IN THE UNITED STATES COURT OF FEDERAL CLAIMS

METROPOLITAN TRANSPORTATION AUTHORITY, Plaintiff, v. THE UNITED STATES, Defendant.	)	No. 26-422C (Judge Hadji)

DEFENDANT'S MOTION FOR PARTIAL DISMISSAL[1]

Pursuant to Rules 12(b)(1) and 12(b)(6) of the Rules of the United States Court of Federal Claims (RCFC), defendant, the United States, respectfully requests the Court to dismiss plaintiff, Metropolitan Transportation Authority's (MTA) claims for the lost time-value of money, including MTA's claims for "$800,000 in lost investment income," and for pre-judgment interest.

STATEMENT OF THE ISSUES

1. Whether MTA's claim for the lost time-value of money is barred by the no-interest rule.

2. Whether MTA's claim for pre-judgment interest is barred by the no-interest rule.

3. Whether MTA has plausibly alleged that it lost at least $800,000 in investment income.

[1] Our motion for partial dismissal temporarily suspends our obligation to respond to the remainder of the complaint. RCFC 12(a)(4); 5B Charles Alan Wright et al., Federal Practice & Procedure Civil § 1346 (3d ed.); *Maass v. Lee*, 189 F. Supp. 3d 581, 587–88 (E.D. Va. 2016) ("[T]he clear consensus among courts is that Rule 12(a)(4) clearly contemplates that any motion under Rule 12, whether it is to dismiss the entire Complaint or only portions of the Complaint, suspends the time for the moving defendant to respond to the remainder of the Complaint." (internal quotations omitted)); *Gamble v. Boyd Gaming Corp.*, No. 2:13-CV-01009-JCM, 2014 WL 1331034, at *3 (D. Nev. Apr. 1, 2014); *B.H.T. v. Sumner Cnty. Bd. of Educ.*, No. 3:20-CV-0732, 2020 WL 12630642, at *2 (M.D. Tenn. Dec. 30, 2020).

BACKGROUND AND STATEMENT OF FACTS

The United States Department of Transportation (DOT) and MTA have entered into a Full Funding Grant Agreement (FFGA), which provides $3,404,883,991 in funding for the Second Avenue Subway Project. First Amended Complaint, ECF No. 31 (Compl.), ¶ 31.

On September 30, 2025, DOT announced that it was initiating an administrative review of MTA's compliance with Federal civil rights laws, including the Equal Protection principles of the Constitution, and notified MTA that reimbursements under the FFGA would be temporarily paused during DOT's review. *Id*., ¶ 68; Exhibit (Ex.) 1. On April 16, 2026, DOT completed its review, and notified MTA that normal reimbursement processing would resume. ECF No. 21. As of April 21, 2026, DOT had paid all of MTA's outstanding reimbursement requests. ECF No. 25; ECF No. 26, ¶¶ 16-18.

MTA filed an amended complaint on May 27, 2026. ECF No. 31. In its amended complaint, MTA alleges that during the suspension of reimbursements, MTA was "forced to fill the . . . deficit with its own funds . . . ." Compl., ¶ 94. MTA further alleges that it "devoted significant internal resources to managing the fallout and mitigating the consequences" of the suspension of reimbursements. *Id*., ¶ 100.

Finally, MTA asserts that because FFGA reimbursements were not available for over six months, MTA endured a "significant opportunity cost," and "lost over $800,000 in investment income while the funds were frozen." *Id*. ¶ 99; *see also id*., ¶ 103 ("because reimbursement payments could have been invested or spent elsewhere . . . MTA has suffered significant opportunity costs"); *id*., ¶ 128 ("lost opportunity cost of money that could have been otherwise spent or invested").

MTA seeks, in part, "at least $800,000 in lost investment income[.]" *Id*., Prayer for

Relief. MTA also seeks, in part, pre-judgment interest. *Id*.

ARGUMENT

I. Standards of Review

"A motion to dismiss under RCFC 12(b)(1) will be granted if the plaintiff fails to assert appropriate subject-matter jurisdiction, as subject matter jurisdiction is strictly construed." *Telemaque v. United States*, 82 Fed. Cl. 624, 626 (2008) (quotation omitted).

Plaintiff "bears the burden of establishing subject matter jurisdiction by a preponderance of the evidence." *Reynolds v. AAFES*, 846 F.2d 746, 748 (Fed. Cir. 1988).

In determining jurisdiction, the Court "must accept as true all undisputed facts asserted in the plaintiff's complaint and draw all reasonable inferences in favor of the plaintiff." *Solenex, LLC v. United States*, 163 Fed. Cl. 128, 131 (2022) (quotations and citations omitted). "If the jurisdictional facts are disputed, the Court may consider other relevant evidence." *Id*. (internal quotations and citations omitted).

In ruling upon a motion to dismiss for failure to state a claim upon which relief can be granted under Rule 12(b)(6), the Court "must accept as true the complaint's undisputed factual allegations and should construe them in a light most favorable to the plaintiff." *Cambridge v. United States*, 558 F.3d 1331, 1335 (Fed. Cir. 2009) (citation omitted). To survive a motion to dismiss, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). That is, the complaint must contain well-pleaded factual allegations "respecting all the material elements necessary to sustain recovery under *some* viable legal theory." *Twombly*, 550 U.S. at 562 (internal quotation marks and citation omitted); *accord Fisher v. United States*, 402 F.3d 1167, 1175-76 (Fed. Cir. 2005) (complaint "fail[s] to state a claim on which relief can be granted" unless the well-pleaded facts

"establish all elements of the cause of action"). Thus, "[i]n order to avoid dismissal for failure to state a claim, the complaint must allege facts 'plausibly suggesting (not merely consistent with)' a showing of entitlement to relief." *Bank of Guam v. United States*, 578 F.3d 1318, 1326 (Fed. Cir. 2009) (quoting *Twombly*, 550 U.S. at 557)).

II. MTA's Claim for the Lost Time-Value of Money is Barred by the No-Interest Rule

MTA seeks damages for the lost time-value / "lost opportunity cost" of money that has already been paid, but in MTA's view, should have been paid sooner. Compl., ¶¶ 99, 103, 128, Prayer for Relief. This claim seeks "at least $800,000 in lost investment income." *Id*., Prayer for Relief (i). This is a claim for interest. *See* Interest, Black's Law Dictionary (12th ed. 2024) ("Interest as damages (1841): Interest allowed by law in the absence of a promise to pay it, as compensation for a delay in paying a fixed sum or a delay in assessing and paying damages." (emphasis added)); *Barnick v. United States*, 80 Fed. Cl. 545, 555 (2008), *aff'd*, 591 F.3d 1372 (Fed. Cir. 2010) ("Mr. Barnick's various claims for the 'loss of use of money' appear to be claims for prejudgment interest that must be dismissed . . . .").

Interest is not recoverable from the United States absent a contract term or Act of Congress specifically providing for interest. 28 U.S.C. § 2516(a). Even without 28 U.S.C. § 2516, claims for interest would be barred absent an express waiver of sovereign immunity. *Libr. of Cong. v. Shaw*, 478 U.S. 310, 317 (1986) ("[T]he Act [28 U.S.C. §2516(a)] merely codifies the traditional legal rule regarding the immunity of the United States from interest."); *Travelers Indem. Co. v. United States*, 72 Fed. Cl. 56, 67–68 (2006) ("The Supreme Court 'repeatedly has made clear that [28 U.S.C. § 2516(a)] merely codifies the traditional legal rule regarding the immunity of the United States from interest.'" (quoting *Shaw*)). This rule is often called the "no-interest rule." *E.g.*, *England v. Contel Advanced Sys., Inc.*, 384 F.3d 1372, 1378

(Fed. Cir. 2004) ("The no-interest rule bars the award of interest damages on a claim against the United States." (citing *Shaw*)).

Per the no-interest rule, absent an express waiver of sovereign immunity for interest, the Court dismisses claims for pre-judgment interest for lack of jurisdiction. *E.g.*, *Mastrolia v. United States*, 91 Fed. Cl. 369, 382 (2010); *Barnick*, 80 Fed. Cl. at 555.

The no-interest rule applies broadly, including when plaintiffs had to obtain money elsewhere to mitigate the harm from a Government breach. The Federal Circuit has repeatedly denied recovery for interest owed on financing for mitigation efforts. *Consol. Edison Co. of New York v. Entergy Nuclear Indian Point 2, LLC*, 676 F.3d 1331, 1340-41 (Fed. Cir. 2012) (affirming denial of damages for the cost of capital to fund mitigation activities); *Sys. Fuels, Inc. v. United States*, 666 F.3d 1306, 1310 (Fed. Cir. 2012) (affirming denial of damages for the cost of borrowing funds to construct a dry fuel storage facility needed to mitigate the Government's breach); *Energy Nw. v. United States*, 641 F.3d 1300, 1310-13 (Fed. Cir. 2011) (reversing award of damages attributable to interest paid on financing used for mitigation efforts); *England*, 384 F.3d at 1379 ("CASI is seeking to recover the interest it paid on the extra money it was forced to borrow as a result of the Navy's delay in reconciling the LTO price. In the absence of a waiver, the no-interest rule bars the recovery of such interest damages against the government.").

Here, MTA's complaint does not identify any contract term or Act of Congress that provides for interest in these circumstances. *See* Compl. Thus, the Court lacks jurisdiction to entertain MTA's claim for the lost "opportunity cost" of having money sooner / loss of "investment income." Compl., ¶¶ 99, 103, 128, Prayer for Relief.

Further, while MTA's complaint does not describe its claim for the time-value of money as seeking "interest," MTA's labeling does not change the substance. As the Supreme Court explained in *Shaw*:

> [T]he force of the no-interest rule cannot be avoided simply by devising a new name for an old institution:
>
> "[T]he character or nature of 'interest' cannot be changed by calling it 'damages,' 'loss,' 'earned increment,' 'just compensation,' 'discount,' 'offset,' or 'penalty,' or any other term, because it is still interest and the no-interest rule applies to it." *United States v. Mescalero Apache Tribe,* 207 Ct.Cl. 369, 389, 518 F.2d 1309, 1322 (1975), *cert. denied*, 425 U.S. 911, 96 S.Ct. 1506, 47 L.Ed.2d 761 (1976).
>
> Respondent claims, however, that interest and delay represent more than mere semantic variations. Interest and a delay factor, according to respondent, have distinct purposes: the former compensates for loss in the use of money, while the latter compensates for loss in the value of money.
>
> We are not persuaded. Interest and a delay factor share an identical function. They are designed to compensate for the belated receipt of money. The no-interest rule has been applied to prevent parties from holding the United States liable on claims grounded on the belated receipt of funds, even when characterized as compensation for delay. Thus, whether the loss to be compensated . . . stems from an opportunity cost or from the effects of inflation, the increase is prohibited by the no-interest rule.

Shaw, 478 U.S. at 321–22 (some citations omitted); *see also White Mountain Apache Tribe of Ariz. v. United States*, 20 Cl. Ct. 371, 384 (1990) ("*Shaw* laid to rest the argument that damages representing compensation for the belated receipt of money, including delay damages, are not barred by the no-interest rule."); *England*, 384 F.3d at 1379 ("The no-interest rule . . . has been construed to apply broadly to claims for interest." (citing *Shaw*)).

Nor does it matter that MTA no longer seeks the now-paid principal. In *Energy Northwest*, the Federal Circuit rejected Energy Northwest's argument that it could evade the

no-interest rule by seeking interest "as" a claim rather than interest "on" a claim. *Energy Nw.*, 641 F.3d at 1310-13. Therefore, the Court should dismiss MTA's claim for the lost "opportunity cost" of having money sooner / lost "investment income," Compl., ¶¶ 99, 103, 128, Prayer for Relief, for lack of subject-matter jurisdiction, or alternatively, for failure to state a claim upon which relief can be granted.

II. The Court Lacks Jurisdiction To Award Prejudgment Interest Generally

MTA also seeks prejudgment interest on all of its remaining claims (perhaps including interest on its claim for interest). Compl., Prayer for Relief (ii). The Court lacks jurisdiction to award pre-judgment interest for the same reasons discussed above.

III. MTA Has Not Plausibly Alleged That it Would Have Earned At Least $800,000 Through Investment, If Only It Had Been Paid Sooner

In the alternative, MTA's claim for "at least $800,000 in lost investment income," Comp., Prayer for Relief (i), should be dismissed per RCFC 12(b)(6) as implausible.

MTA does not allege that if it had been paid the principal grant money sooner, it *would* have invested any of it, let alone all. It alleges only that it "could have" done so. Compl., ¶¶ 11, 99. MTA does not allege any intent, planning, or preparation to start investing grant reimbursement money as soon as it received the funds from DOT, beginning in October 2025. Indeed, if MTA had started using all the grant reimbursement money for an investment opportunity rather than funding the work of the grant, it would have placed itself in the same predicament it alleges and complains of: having to divert money from elsewhere to fill the gap, and to use its limited human resources to "mitigate the fallout." *E.g.*, Compl., ¶ 11. It is implausible that if only it had been paid earlier, MTA would have directed all of the grant reimbursement money into some investment starting in October 2025, and inflicted the alleged "fallout" upon itself. Therefore, MTA's claim for "at least $800,000 in lost investment income"

fails to raise the right to relief above the speculative level. As an alternative to our primary argument above (that this claim is barred by the no-interest rule), this claim should be dismissed pursuant to RCFC 12(b)(6).

CONCLUSION

For these reasons, the Court should dismiss MTA's claim for the lost "opportunity cost" of having money sooner / "at least $800,000 in lost investment income," Compl., ¶¶ 99, 103, 128, Prayer for Relief, as well as MTA's general claim for prejudgment interest, Compl., Prayer for Relief (ii), for lack of subject-matter jurisdiction per RCFC 12(b)(1), or alternatively, for failure to state a claim upon which relief can be granted per RCFC 12(b)(6).

Respectfully submitted,

BRETT A. SHUMATE
Assistant Attorney General

PATRICIA M. McCARTHY
Director

MARTIN F. HOCKEY, JR.
Deputy Director

/s/ Joshua A. Mandlebaum
JOSHUA A. MANDLEBAUM
Senior Trial Counsel
GEOFFREY M. LONG
Assistant Director
Commercial Litigation Branch
Civil Division
Department of Justice
P.O. Box 480
Ben Franklin Station
Washington D.C. 20044
Tel: (202) 532-5409
joshua.a.mandlebaum@usdoj.gov

Attorneys for Defendant

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