, [defendant’s multiple breaches of fiduciary duty, and the probability that [defendant] earned more than the legal rate of interest on the moneys he owes to [plaintiff], fairness dictates that the prejudgment interest awarded to [plaintiff] be compounded. Admittedly, an award of compound interest tied to the legal rate will quite likely be inadequate to compensate [plaintiff] for missing the opportunity to invest the funds

¹ Del. Ch., C.A. No. 14819, Strine, V.C. (July 13, 2000).

² *Id.* (citing *Summa Corp. v. Trans World Airlines, Inc.*, Del. Supr., 540 A.2d 403,409 (1988)).

due her in one of the nation's longest-running bull markets, but it is a fair proxy for the injury caused to her.

Id. at 74-75. I agree fully with this reasoning. Here, Nu-West has deprived the class members of the use of money rightfully owed them for over four years—from 1996 until 2000. Even the most unsophisticated class members were easily capable of earning compound interest on their money during this time. Indeed, commercial lending and savings institutions do not offer simple interest rates in this day and age. See *Onti, Inc. v. Integra Bank*, Del. Ch., 751 A.2d 904 (1999). It also is highly improbable that Nu-West sought (or obtained) only simple interest on the \$1,043,000 it has held over the last four years, or that it could conceivably have borrowed that amount at simple interest. This undisputed fact plainly undermines Nu-West's argument that an award of compound interest constitutes an "additional penalty" to it. To the contrary, an award of compound interest will merely recognize the economic reality—that is precisely what Nu-West has earned on the \$1,043,000 it wrongfully withheld, and it is precisely what the class members could have earned had their money been tendered in a timely fashion on December 13, 1996. Parenthetically, I note that simple interest at ten percent on \$10.43 (the amount owed by Nu-West per share) over that four year period totals \$4.03, or 84 cents per share less than would be yielded by an award of compound interest on ten percent for four years.

No principled distinction exists between this case and *Brandin*. I believe *Brandin* was correctly decided. Accordingly, I grant plaintiffs motion, and amend my Judgment Order to include an award of prejudgment interest in the amount of \$4.87 per share, representing interest at the rate of ten percent compounded monthly from December 13, 1996 through October 25, 2000, the date of judgment. Finally, as recognized in *Brandin*, post-judgment interest in this case (assuming the judgment survives appeal) should accrue on the full amount of the judgment, including that part comprised of prejudgment interest, to ensure that the class members are fully compensated for the loss of the time value of their money. Otherwise, simply by delaying payment of the final judgment, defendants can “chip away at the real value of [plaintiffs] recovery.” *Brandin, supra*, at 78.

IT IS SO ORDERED.

Very truly yours,

A handwritten signature in black ink that reads "William B. Chandler III". The signature is written in a cursive style with a horizontal line underlining the name.

William B. Chandler III

WBCIII:meg

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