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## Lobster Thief Ordered To Fork Over \$30M To South Africa

By **Shayna Posses**

Law360, New York (September 19, 2017, 6:06 PM EDT) -- A New York federal judge on Tuesday ordered a man who plundered South African lobster fisheries from 1987 to 2001 to fork over more than \$30 million to the country, bumping up a previous restitution award after the poacher dodged his obligation to pay back victims of the overharvesting.

U.S. District Judge Lewis A. Kaplan tacked nearly \$8.9 million in interest onto the roughly \$21.2 million in restitution Arnold Bengis has failed to pay despite pleading guilty in 2004 to U.S. charges of importing fish illegally caught in foreign waters and spending 46 months in prison.

The decision is the last piece of a resentencing that started with a **July hearing** wherein Judge Kaplan added \$37.2 million to the forfeitures Bengis had already made and increased his prison sentence to 57 months, though the judge noted that the additional time might be "meaningless" because the poacher, who is now in his 80s, is believed to be in Israel.

Judge Kaplan said at the time that he would address restitution later, and after receiving extensive briefing on the issue, handed down his ruling during a Tuesday morning hearing in Manhattan federal court.

He noted that while South Africa offered a thoughtful argument for increasing the principal amount of the award based on the environmental impact of Bengis' actions — which the country said decimated its rock lobster population — he wasn't swayed. Nor was the judge inclined to grant the country's request for attorneys' fees, which he said was dumped on the court at the last minute.

Judge Kaplan added that any more than \$22 million probably won't be paid unless "Bengis and his family are suddenly overcome with an attack of ethical behavior" and decide to voluntarily satisfy the poacher's legal obligations, which seems unlikely, since they have held out for the more than a decade the case has been litigating.

That sum is what remains in Bengis family trusts overseen by SG Hambros, a bank on the island of Jersey, the judge explained. Judge Kaplan previously found that Bengis put funds that could have been used to make restitution into those trusts in a "blatant attempt" to hold on to his money, which the poacher has consistently denied.

Securing the money will be another challenge, Judge Kaplan said, noting that the U.S. government will have to go to Jersey court to try to collect on the court's forfeiture order. At that point, the judge said, it will be up to the government to decide what to pass along to South Africa, a discussion he deemed "above my pay grade."

Andrew Bauer, who represents South Africa, chimed in at the end of the hearing to ask the judge to say on the record what the attorney claims he intimated throughout the resentencing: The forfeiture order was intended to make it easier for South Africa to collect the restitution it deserves.

But Judge Kaplan declined, noting that he said his piece and didn't intend to add anything else.

Eric M. Creizman, who represents Bengis, told Law360 on Tuesday that he thought the judge's restitution decision was well reasoned.

The South African government's efforts to submit supposed evidence about Bengis destroying its ecosystem years after his company went out of business were ridiculous, Creizman added, saying, "The fact is that there were other poachers and there have been other poachers for a long time."

The U.S. government declined to comment Tuesday.

The hearing was peppered with the judge's references to the length of the proceedings, which began in 2003, and before leaving the courtroom, Judge Kaplan highlighted a statement he made early on. At the time, the judge said he thought this was one of those situations in which restitution was better left to private civil litigation rather than a criminal case.

The Second Circuit disagreed, which is the appeals court's job, but "everything that has happened since makes it clearer and clearer" that this sort of protracted proceeding isn't the best approach, the judge said.

Judge Kaplan also rejected Bengis' eleventh-hour challenge to the new forfeiture order, which the poacher has already appealed to the Second Circuit.

Creizman said in a **Monday letter** that the judge based his calculations on the sale price for whole lobsters, rather than the tails that were actually sold, inflating the poacher's ill-gotten gains by more than \$27 million.

But, the judge noted Tuesday, his calculation was only based on the amount of lobsters the Bengis family poached during one season because it was the only one when he had data about the product's price in the United States.

Thus, Judge Kaplan said, while he admires the "creative and inventive lawyering" Creizman displayed in this circumstance and throughout the case, the increased forfeiture is a "quite conservative estimate" of what was actually reaped from the 14-year-long overharvesting scheme, and the poacher should be happy he wasn't saddled with the full amount.

The prosecution is represented by Kiersten A. Fletcher.

Bengis is represented by Eric M. Creizman of Creizman LLC.

South Africa is represented by Andrew Bauer of Arnold & Porter Kaye Scholer LLP.

The case is U.S. v. Bengis et al., case number 1:03-cr-00308, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Pete Brush and Sindhu Sundar. Editing by Catherine Sum.