

**JUDICIAL CASE MANAGEMENT: EFFECTIVENESS OR
INTERFERENCE: BEING A PAPER DELIVERED BY YUSUF
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ABSTRACT

Judicial supervision, a relatively new phenomenon in most courts of the world, is so much desired in this contemporary time, as same has been viewed by lawyers as one of the best ways of reducing cost and delay. The out cries for judicial supervision is due to the rampant obstacles of delays, cost of litigation, complex legal rules and procedure, lack of legal knowledge and the likes, which has for decades being denying citizens facing legal disputes access to justice. This is much rampant in Nigeria's justice system. There have been instances where a matter, from the time of issuance of the summons to the point when a final judgment will be delivered, which should not be more than four to five years, has spanned for more than thirty years and still ongoing. This is so as almost all cases are subject to delay at all stages. These delays can all be primarily traced to procedural/administrative delay mostly exploited by parties to proceedings.

This paper aims to examine the concept and role of judicial case management in the Nigerian judicial system, to determine its effectiveness in the country or whether it amounts to an act of interference in the Nigerian Judicial process. In doing this, the Kwara State High Court Civil Procedural Rule 2005, Lagos State High Court (Civil Procedure) Rule 2019 and the Federal High Court (Civil Procedure) Rule 2009 will be consulted and a comparative study of the three will be carried out. This paper tilts more towards the view that judicial case management is effective and efficient but should be more effectively administered so that its optimal use can be achieved. Recommendations are also made on how case management can be improved.

INTRODUCTION

Case management has over the years been given subjective meanings. This is so as different meanings have been given to it by different people. However, what continues to stand out about it is the fact that it essentially involves judges using tools available to them in all fairness and reasonableness to achieve the goal of securing just, speedy and inexpensive determination of all suits before them.

The tools mostly used in achieving goals of judicial case management are laws, rules and regulations. For instance in Nigeria, such tools are the High Court Civil Procedure Rules of the various states in Nigeria, High Court laws of the states, Federal High Court Civil Procedure Rules, Federal High Court Act, Supreme Court Rules, Supreme Court Practice and Procedure, Court of Appeal Rules, Administration of Criminal Justice laws of the various state, Criminal Procedural Code Laws of the Northern states in Nigeria, Administration of Criminal Justice Act etc. These tools are also present in other countries. All the previously stated tools contribute to effective judicial case management. The overriding objective of the tools is to ensure just, inexpensive and expeditious disposition of cases.

The concept of case management arose due to the fact that it was found out in the course of time that, the expense and time invested in pursuit of a case most times exceed the value of the prize realized at the end of the day. As such, most times often than not, this results in denial of justice. This is borne out by the fact that most cases have been abandoned due to the poverty of the claimant and justice seems too expensive to attain. Thus, Edward Gibbon in 1788 said as follows:

“The expense of the pursuit sometimes exceeded the value of the prize, and the fairest rights were abandoned by the poverty or prudence of the claimants. Such costly justice might tend to abate the spirit of litigation, but the unequal pressure serves only

to increase the influence of the rich, and to aggravate the misery of the poor. By these dilatory and expensive proceedings, the wealthy pleader obtains a more certain advantage than he could hope from the accidental corruption of his judge.”²

The delays and expenses involved become the problem denying people justice in the judicial system and increases the widening of the social gap and inequality between the powerful, wealthy litigant and the under-resourced litigant. This was rightly observed by Lord Woolf in his report on Britain’s civil justice system.³ Thus, it was the aim of the judiciary of most countries as enshrined in their legislations or rules⁴, to have a sophisticated, but swift and inexpensive system rather than summary justice based solely on discretion. Case management was, therefore conceived to combat this procedurally in-built delay mechanism.

It must be noted that in other jurisdictions, several cutting edge technologies and software have been introduced to aid case management, such as time and billing litigation support, research communication, data mining and modeling, data security, storage and archive accessibility. However, same is not the case in Nigeria due to our peculiar circumstances. The only tool for case management in Nigeria is through the Court Rules. Although there has been attempts to introduce the technological angle of case management in the country, this attempt has not yet been successful due to the lack of infrastructure needed to effect such.

² Edward Gibbon, *Decline and Fall of the Roman Empire* (Vol IV, 1788), Ch 44 (available at <<http://www.ccel.org/g/gibbon/decline/volume2/chap44.htm>>).

³ Lord Woolf MR, *Access to Justice: Final Report to the Lord Chancellor on the Civil Justice System in England and Wales* (London, HMSO, 1996) 2.

⁴ See, eg, Federal High Court (Civil Procedure) Rules 2009, O. 1 r. 4; Kwara State High Court (Civil Procedure) Rules 2005, O. 1 r. 4(2); Lagos State High Court (Civil Procedure) Rules 2019, O. 2 r.1; *Civil Procedure Act 2005* (NSW), s 56; *Federal Court of Australia Act 1976*, s. 37M.

CONCEPTUAL CLARIFICATION

- a. **JUDICIAL CASE MANAGEMENT:** This concept has been said to refer to an approach to the proceedings before a court of law, that holds that: (1) The specific nature of the case should determine to a large extent the rules, directions and orders that govern the proceedings; (2) The rules, directions and orders of proceedings should to a large extent be determined by the judges, parties and attorneys involved in the case and not by detailed legal provisions; (3) The court should have the necessary procedural discretionary powers to manage the case; (4) The court's discretion should be discretion in the weak sense, that is to say, the court should use its powers for a specific goal, i.e. to achieve the disposition of the dispute fairly, efficiently, and with reasonable speed.⁵

Case Management connotes supervision or management of the time and events involved in the movement of a case through the court system from the point of initiation to disposition, regardless of the type of disposition.⁶ Lord Woolf stressed the importance of judicial case management in the following words. "Without effective judicial control, the adversarial process is likely to encourage an adversarial culture and to degenerate into an environment in which the litigation process is too often seen as a battlefield where no rules apply. In this environment, questions of expense, delay, compromise and fairness may have only low priority. The consequence is that expense is often excessive, disproportionate and unpredictable; and delay is frequently unreasonable'⁷

⁵ Storme, M., *Approximation of Judiciary Law in the European Union*, Dordrecht: Nijhoff, 1994.

⁶ M Solomon and D Somerlot, *Caseflow Management in the Trial Court: Now and for the Future* (American Bar Association, 1987) 3.

⁷ Lord Woolf MR, *Access to Justice: Interim Report*, ch 3 at [4] (available at < <http://webarchive.nationalarchives.gov.uk/+http://www.dca.gov.uk/civil/interim/chap3.htm>>).

b. JUDICIAL EFFECTIVENESS: Judicial effectiveness will entail the just, speedy, and inexpensive determination of every action. The following indicators have been used to measure the effectiveness of a judiciary:

- i. Efficiency: The ability to dispose cases in a timely manner and without undue delays –
- ii. Quality: The application of and compliance with the legislation in court/PO proceedings and decisions.
- iii. Accountability and Transparency: Responsibility towards fulfilling the judicial mandate with sufficient levels of public access to information and public confidence.
- iv. Capacity and Resources: Levels of human, financial, and technical resources and capacities available for delivering judicial services.
- v. Independence and Impartiality: The absence of improper influences on judicial and prosecutorial decisions, including trust in judges and prosecutors.⁸

c. JUDICIAL INTERFERENCE: Judicial interference has been defined as the actions of courts or judicial officers in matters that are interpreted by some as beyond their constitutionally established role.

ELEMENTS OF JUDICIAL CASE MANAGEMENT

The earlier judicial involvement in the basic concept of case management was in identifying the principal factual and legal issues for determination between the parties, and work with them and their counsel to plan for and manage the conduct of such proceedings. It was the expectation then that this would enable swift and most

⁸ MONITORING AND EVALUATION SUPPORT ACTIVITY (MEASURE-BiH) JUDICIAL EFFECTIVENESS INDEX OF BOSNIA AND HERZEGOVINA: 2017 REPORT AUGUST 2018 available at <http://measurebih.com/uimages/JEI-BiH-201720ENG20Report20with20Matrix.pdf>

cost effective disposition of the dispute⁹. The current case management system was introduced into the Nigerian Courts through the various court Rules. In this paper, the consideration of case management through the use of rules will be limited to that of Kwara State High Court and Federal High Court. Thus, the current process of case management in the Nigerian court system, which are all similar both at the federal and state levels all across the states, with little differences which requires that after filing of the lawsuit (by any of the means of initiating civil suit), filing of the necessary pleadings and the counsel of the parties have appeared in court for mention of such case, a Case Management Conference/ Pre-trial is scheduled.¹⁰ It must be noted that Case Management Conference is a part of the court procedure and involves the meeting between the judge and the parties, the legal practitioners representing the parties may also appear at the conference. The Case Management/Pre-trial is scheduled within 14 days after close of pleadings upon application by any of the parties to the suit under the Kwara State High Court Rules¹¹. However, same is not available in the Federal High Court (Civil Procedure) Rules, 2009, as it recognizes settlement of issues in the place of Pre-trial Conference¹².

In preparation for the conference, the counsel to the parties are expected to have defined the issue(s) in dispute and to have filed same within 7 days after close of pleadings¹³. However, Order 18 of the Federal High Court (Civil Procedure) Rules,

⁹ Edward A. Infante, United States Magistrate Judge, *Judicial Case Management in the Federal Trial Courts of the United States of America* (available at <http://www1.worldbank.org/publicsector/LearningProgram/Judicial/CASEMGMT%20Inf....>).

¹⁰ It must be noted that the study of the current process of case management will be limited to the Kwara State High Court and Federal High Court

¹¹ Order 33, rule 2 Kwara State High Court (Civil Procedure) Rules 2005.

¹² O. 18 of the Federal High Court (Civil Procedure) Rules, 2009.

¹³ O. 33 r. 1(1) at n. 7. However, it same is to be filed within 14 days after close of pleading in Lagos state and Federal Capital Territory, Abuja. See Lagos State High Court (Civil Procedure) Rules 2019, O. 30 r. 1; Federal Capital Territory, Abuja High Court (Civil Procedure) Rules, O. 33 r. 1.

which provide for settlement of issues does not state the time within which parties are to define their issues for determination. The rule¹⁴ requires the following of the counsel to the parties: (a) that the claimant is to apply for issuance of Pre-trial Conference Notice¹⁵. However, where the claimant fails to apply for same, the defendant has the option of applying for same or apply for an order to dismiss the action; (b) upon application the court is to issue to the parties and their legal practitioners a Case Management/Pre-trial Information Sheet¹⁶; (c) To consider the amicable settlement of the matter or adoption of alternative dispute resolution etc.

At the Case Management/Pre-trial Conference the court will consider certain agenda¹⁷. Important items on the agenda that can aid Judicial Case management include the implementation of any ADR orders that may facilitate the just and speedy disposal of the action; formulation and settlement of issue; control of discovery, inspection and production of document; hearing and determination of non-contentious motions and objections on point of law; settlement of issues, inquiries and account; settlement of documents to be admitted as exhibit at the trial etc. It is worthy of note that Order 18 of the Federal High Court (Civil Procedure) Rule, 2009 also promotes just and speedy disposal of dispute by giving parties the liberty to explore the option of settlement out of court within 30 days, from the first time the matter comes before the court. It further provides that where the parties fail to settle within that time limit, then the judge is to set aside the matter for trial. The rules also provide the time limit within which the Case Management/Pre-trial Conference is to be concluded. For instance, the Kwara State High Court (Civil Procedure) Rule

¹⁴ See Order 33 of Kwara State High Court (Civil Procedure) Rules 2005; Order 27 of Lagos State High Court (Civil Procedure) Rules 2019.

¹⁵ Ibid, as in Form 23 in Kwara State and Form 17 in Lagos State.

¹⁶ As in Form 24 in Kwara State and Form 18 in Lagos State.

¹⁷ See O. 33 r. 4 of Kwara State High Court (Civil Procedure) Rules 2005; O. 27 r. 2 of Lagos State High Court (Civil Procedure) Rules 2019,.

provides that it shall be concluded within 45 days¹⁸, while that of the Lagos State High Court (Civil Procedure) Rule, 2019 stipulate 3 months¹⁹. This time limit aids in fast tracking disposal of cases.

Upon the completion of the Case Management/Pre-trial Conference, the Pre-trial Judge is expected to issue a report which shall guide the subsequent course of proceeding of the case unless modified by the trial judge²⁰.

One of the goals aimed to be achieved with the case management process is to structure pretrial proceedings of any case in a way that promotes the early exchange of information on key issues, so that the parties will be in a better position to evaluate their claims, defenses and also achieve an early settlement of the case²¹. In cases where settlement is not possible, the case management process is there to equip the court with other management techniques to eliminate frivolous issues and streamline the issues in the case, so as to proceed to trial efficiently, mainly on genuine issues of material facts²².

Among the case management techniques being utilized by the trial courts are: (1) assigning of cases at the outset to a court sponsored alternative Dispute Resolution Program²³; (2) Ordering the inspection, disclosure or discovery of information or document on particular issues; (3) inviting parties to file non contentious motions with the view of eliminating or narrowing the disputed issues of fact to be tried; (4)

¹⁸ O. 33 r. 5.

¹⁹ O. 27 r. 3.

²⁰ See O. 33 r. 6 Kwara State High Court (Civil Procedure) Rule, 2005; O. 27 r. 4 Lagos State High Court (Civil Procedure) Rule, 2019.

²¹ Ibid at n.4.

²² Ibid.

²³ This technique is more fervently practice by the Lagos state High Court as reflected in O. 27 of the Lagos High Court (Civil Procedure) Rule, 2019 and in the establishment of the Lagos Multi-Door Courthouse by the Lagos Multi-Door Courthouse law, 2009. Other states are still yet to tap into this innovation of Lagos state. Also R. 15(3) of the Rules of Professional Conduct, 2007 impose a duty on Legal Practitioners to explore the option of Alternativr Dispute Resolution.

imposing quantitative limits on discovery to save costs except a tangible reason is raised otherwise; (5) determining the order in which the legal issues will be presented at the trial; (6) requesting the parties to stipulate or agree on certain issues that appear undisputed, and to the admission of documentary evidence; (7) to invite parties to settle on documents to be admitted at the trial stage; (8) consolidating several cases which involve common issues into one case for pretrial discovery and trial.

In enabling the courts to enforce its case management orders, the rules of the state high courts empower judges to prescribe sanctions or penalties for failing to comply, appear at the Pre-trial conferences or failure to participate in good faith in case management. Order 33 rule 7 of the Kwara State High Court (Civil Procedure) Rule, 2005 and Order 27 rule 5 of the Lagos State High Court (Civil Procedure) Rule, 2019 empower the Pre-trial Judge to either: (a) in the case of the Claimant strike out the claim; or (b) in the case of a defendant enter final judgment against him.

LIST OF THINGS IN THE COURT RULES THAT PROMOTE EFFECTIVE CASE MANAGEMENT

1. Service of Processes

The High Court Civil Procedure Rules of most states address the delay in service of processes occasioned by the inadequacy and inefficiency of the Sheriff's Department. Thus, the Kwara State High court (Civil Procedure) Rules²⁴ and the Lagos State High Court (Civil Procedure) Rule²⁵ recognize service of originating process by law chambers, courier company or any other person appointed by the Chief Judge, in addition to service by the Sheriff Department, unlike the Federal

²⁴ See Order 7

²⁵ See Order 9

High Court (Civil Procedure) Rule, 2009 which does not recognize service by courier company²⁶.

2. Front Loading

To encourage and enable effective case management in civil cases, the rules of the state High Courts now provide for frontloading²⁷. The rules require both parties to file all accompanying documents with originating process simultaneously. This is to ensure that parties reveal their case before trial and to aid just and speedy delivery of justice. Thus, all originating processes must be accompanied by a statement of claim, list of witnesses, copies of every document to be relied on at trial, witness written statement on oath and list of document as the case may be. Failure to comply with this provision, the claimant's originating processes will not be accepted for filing by the Registry. The defendant, once served with the claimant's originating process, is expected to file his statement of defence, to be accompanied by a list of witnesses, copies of document to be relied on at trial and witness written statement on oath.

It must be noted that, in frontloading the documents, the rules imposed a time limit within which same is to be frontloaded²⁸. The imposition of the time limit aids in an effective case management and just disposal of cases, unlike the old rules that do not have this provision and which has led to trials lasting longer than necessary. This, in effect, escalates costs of trial, making the citizen to lose faith in the judicial system²⁹.

²⁶ See Order 6

²⁷ See Order 2 Rule 2(2), (3), Order 4 and Order 27 Rule 1 Kwara State High Court (Civil Procedure) Rules, 2019; Order 5 Rule 2(2) (3), Order 7 and Order 48 Rule 1 of the Lagos State High Court (Civil Procedure) Rule, 2019.

²⁸ Ibid

²⁹ Hon. Justice A.U. Kalu, *Speedy Dispensation of Justice Through Effective Case Management In Nigeria* available at <http://www.nigerialawguru.com/articles/practice%20and%20procedure/SPEEDY%20DISPENSATION%20EFFECTIVE%20CASE%20MANAGEMENT.pdf> assessed on 1/04/2019.

Describing the old order, Fatayi-Williams, JSC (as he then was) in **Mobile V. F.B.I.R**³⁰ said:

..... In an action before the High Court, it is the right of the party to decide whether to adduce evidence in support of his pleadings or not. The court has no power to force him to give particulars of the nature and extent of the evidence which he proposes to call in the exercise of that right.

Thus, the concept of frontloading under the current State High Courts Rules is an effective case management tool which empowers the pretrial judge to identify the points in controversy between the parties, to schedule trial or refer parties to alternative dispute resolution methods as may be appropriate³¹. This according to most judges and legal practitioners makes it possible for the parties to settle all preliminary matters and substantial issues of admissibility of evidence before the trial of the case. This, surely and inevitably, shortens the trial time immensely³².

3. Pretrial Conference

This concept has been discussed supra under the subtopic of element of judicial case management. It is a very important weapon of case management and represents a major step of litigation process. This weapon aids in fostering and achieving the major objective of most High Court Rules, which is ensuring that trial of cases proceeds quickly and efficiently and that same is justly and speedily dispensed.

4. Amendments and Adjournments³³

³⁰ (1977) 3 S.C. 1 at 15

³¹ Ibid.

³² Ibid.

³³ Ibid at n.25.

As amendments and adjournments were the greatest causes of delay of trial, the High Court rules have now imposed a limit on the number of times a party can amend his originating processes and pleadings. For instance, the Kwara and Lagos State High Court (Civil Procedure) Rules, 2005 and 2019 respectively provide that a party may amend his originating process and pleadings any time before the close of Pretrial Conference and not more than twice during trial but before closing his case³⁴ while the Federal High Court (Civil Procedure) Rule, 2009 provides for three times during trial but before judgment³⁵. The rules further impose sanction on a party who fails to carry out the amendment within the period stipulated³⁶. The imposition of sanction is to make parties proactive in terms of swift response, this in turn aids judicial case management. The rules further ordered frontloading of accompanying document such as proposed amended document, list of any additional witnesses to be called, their written statement on oath and copies of document to be relied on, with the application for amendment³⁷. The issue of adjournment has also been severely dealt with and frivolities associated with adjournment have been curtailed under the High Court Civil Procedure Rules of various states in Nigeria.

5. Use of Written Addresses³⁸

The rules of the High Court now require that written addresses must be filed along with all interlocutory applications and at the end of trial parties are also expected to file final written addresses within a stipulated time frame. The stipulation for written

³⁴ See Order 29 of the Kwara State High Court (Civil Procedure) Rule, 2005; Order 26 of the Lagos State High Court (Civil Procedure) Rule, 2019

³⁵ See Order 17.

³⁶ Ibid.

³⁷ Ibid.

³⁸ See Order 41 Kwara State High Court (Civil Procedure) Rule, 2005; Order 35 Lagos State High Court (Civil Procedure) Rule 2019; Order 22 Federal high Court (Civil Procedure) Rule 2009.

addresses is to save time and ensure that cases are not dragged for longer than necessary. This thus serves as a weapon and tool of effective case management. The rules also state the forms which written addresses must follow and the contents of the addresses.

The rules also restrict the time frame for oral argument in amplification of the written addresses to save cost and time³⁹

6. Accelerated Hearing

This weapon of case management seems to be only provided for in the Lagos State High Court (Civil Procedure) Rule, 2019⁴⁰, known as Fast Track Procedure. The aim of the procedure is to reduce the time spent on litigation to a period not exceeding 9 months from the commencement of the action till final judgment. This accelerated hearing is only available to cases commenced by Writ of Summon and whose claim is for liquidated sum of not less than One Hundred Million Naira or involves a mortgage transaction or securities.

The only provisions of the Kwara State High Court (Civil Procedure) Rules that encourage accelerated hearing are the Undefended List⁴¹, Summary Judgment⁴² and Summary Proceedings for Possession of Landed Property Occupied without the Owner's Consent⁴³. However, the Federal High Court (Civil Procedure) Rules, 2009 seems to be lacking provision on accelerated hearing.

The above are all commendable steps taken by the High Courts in Nigeria to make sure that cases are expeditiously disposed of. Though not part of High Court Civil

³⁹ Ibid.

⁴⁰ See Order 59.

⁴¹ See Order 23 Kwara State High Court (Civil Procedure) Rule, 2005.

⁴² Ibid, Order 24.

⁴³ Ibid, Order 53.

Procedure Rules, it is important to mention here the innovation made by the Supreme Court. In July 2018, the Supreme Court of Nigeria introduced innovative tech solution for seamless exchange of information using electronic mail - LEGAL MAIL. The legal mail enables the Nigerian Judiciary to improve its justice system delivery by automating court processes, effecting service of processes and supporting case/court management through the use of real-time data and analytics”.⁴⁴ Other benefits of the legal mail includes availability of reliable information, authentication of status of legal practitioners, and having undeniable proof of service.

EFFECTIVENESS OR INTERFERENCE

Concerns have been raised in some quarters that judicial case management transforms the judge from adjudicator to manager and substantially expands the opportunities for judges to use or to abuse their powers.⁴⁵ However, from what we have considered earlier, we are inclined to opine that judicial case management is an important aspect of the exercise of the powers of the judiciary and is not interference in the dispute. However, it is important that a brief recommendation will be suggested to ensure that judicial case management does not cross the line into becoming interference by the Judge in the case of the parties. Effective case management skills are necessary for judges to narrow the issues in dispute and control the scope and process of litigation. Providing training that encourages judges to use their existing powers more actively and effectively is another potential way to case management. The National Judicial Institute should organize training for

⁴⁴ Kingsley OBIEJESI ‘E-mail your case to Supreme Court – Manual filing of charges terminated’ available at <https://www.icirnigeria.org/e-mail-your-case-to-supreme-court-manual-filing-of-charges-terminated/>

⁴⁵ Judith Resnik, Managerial Judges and Court Delay: The Unproven Assumptions, 23 JUDGES J., Winter 1984 at 54

judges that includes measures aimed at enhancing the understanding and use of case management techniques without becoming interfering.

Furthermore, training on the use of computer technologies, in case management, may be particularly necessary for Judges. The judiciary still needs to explore options in modern technology that aid in quick and affordable dispensation of justice for there to be a more active effective judicial case management. The Nigerian Judiciary still has a long way to go to be able to catch up with the western world judicial system, where different technologies have been employed to achieve active effective case management in just and speedy dispensation of matter, which in turn makes justice accessible to the common man.

It is important to stress that not only judges that require training, but also clients and lawyers, and that training needs to be ongoing as technology changes. The courts and counsel must take responsibility for managing civil cases from the time of filing to disposition. We have the responsibility to move the cases ahead.

CONCLUSION

This paper has shown that judicial case management is effective, in a bid to ensure just and speedy dispensation of cases and to arrive at cost saving justice than being an interference in the dispensation of justice or in the powers of the legislature. Effective case management tailored to each particular matter enables the parties to evaluate their position sooner and less costly. As it has been shown without active judicial case management, the courts would be hindered in achieving the just, efficient and inexpensive determination of cases.

We recommend that the Nigerian Judiciary should employ, in addition to the above tools, modern technology in their case management and promote computer literacy among the administrative staff of the court. In doing this a more active approach to

case management will be put in place and in return fast tracking matters at the same time ensuring an inexpensive means of delivery of justice.

Without active judicial case management, the courts would be hampered in achieving the just, efficient, and inexpensive resolution of civil disputes. However, the key to the judiciary's success in the twenty-first century is technological compliance. Change is the law of life, and the judiciary will have to change to meet the challenges which will face it in the future. But the independence of the judiciary is essential to its proper functioning and must be retained.⁴⁶

⁴⁶ Chief Justice William H. Rehnquist, Keynote Address at the Washington College of Law Centennial Celebration (Apr. 9, 1996), in Symposium on the Future of the Federal Courts, 46 AM. U. L. REV. 263, 274 (1996).