

Denver District Court Denver County, Colorado 1437 Bannock Street Denver, Colorado 80202	
PLAINTIFF(S): CELESTE C. GRYNBERG, et. al v. DEFENDANT: WILLIAMS PRODUCTION RMT COMPANY	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> Case No.: 02CV5167 Ctrm:5
ORDER RE: <u>AMENDED</u> JUDGMENT	

THIS MATTER comes before me upon consideration of Plaintiff's Proposed Judgment on Jury Verdict. I have reviewed the Proposed Judgment on Jury Verdict, William's Objection, and Plaintiff's Reply. The Motion to Strike the Reply is **DENIED**. I make the following findings and enter the following **ORDER**:

On November 17, 2008 a judgment was entered upon the jury's Special Verdict in favor of the Plaintiffs and against the Defendant. The jury upon Special Verdict entered the following judgments:

1. Breach of Contract—for failure to pay best price obtainable. The jury found no breach and entered a verdict for the Defendant.
2. Breach of Contract—for underreporting and underpaying Plaintiffs' share of the gas volumes, natural gas liquids sales and heating content of the gas. The jury upon Special Verdict found for the Plaintiffs and awarded the following damages:
 - a. Mrs. Grynberg in the amount of \$1,102,018.10
 - b. The Grynberg Trusts in the amount of \$19,968.49.
3. Breach of Contract—overcharging for gathering and transportation related services and for other operational and payment issues. The jury upon Special Verdict found for the the Plaintiffs and awarded the following damages:
 - a. Mrs. Grynberg in the amount of \$311,729.47.
The jury also answered "YES" as to the Plaintiffs' failure to mitigate. The amount upon Special Verdict was \$339,452.94, and the failure to mitigate amount was \$27,723.47. Therefore, Mrs. Grynberg's amount was reduced to \$311,729.47.

- b. The Grynberg Trusts in the amount of \$13,908.78.
4. Breach of Contract—duty of good faith and fair dealing. The jury upon Special Verdict found for the Plaintiffs' and awarded the following damages:
 - a. Mrs. Grynberg in the amount of \$116,549.90
 - b. The Grynberg Trusts in the amount of \$0.

The Defendant objects to the entry of judgment on this claim citing that the damages are duplicative. The Defendant argues that jury cannot award damages for the breach of the express contract terms *and* for the breach of the implied covenant of good faith and fair dealing. The Defendant requests that the judgment not include the damages for breach of good faith and fair dealing in the amount of \$116, 549.90.

The Plaintiffs argue that the Defendant did not object to the jury instruction or the Special Verdict form; nor did the Defendant argue that the jury should be instructed to not award damages for the breach of good faith and fair dealing in addition to the damages awarded for other claims. The Plaintiffs also argue that the Defendant never asked the Court to clarify the verdict while the jury was still empanelled to ensure that there was not duplication.

The jury did not award the full amount of requested damages; the jury awarded damages on three separate claims. "The evidence concerning damages consisted of extensive and complex statistical and expert evaluations of the industry, the market, and Teilhaber's business pattern. The evidence provides ample support for the jury's verdict, and we must, therefore, uphold it on appeal." *Teilhaber Mfg. Co. v. Unarco Materials Storage, a Div. of Unarco Industries, Inc.*, 791 P.2d 1164 (Colo. App. 1989) (citing *Smith v. Hoyer*, 697 P.2d. 761 (Colo. App. 1984)). Like in *Teilhaber*, there was extensive evidence and expert evaluations presented at trial that went towards Plaintiffs' alleged damages. After reviewing the jury instructions and the Special Verdict rendered by the jury, and in light of the evidence at trial, I do not find that there was double recovery. I find that I must uphold the jury's verdict. Therefore, Defendant's request to no award damages for the breach of good faith and fair dealing is **DENIED**.

5. Updated additional damages
 - a. Mrs. Grynberg in the amount of \$344,032.28
 - b. The Grynberg Trusts in the amount of \$16,131.53

Plaintiffs assert that prior to trial the parties agreed to allow the Plaintiffs to update, *after trial*, damages for June, July and August of 2008. The Plaintiffs expert, Ms. Denomy, provided the updated calculations.

The Defendant objects to the proposed updated damages, but admits that the parties agreed to update the Plaintiffs' damages based on the jury's verdict.

Plaintiffs' expert prepared a report for the underreporting from June, July and August 2008; this calculation was not presented to the jury. I find the methodology used by Ms. Denomy to be reasonable. Therefore, the updated damages are awarded.

6. Statutory Interest pursuant to C.R.S. §5-12-102(1)(b).

The Defendant objects to the award of prejudgment interest arguing that the Plaintiffs cannot meet the requirement for calculating prejudgment interest. The Defendant argues that the interest cannot be accurately calculated on the jury's award, and therefore the demand for prejudgment interest should be denied. The Defendant relies on the holding that the assessment of prejudgment interest is erroneous where there was only general verdict by jury which did not indicate on which basis damages were assessed or when amounts it found as damages should have been paid. *Tripp v. Cotter Corp.*, 701 P.2d 124, 127 (Colo. App. 1985).

The Plaintiffs maintain that their right to recover prejudgment interest is a matter of law. *Tripp*, 701 P.2d at 126. The Plaintiffs assert that Ms. Denomy, the expert who calculated the prejudgment interest, used a "straight-line percentage" to allocate the damages over the years for purposes of computing interest, since the verdict did not identify the year to which the damages applied.

"Section 5-12-102(1)(b) is to be liberally construed to permit recovery of prejudgment interest on money or property wrongfully withheld. Whether the nonprevailing party recognized an actual gain or benefit as a result of wrongfully withholding is irrelevant. Thus, one who is damaged by a breach of duty may recover prejudgment interest from the date of the breach, since it is the breach itself that makes the conduct wrongful." *Vento v. Colorado Nat. Bank-Pueblo*, 907 P.2d 642, 647 (Colo. App. 1995) (citing *Mesa Sand & Gravel Co. v. Landfill, Inc.*, 776 P.2d 362 (Colo. 1989)).

"[W]here the entitlement and the amount of prejudgment interest is clearly ascertainable from the "verdict or from uncontroverted facts," the court itself may compute and add the interest to the verdict." *Tripp*, 701 P.2d at 126.

In relation to prejudgment interest, the Plaintiffs and the Defendant filed affidavits by their experts and prejudgment interest calculations. I have reviewed each side's expert and their corresponding calculations. I find the approach used by the Plaintiffs' expert, Ms. Denomy, to be reasonable and an acceptable method of computing the prejudgment interest on the damages awarded by the jury upon their Special Verdict. Ms. Denomy took into consideration that the Plaintiffs failed to mitigate on a portion of their damages, and she subtracted this amount from the damages before she computed prejudgment interest. I find the documentation supplied by the Plaintiffs, including Ms. Denomy's affidavit and accompanying calculations, to be reasonable and sufficient.

Therefore, in light of the general verdict, that the Defendant *did not object to*, I hereby adopt the findings and calculations set forth by the Plaintiffs' expert. I find that the

Plaintiffs are entitled to prejudgment interest in the amount of \$537,196.73 on the jury's award of damages.

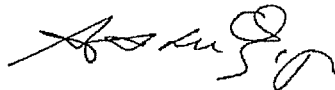
7. TOTAL: \$2,461,535.28.

The previously entered Order included the Bill of Costs. The Bill of Costs was already entered as a judgment. This Amended Order does not include the Bill of Costs.

So there is no confusion: this Amended Order shall serve as a final judgment from which all post-trial motions and/or appellate procedures shall run.

Done this 28th day of September, 2009, *nunc pro tunc* November 17, 2008.

BY THE COURT:



Robert L. McGahey, Jr.
District Judge

Cc: Counsel (by e-filing)