No. 23-

IN THE

Supreme Court of the United States

MCLAUGHLIN FREIGHT SERVICES, INC.,

Petitioner,

v.

CONTITECH USA, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Federal Rule of Civil Procedure 59(d) establishes a twenty-eight-day deadline for a court to award a new trial on its own initiative, and Rule 59(e) imposes the same deadline to alter or amend a judgment. This Court has held that similar rules of procedure are mandatory claim-processing rules that courts cannot "disregard." *Nutraceutical Corp. v. Lambert*, 139 S. Ct. 710, 714 (2019).

The question presented is: Can a district court disregard Rule 59's claim-processing rule by *sua sponte* remitting and amending a judgment more than nine months after Rule 59's twenty-eight-day deadline expires?

PARTIES TO THE PROCEEDING

Petitioner (defendant and counterclaim-plaintiff in the district court, appellant in the court of appeals) is McLaughlin Freight Services, Inc.

Respondent (plaintiff and counterclaim-defendant in the district court, appellee in the court of appeals) is ContiTech USA, Inc.

CORPORATE DISCLOSURE STATEMENT

No publicly held corporation owns 10% or more of the stock of McLaughlin Freight Services, Inc.

RELATED PROCEEDINGS

United States District Court (S.D. Iowa):

ContiTech USA, Inc. v. McLaughlin Freight Services, Inc. et al., 20-cv-00075 (entering judgment Feb. 16, 2022); (amending and remitting judgment Jan. 25, 2023)

United States Court of Appeals (8th Cir.):

Contitech USA, Inc. v. McLaughlin Freight Services, Inc., 23-1379 (affirming the district court Jan. 25, 2024); (denying panel and en banc rehearing Feb. 28, 2023)

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PETITION FOR A WRIT OF CERTIORARI

McLaughlin Freight respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a–10a) is reported at 91 F.4th 908. The district court's opinion (Pet. App. 11a-33a) is unpublished but is available at 2023 WL 2300398.

JURISDICTION

The court of appeals entered its judgment on January 25, 2024, and denied McLaughlin Freight's petition for panel and en banc rehearing on February 28, 2024. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Federal Rule of Civil Procedure 59 provides in pertinent part:

> (d) New Trial on the Court's Initiative or for Reasons Not in the Motion. No later than 28 days after the entry of judgment, the court, on its own, may order a new trial for any reason that would justify granting one on a party's motion. After giving the parties notice and an opportunity to be heard, the court may grant a timely motion for a new trial for a reason not stated in the motion. In either event, the court must specify the reasons in its order.

> (e) MOTION TO ALTER OR AMEND A JUDGMENT. A motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment.

Fed. R. Civ. P. 59(d)–(e).

Federal Rule of Civil Procedure 6 provides in pertinent part:

> (b) EXTENDING TIME.
>
> . . . . .
>
> (2) *Exceptions.* A court must not extend the time to act under Rules 50(b) and (d), 52(b), 59(b), (d), and (e), and 60(b).

Id. r. 6(b)(2).

INTRODUCTION

This case involves a circuit split over a district court's authority to modify or amend a judgment after the time for doing so under Federal Rule of Civil Procedure 59 has expired. Resolving the divide presents important questions about enforcing claim-processing rules against district courts and protecting the finality of judgments.

Federal Rule of Civil Procedure 59 establishes a twenty-eight-day deadline to alter, amend, or otherwise modify a judgment. In specific, subdivisions (b) and (d) authorize motions for a new trial, which include remittiturs as "classic Rule 59 claim[s]." *Perez-Perez v. Popular*

Leasing Rental, Inc., 993 F.2d 281, 283 (1st Cir. 1993); Fed. R. Civ. P. 59(b), (d). And subdivision (e) allows judgments to be altered or amended to include interest, for example. Fed. R. Civ. P. 59(e).

Whatever motion is urged, however, Rule 59 demands that it be made "[n]o later than 28 days after entry of judgment." *Id.* r. 59(d). This time limit binds courts and parties alike. *Id.* r. 59(b), (d), (e). What is more, Rule 6, which otherwise endows courts with broad discretion over deadlines, singles out Rule 59(b), (d), and (e) for separate treatment—a "court must not extend the time to act" under these provisions. *Id.* r. (6)(b)(2).

Below, the district court unequivocally violated Rule 59's time bar: About *eleven months* after entering judgment, the court on its own motion remitted McLaughlin Freight's judgment against ContiTech. At the same time the district court awarded ContiTech pre- and post-judgment interest under Rule 59(e). *Osterneck v. Ernst & Whinney*, 489 U.S. 169, 176 n.3 (1989) (prejudgment interest falls within Rule 59(e)).

The Eighth Circuit's decision affirming these *sua sponte* rulings struck a split with the four other circuits that have enforced Rule 59's time limits against late-acting district courts. *E.g.*, *Lesende v. Borrero*, 752 F.3d 324, 335–36 (3d Cir. 2014).

The decision below is also inconsistent with this Court's analysis of mandatory claim-processing rules. Though the Court has yet to locate Rule 59 in the three-part "taxonomy" of jurisdictional limits, mandatory claim-processing rules, and time-related directives, *McIntosh v. United States*, 601 U.S. ____, ____ (2024) (slip op., at 8), it

has held that a procedural rule whose deadline is "single[d] out" for "inflexible treatment" by another rule—like the way Rule 6 singles out Rule 59's—is a mandatory claim-processing rule, *see Nutraceutical Corp. v. Lambert*, 139 S. Ct. 710, 714–15 (2019). As a result, Rule 59's deadline is "unalterable" and "not susceptible" to "equitable" exceptions. *Id.* at 714. That means courts are without authority to "disregard" the Rule's "plain import," as the decision below did. *Id.*

Because Rule 59 plainly directs district courts to take or refrain from taking certain action by a clear deadline, this case carries two important issues with it. First is the critical issue about applying claim-processing rules to public officials, such as judges. To date, the Court has not opined on a deadline that "condition[s] [a] court's authority to act" on the *court's* own timeliness. *McIntosh*, 601 U.S. at ____ (slip op., at 10). This case presents that issue head-on. Second is the fundamental issue of preserving the finality of judgments. Rule 6 forbids extensions under Rule 59 to provide clarity about when a judgment becomes final and unalterable. *See* Advisory Committee's Notes on 1946 Amendments to Fed. R. Civ. P. 6. Litigants, the judiciary, and the public have a strong interest in maintaining that clarity.

STATEMENT OF THE CASE

Petitioner McLaughlin Freight, Dan McLaughlin (who owns McLauglin Freight), and Respondent ContiTech went to trial on claims and counterclaims for fraud and unjust enrichment in February of 2022. The district court had jurisdiction under 28 U.S.C. § 1332(a).

After four days of evidence, the jury returned verdicts for both McLaughlin Freight and ContiTech on each of their claims. Because of the nature of the parties' causes of action, the recoveries on their unjust enrichment and fraud claims overlapped, but to differing degrees. Anticipating that, the court instructed the jury to ignore any overlapping damages in its deliberations. Pet. App. 48a. The instruction stated the "law instructs the judge on how to apportion" a verdict to "avoid" overlap. Pet. App. 48a.

On February 16, 2022, the court entered judgment on the verdict. Pet. App. 34a-35a. Twenty-eight days later, on March 16, 2022, McLaughlin Freight filed two post-trial motions. It moved the court under Rule 59(d) to, among other things, remit ContiTech's judgment, and also asked the court for an award of pre- and post-judgment interest under Rule 59(e). ContiTech did not move at all.

On January 25, 2023, the district court granted McLaughlin Freight's motions in part by remitting ContiTech's judgment and awarding the requested interest to McLaughlin Freight. Pet. App. 28a-32a. But acting *sua sponte*, the court also remitted McLaughlin Freight's judgment against ContiTech and awarded ContiTech interest, even though ContiTech did not request it. Pet. App. 28a-32a. These rulings came nearly eleven months after the entry of judgment. Pet. App. 33a.

On appeal, McLaughlin Freight challenged the court's authority to act untimely under Rule 59(d) and (e). The Eighth Circuit, however, affirmed the belated rulings. Without mentioning the missed deadline, it upheld the Rule 59(d) remittitur order, finding that the parties agreed there were overlapping recoveries that the district court

could undo. Pet. App. 9a. And it upheld ContiTech's Rule 59(e) interest award since ContiTech "requested" that relief "in its complaint." Pet. App. 10a.

On February 7, 2024, McLaughlin Freight petitioned for en banc and panel rehearing, which the Eighth Circuit denied on February 28, 2024. Pet. App. 36a.

REASONS FOR GRANTING THE PETITION

This Court's review is warranted for three reasons. First, in relieving the district court from Rule 59's deadline, the decision below establishes a conflict among the circuits about whether claim-processing rules are exceptionless and, if not, what exceptions qualify. Second, the application of claim-processing rules to courts is important and implicates here the finality of judgments. Finally, this case is a superior vehicle because there is no factual dispute that the district court acted on its own initiative well outside of Rule 59's deadline.

A. The Decision Below Creates a Circuit Split.

The Eighth Circuit created a circuit split in holding that a district court has authority to act *sua sponte* under Rule 59 after the Rule's twenty-eight-day timeline elapsed. This holding conflicts with the four United States Courts of Appeals (the Third, Fifth, Tenth, and Eleventh) that have considered the issue.

These other circuits put courts and parties on equal footing under Rule 59(d) and (e). The Third Circuit, for example, found that a district court "lacked power to *sua sponte*" order a new trial under Rule 59(d) because

it "failed" to do so "within twenty-eight days of the entry of judgment," as the Rule requires. *Lesende*, 752 F.3d at 335–36. This finding aligns with the Fifth, Tenth, and Eleventh Circuits. *Tarlton v. Exxon*, 688 F.2d 973, 978–79 (5th Cir. 1982) (explaining that "the court may act" on its own under Rule 59(d), "but it must exercise its authority with dispatch, within the limited period established by" the Rule); *Kain v. Winslow Mfg., Inc.*, 736 F.2d 606, 608 (10th Cir. 1984) (same); *Hidle v. Geneva Cnty. Bd. of Educ.*, 792 F.2d 1098, 1100 (11th Cir. 1986) (same).

Similarly, the Tenth Circuit held that even if a district court could amend a judgment on its own initiative under Rule 59(e), the court still "had to rule" within twenty-eight days of the judgment. *Nelson v. City of Albuquerque*, 921 F.3d 925, 930 (10th Cir. 2019). And since the district court's ruling in *Nelson* exceeded that deadline, its order was not a "proper exercise of authority to act sua sponte." *Id.*

In short, rather than focus on the district court's "discretion," as the Eighth Circuit did, (Pet. App. 8a), these circuits straightforwardly imposed Rule 59's deadline on the court: If the court acts within that time limit, its ruling can be upheld. *E.g.*, *Burnam v. Amoco Container Co.*, 738 F.2d 1230, 1232 (11th Cir. 1984) (holding that the district court had "the power on its own motion to consider altering or amending a judgment" only because it timely acted under Rule 59(e)). But if not, the untimely ruling is overturned as beyond the court's authority. *E.g.*, *Lesende*, 752 F.3d at 335–36.

This predictable framework has been applied to cases like the one below, where only one of two or more parties moves for post-judgment relief. The Eighth

Circuit's decision conflicts with these decisions. In the Fifth Circuit's *Tarlton* case, for instance, only one of the two defendants timely moved the district court under Rule 59 for a new trial and remittitur of a judgment that apportioned fault between the two defendants. 688 F.2d at 977. The other defendant made no motion. *Id.* Despite that, the district court, on its own initiative, granted Rule 59 relief to the non-moving defendant after the Rule's deadline expired. *Id.* The Fifth Circuit reversed the *sua sponte* ruling on appeal, noting that, "Just as the court may not extend the period for a party to file a motion for a new trial, it may not extend the period for a court-initiated action." *Id.*

The Eleventh Circuit reached substantially the same result in *Hilde*. There, the plaintiff, after receiving a favorable judgment, filed a Rule 59(e) motion to expand the relief the district court awarded. 792 F.2d at 1099–1100. But the defendant, like the *Tarlton* defendant, filed nothing. *Id.* In denying the plaintiff's motion, however, the district court also *sua sponte* set aside the plaintiff's judgment, and then entered judgment for the defendant instead. *Id.* at 1100. On appeal, the Eleventh Circuit refused to "pull[] the rug from under the plaintiff" and reversed. *Id.* In doing so, it cited the "interest of the parties and society in the finality of judgments" and the "legitimate expectation of the parties concerning the judgment to the extent it is not questioned by the parties[.]" *Id.* at 1100.

Unlike these decisions, the Eighth Circuit did not apply Rule 59(d) and (e)'s categorical twenty-eight-day time bar to the district court's untimely *sua sponte* rulings. Because the Eighth Circuit's decision creates a circuit split, this Court's review is appropriate.

B. The Decision Below Addresses Matters of Great Importance that this Court Should Settle.

Although claim-processing rules can be "addressed to courts," *Santos-Zacaria v. Garland*, 598 U.S. 411, 420 (2023), this Court has yet to examine such a rule with a judicial addressee. Distinguishing prior cases, the Court just this term clarified that certain claim-processing rules seemingly directed to courts have in fact merely "conditioned the court's authority to act on the party's adherence to a certain procedure, and not on the court's compliance with a deadline." *McIntosh*, 601 U.S. at ____ (slip op., at 10) (discussing *Santos-Zacaria*, 598 U.S. 411, and *Gonzalez* v. *Thaler*, 565 U.S. 134 (2012)). In fact, the Court contrasted claim-processing rules with time-related directives by noting that those directives "typically spur public officials to act within a specified time," whereas claim-processing rules "ordinarily" enjoin "the *parties*" to act. *McIntosh*, 601 U.S. at ____ (slip op., at 10) (emphasis in original) (citation omitted).

This case does not fit that general dichotomy. Rule 59(d) explicitly imposes an unconditional time limit on district courts: "No later than 28 days after the entry of judgment" is a "court" allowed to act "on its own." Fed. R. Civ. P. 59(d). And Rule 6 categorically proscribes extending the time to take any Rule 59 action, whether under subdivision (d) for remittitur or subdivision (e) for amending a judgment. *Id.* r. 6(b)(2). This case thus squarely presents the important issue of applying claim-processing rules to "public official[s]" like district court judges. *McIntosh*, 601 U.S. at ____ (slip op., at 7).

In addition, this case also implicates the role of Rule 6 and Rule 59 in protecting the finality of judgments.

Before the Federal Rules of Civil Procedure were adopted, a judgment became final and unalterable when the term in which the judgment was entered expired. *Bronson v. Schulten*, 104 U.S. 410, 415 (1881). More specifically, once the term ended with no party submitting an appropriate motion, the court lost the "*power*" to "set aside, vacate, and modify its final judgments[.]" *Id.* But that all changed when the Rules virtually abolished the term system. *See* WRIGHT & MILLER, 4B FED. PRAC. & PROC. CIV. § 1161 (4th ed.). In this evolved procedural world, Rule 6 performs the finality-defining role that court terms once did. *See* Advisory Committee's Notes on 1946 Amendments to Fed. R. Civ. P. 6. As the Advisory Committee put it, because court terms no longer formed a temporal perimeter circumscribing a court's "power" over its judgments, Rule 6 had to delimit that power instead, otherwise "judgments never c[ould] be said to be final." *Id.*

Applying Rule 59 and Rule 6 to judges' *sua sponte* action is not just a matter of enforcing claim-processing rules against courts, then. It is also about the Rules' ability to preserve the finality of civil judgments, where such finality "is demanded by the very object for which civil courts have been established[.]" *S. Pac. R. Co. v. United States*, 168 U.S. 1, 49 (1897). Given the thousands of civil judgments enrolled in district courts every year, these important issues warrant this Court's review.

C. This Case Is an Ideal Vehicle.

This case provides a proper vehicle to decide how claim-processing rules confine district courts' authority to *sua sponte* remit, alter, or amend judgments under Rule 59. ContiTech did not file any post-trial motions or request the relief the district court awarded. Pet. App.

3a. And it is undisputed that the district court submitted its post-trial order remitting the judgment against ContiTech under Rule 59(d) nearly eleven months after entering judgment, far outside Rule 59's twenty-eight-day timeframe. Pet. App. 35a. McLaughlin Freight agreed that overlapping damages could be addressed post-trial, but it never consented to depart from the strictures of Rule 59 or waived a timeliness objection to the court's remittitur award. Pet. App. 37a-47a.

Moreover, there is no question that ContiTech failed to move for pre- and post-judgment interest under Rule 59(e), or that the district court awarded it such interest anyway after Rule 59(e)'s time bar expired. Thus, the question presented can be cleanly resolved under these facts.

CONCLUSION

For the reasons above, Petitioner McLaughlin Freight Services, Inc. respectfully requests that the Court issue a writ of certiorari.

Respectfully submitted,

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APPENDIX

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APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT, FILED JANUARY 25, 2024

No. 23-1379

CONTITECH USA, INC.,

Plaintiff–Appellee,

v.

MCLAUGHLIN FREIGHT SERVICES, INC.; DAN MCLAUGHLIN, INDIVIDUALLY,

Defendants–Appellants.

Appeal from United States District Court for the Southern District of Iowa—Eastern

Submitted: December 14, 2023
Filed: January 25, 2024

Before SMITH, Chief Judge, GRUENDER and GRASZ, Circuit Judges.

GRUENDER, Circuit Judge.

McLaughlin Freight Services, Inc., and Dan McLaughlin (collectively, "McLaughlin") appeal the district court's[1] post-trial order. We affirm.

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1. The Honorable Stephanie M. Rose, Chief Judge, United States District Court for the Southern District of Iowa.

Appendix A

I.

Contitech USA, Inc., a division of tire manufacturer Continental AG, contracted with McLaughlin, a trucking company, to deliver rubber from one of Contitech's facilities in Lincoln, Nebraska, to another facility in Mt. Pleasant, Iowa. For this work, Contitech and McLaughlin agreed on a predetermined fee schedule. The fee schedule included a base rate and a much higher "rounder" rate, which required pre-approval from Contitech. These rounder rates were to cover the costs of sending an empty truck to Lincoln to pick up an additional load if Contitech needed rubber at Mt. Pleasant but there were no available trucks near Lincoln. To get paid, McLaughlin would submit bills to a third-party administrator that managed Contitech's freight-shipping payments. Over three years, McLaughlin submitted 645 unapproved "rounder" bills to the third-party payments administrator, using fraudulent emails that purported to show pre-approval from Contitech.

Contitech eventually discovered McLaughlin's scheme and sued it for fraud, unjust enrichment, and breach of contract. Based on Contitech's self-help measures in the aftermath of its discovery, McLaughlin counterclaimed for fraud, unjust enrichment, and breach of contract. Both parties' fraud and unjust enrichment claims went to trial. During deliberation, the jury expressed concern about the possibility of double recovery. In response, the district court, with the consent of the parties, told the jury that the court would remit any awards to prevent double recovery. The jury then awarded Contitech $436,130.72 in damages on its fraud claim and the same amount on

its unjust-enrichment claim. It also awarded McLaughlin $266,471.59 in compensatory damages and $14,088.51 in punitive damages on its fraud claim and likewise awarded $266,471.59 to McLaughlin on its unjust-enrichment claim.

After the verdict, McLaughlin filed two motions. The first, a renewed motion for judgment as a matter of law, requested that the court set aside the jury's verdict on Contitech's fraud and unjust-enrichment claims for insufficient evidence, or in the alternative, that the court remit Contitech's damages award based on insufficient evidence. The second, a motion to amend the judgment, argued that the court should award McLaughlin pre- and post-judgment interest. Contitech did not file any substantive post-trial motions. The district court denied McLaughlin's renewed motion for judgment as a matter of law, remitted Contitech's damages award to the extent necessary to prevent double recovery, and granted McLaughlin's motion for pre- and post-judgment interest. The district court likewise remitted McLaughlin's damages award against Contitech to prevent double recovery and awarded Contitech pre- and post-judgment interest, despite the fact that Contitech did not request this relief. McLaughlin appeals.

II.

McLaughlin argues that the district court erred by 1) denying its motion for judgment as a matter of law on Contitech's fraud and unjust-enrichment claims; 2) not further remitting Contitech's damages award; and 3) remitting McLaughlin's damages award to prevent double

recovery and awarding Contitech pre- and post-judgment interest in the absence of a motion from Contitech. We address these arguments in turn.

A.

"In reviewing the district court's denial of judgment as a matter of law *de novo*, we view the facts in the light most favorable to the verdict, including facts necessary to the issues on appeal." *CRST Expedited, Inc. v. Swift Transportation Co. of Arizona*, 8 F.4th 690, 697 (8th Cir. 2021). "Judgment as a matter of law is granted only if a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue." *Christensen v. Titan Distribution, Inc.*, 481 F.3d 1085, 1092 (8th Cir. 2007) (internal quotation marks omitted). "We apply the same standards as the district court, giving the nonmoving party all reasonable inferences and viewing the facts in the light most favorable to the nonmoving party." *Id.* "If conflicting inferences reasonably can be drawn from evidence, the jury is in the best position to determine which inference is correct." *Id.* (internal quotation marks omitted).

We first consider McLaughlin's motion for judgment as a matter of law on Contitech's fraud claim. In Iowa, a party bringing a fraud claim must prove:

> (1) the defendant made a representation to the plaintiff, (2) the representation was false, (3) the representation was material, (4) the

> defendant knew the representation was false, (5) the defendant intended to deceive the plaintiff, (6) the plaintiff acted in justifiable reliance on the truth of the representation, (7) the representation was a proximate cause of the plaintiff's damages, and (8) the amount of damages.

Dier v. Peters, 815 N.W.2d 1, 7 (Iowa 2012). Each element of the claim must be proved "by a preponderance of clear, satisfactory, and convincing proof." *Lloyd v. Drake Univ.*, 686 N.W.2d 225, 233 (Iowa 2004) (internal quotation marks omitted). McLaughlin claims that Contitech failed to prove proximate cause and damages, because Contitech allegedly failed to demonstrate that it would have paid less for trucking services in the absence of McLaughlin's fraudulent scheme. *See Robinson v. Perpetual Servs. Corp.*, 412 N.W.2d 562, 567 (Iowa 1987) (explaining that to show proximate cause, defendant's fault must be both the "but for" cause and a "substantial factor" in bringing about the harm); *Midwest Home Distrib., Inc. v. Domco Indus. Ltd.*, 585 N.W.2d 735, 739 (Iowa 1998) (explaining that Iowa recognizes both out-of-pocket damages and benefit-of-the-bargain damages in fraud cases); *id.* ("[T]he benefit-of-the-bargain rule and the causation analysis are inextricably intertwined.").

According to McLaughlin, it was economically impossible to haul rubber at the contractual base rate. To support this point, it notes that Contitech did not introduce evidence that another trucking company would have hauled rubber at the base rate or at any rate.

Thus, McLaughlin argues, Contitech did not suffer any damages—and even if it did, McLaughlin's fraudulent scheme was not the but-for cause of any loss to Contitech.

However, under Iowa law "a defrauding defendant will not be heard to say that its intentional misrepresentations were not the cause of any damages to the plaintiff because the plaintiff was not out anything." *Midwest Home*, 585 N.W.2d at 739; *see also Dier*, 815 N.W.2d at 13 n.5 (collecting cases). Moreover, "a factfinder" may "find a causal connection between the misrepresentations and the injury by holding the defendant to what it has represented to the plaintiff." *Midwest Home*, 585 N.W.2d at 739. Here, McLaughlin represented to Contitech that it would deliver rubber at the contractual base rate unless it had pre-approval to charge a rounder rate. "Examined in this fashion, the jury's verdict on proximate cause and damages makes sense." *Id.* at 742. It is undisputed that McLaughlin submitted fraudulent approval emails to receive rounder payments when Contitech believed it was paying, and had only authorized, the base rates. The difference between the contractual base rate and the actual billed amount was $436,130.72. A reasonable jury could have found that, in order to prevent McLaughlin from benefiting from its fraud, the proper remedy was to award Contitech the benefit of the bargain it struck with McLaughlin.

We next turn to McLaughlin's motion for judgment as a matter of law on Contitech's unjust-enrichment claim. Unjust enrichment in Iowa is "a broad principle with few limitations," "rooted in the principle that one

party should not be unjustly enriched at the expense of another party." *Endress v. Iowa Dep't of Hum. Servs.*, 944 N.W.2d 71, 80 (Iowa 2020). "Recovery based on unjust enrichment can be distilled into three basic elements . . . (1) defendant was enriched by the receipt of a benefit; (2) the enrichment was at the expense of the plaintiff; and (3) it is unjust to allow the defendant to retain the benefit under the circumstances." *State, Dep't of Hum. Servs. ex rel. Palmer v. Unisys Corp.*, 637 N.W.2d 142, 154-55 (Iowa 2001). In short, Contitech needs "merely to prove that [McLaughlin] has received money which in equity and good conscience belongs to [Contitech]." *See Iconco v. Jensen Const. Co.*, 622 F.2d 1291, 1295 (8th Cir. 1980) (summarizing Iowa unjust enrichment law).

McLaughlin argues that it was not unjustly enriched by charging a rounder rate because at least some of the trips it charged as rounders were in fact rounder trips. According to McLaughlin, it was merely paid for the actual work it performed. But even assuming that some of these trips were actually rounders, under the contract as negotiated, McLaughlin could not charge rounder rates without pre-approval from Contitech. McLaughlin's falsification of emails to hide its lack of pre-approval cost Contitech a total of $436,130.72 over the contractual base rate.[2] In this situation, where "conflicting

2. McLaughlin also argues in a footnote that the district court erred in allowing Contitech to submit the audit log of its freight charges as evidence. "We generally review evidentiary rulings for clear abuse of discretion . . . " *Chism v. CNH America LLC*, 638 F.3d 637, 640 (8th Cir. 2011). The district court did not abuse its discretion in admitting the audit log as summary

inferences reasonably can be drawn from evidence, the jury is in the best position to determine which inference is correct." *Christensen*, 481 F.3d at 1092 (internal quotation marks omitted). In light of the broad principles of unjust enrichment and the evidence presented, a reasonable jury could have found that $436,130.72 was the amount of money McLaughlin "received . . . which in equity and good conscience belongs" to Contitech. *See Iconco*, 622 F.2d at 1295.

A reasonable jury could have found for Contitech on the fraud and unjust-enrichment counts in the amount of $436,130.72. The district court thus did not err in denying McLaughlin's motion for judgment as a matter of law on both counts.

B.

We next turn to McLaughlin's argument that the district court abused its discretion in not further remitting Contitech's unjust-enrichment award to a much smaller amount. However, the district court already remitted Contitech's unjust-enrichment award to $0, stating that Contitech's $436,130.72 recovery is based only on its fraud claim. McLaughlin's argument is thus moot, and we decline to address it.

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evidence. *See* Fed. R. Evid. 1006; *United States v. Boesen*, 541 F.3d 838, 848 (8th Cir. 2008).

C.

Lastly, we turn to McLaughlin's argument that, in the absence of a motion from Contitech, the district court erred in *sua sponte* remitting McLaughlin's damages award to prevent double recovery and in awarding Contitech pre- and post-judgment interest.

Because Contitech did not move for remittitur of McLaughlin's damages award, McLaughlin argues that the district court had no authority to alter the jury's verdict to prevent double recovery. Remittitur orders will "not be disturbed in the absence of a clear abuse of discretion," and "the trial court's determination [will] be given considerable deference." *Ouachita Nat. Bank v. Tosco Corp.*, 686 F.2d 1291, 1295 (8th Cir. 1982). We have previously affirmed a district court's *sua sponte* remittitur, *see Stephens v. Crown Equip. Corp.*, 22 F.3d 832, 837 (8th Cir. 1994), and it is well established that "[a]lthough a party is entitled to proceed on various theories of recovery, a party is not entitled to collect multiple awards for the same injury," *EFCO Corp. v. Symons Corp.*, 219 F.3d 734, 742 (8th Cir. 2000). It is undisputed that the jury's verdict provided double recovery for each party. It is also undisputed that the parties agreed that the district court could modify any verdict to prevent double recovery. Thus, the district court did not err in reducing each party's award.

Similarly, we have already held that "a failure to request postjudgment interest is not fatal to a prevailing party's entitlement to such interest," because

"[p]ostjudgment interest is mandatory under 28 U.S.C. § 1961 . . . and should therefore be awarded" regardless of whether the district court orders it. *Travelers Prop. Cas. Ins. Co. of Am. v. Nat'l Union Ins. Co. of Pittsburgh*, 735 F.3d 993, 1007- 08 (8th Cir. 2013); *Hillside Enters v. Carlisle Corp.*, 69 F.3d 1410, 1416 (8th Cir. 1995) (affirming award of post-judgment interest although it was not requested).

Likewise, "[t]he decision to award or deny prejudgment interest will be upheld unless the district court abuses its discretion." *E.E.O.C. v. Rath Packing Co.*, 787 F.2d 318, 333 (8th Cir. 1986). The district court did not abuse its discretion in granting pre-judgment interest to Contitech, because Contitech requested this relief in its complaint. *See Hillside Enters*, 69 F.3d at 1416 (upholding award of pre-judgment interest where party "asserted its right to prejudgment interest" "in its prayer for relief on its counterclaim").

III.

For the foregoing reasons, we affirm the judgment of the district court.

APPENDIX B — ORDER ON DEFENDANTS' MOTIONS OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA DAVENPORT DIVISION, FILED JANUARY 25, 2023

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
DAVENPORT DIVISION

Case No. 3:20-cv-00075-SMR-SBJ

CONTITECH USA, INC.,

Plaintiff,

v.

MCLAUGHLIN FREIGHT SERVICES, INC.,
and DAN MCLAUGHLIN,

Defendants.

I. FACTUAL BACKGROUND

ContiTech hired Dan McLaughlin and McLaughlin Freight to deliver loads of rubber to its facility in Mount Pleasant, Iowa.[1] [ECF No. 120-13-120-16]. The Mount

1. Defendants provided two types of services to ContiTech: one-way trips where the rubber was shipped from Nebraska to Iowa and roundtrips where the truck left Iowa, went to Nebraska, and returned to Iowa. Dan McLaughlin had to submit a bill of lading and invoice to DSV to receive payment for one-way trips from Lincoln, Nebraska to Mount Pleasant, Iowa. [ECF No. 112

Pleasant facility had a scheduler – initially Scott Housman and later Dan Cook – who worked with Dan McLaughlin to schedule deliveries as needed. [ECF Nos. 120-24-120-25 (Availability Emails)]. After the rubber was delivered, the truck driver who delivered the load would receive a bill of lading as proof of ContiTech's receipt of goods. [ECF No. 112 at 27 (Dan McLaughlin – Direct Examination)]. This document and others were submitted to third-party administrator Concentrek, Inc., now DSV Roads, Inc., who would pay McLaughlin Freight for its services. [ECF Nos. 120-13 (Concentrek Brokerage Agreement); 120-14 (Transportation Schedule – Sealed)]. ContiTech would then pay DSV for the charges DSV incurred paying Defendants.

It is well established Defendants were paid based on a predetermined fee schedule. [ECF Nos. 120-14 (Transportation Schedule); 131 at 16 (Dan McLaughlin – Cross Examination)]. Many years into the relationship, ContiTech realized it was reimbursing DSV for transportation costs that far exceeded what it expected to pay. This led ContiTech staff – Daniel Cook and Robin Daniel – to ask Regina Wilson, an employee at DSV, to review the expenses and conduct an audit. [ECF No. 124 at 15 (Wilson Testimony)]. Wilson reviewed the bills and created an audit log to identify questionable charges. [ECF Nos. 120-1 (McLaughlin Audit Log); 120-2-120-12 (Audit Log Support Documents)]. The audit revealed hundreds of instances where Dan McLaughlin submitted

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at 26]. He was required to provide a bill of lading, invoice, and approval email from ContiTech officials to be paid for roundtrips, known as rounders, from Mount Pleasant to Lincoln. *Id.* at 13.

one-way trips as rounders. [ECF No. 121-1]. ContiTech decided to withhold future payment for completed deliveries to recoup the allegedly excessive charges and then terminated the contract. [ECF Nos. 128-10 (Email on Hold of Payments); 128-16 (Termination Letter)].

II. PROCEDURAL BACKGROUND

On September 16, 2020, ContiTech initiated this lawsuit, alleging claims of fraud, breach of contract, and unjust enrichment against McLaughlin Freight Services and Dan McLaughlin. [ECF No. 1]. Defendants filed an answer and three counterclaims for fraud, breach of contract, and unjust enrichment. [ECF No. 9]. On August 20, 2021, ContiTech moved for summary judgment on its claims and Defendants' counterclaims. [ECF No. 40]. On January 6, 2022, the Court granted the motion for summary judgment in part and denied it in part. [ECF No. 67].

On February 7, 2022, the Court began a five-day jury trial on the remaining counts. [ECF Nos. 93-96, 100, 103]. At the conclusion of the presentation of evidence on February 10, 2022, both parties moved for judgment as a matter of law under Federal Rule of Civil Procedure 50(a). [ECF No. 100]. The Court denied both motions and submitted the case to the jury. *Id.* The next day, the jury returned a mixed verdict in favor of both parties. [ECF Nos. 107 (Jury Verdict)].

On the first verdict question, the jury found ContiTech had proven its fraud claim against Defendant McLaughlin

Freight Services by a preponderance of clear and satisfactory evidence and was entitled to $436,130.72 in compensatory damages. [ECF No. 107 at 1]. On the second question, the jury held ContiTech had proven its fraud claim against Defendant Dan McLaughlin but did not award compensatory or punitive damages. *Id.* at 3. On the third verdict question, the jury concluded that McLaughlin Freight proved its fraud claim against ContiTech and awarded $266,471.59 in compensatory and $14,088.51 in punitive damages. *Id.* at 5–6. On the fourth question, the jury determined that ContiTech had proven its unjust enrichment claim against McLaughlin Freight and should receive $436,130.72 in damages. *Id.* at 7–8. On the fifth and final question, the jury concluded McLaughlin Freight had proved its unjust enrichment claim against ContiTech and was entitled to $266,471.59 in compensation. *Id.* at 9.

On March 16, 2022, Defendants filed two separate motions. [ECF Nos. 117; 118]. The first is a renewed Motion for Judgment as a Matter of Law, which is brought pursuant to Federal Rule of Civil Procedure 50(b). [ECF No. 117-1]. Defendants ask the Court to set aside the verdict on fraud because there was not sufficient evidence for the jury to conclude that Dan McLaughlin's submission of falsified approval documents caused damage to ContiTech. *Id.* at 5. They request that the unjust enrichment verdict be set aside because there was no evidence ContiTech overpaid or paid for services it would not have otherwise used. *Id.* at 8. Last, they ask, in the alternative, that the Court remit damages to avoid excessive recovery. *Id.* at 12. ContiTech filed its resistance and Defendants provided their response. [ECF Nos. 136; 147].

The second motion is a Motion to Amend Judgment, which is brought under Federal Rule of Civil Procedure 59(e). [ECF No. 118]. In this Motion, Defendants ask the Court to amend the judgment to address that the verdict did not mention interest. *Id.* They maintain that the judgment should include prejudgment and postjudgment interest because they are mandatory under state and federal law. *Id.* at 2. ContiTech filed a partial resistance and Defendants submitted a reply. [ECF Nos. 135; 143].

The Court considers the legal matters fully briefed and ready for review. For the reasons discussed below, the Renewed Motion for Judgment as a Matter of Law is DENIED with respect to the Motion to Set Aside and GRANTED on remittitur. The Motion to Amend is GRANTED to add prejudgment and postjudgment interest.

III. GOVERNING LAW

A. Judgment as a Matter of Law

Federal Rule of Civil Procedure 50(a) permits judgment on a claim before submission of the case to a jury when "'there is no legally sufficient evidentiary basis for a reasonable jury to find for' the non-moving party." *Porous Media Corp. v. Pall Corp.*, 186 F.3d 1077, 1080 (8th Cir. 1999) (quoting Fed. R. Civ. P. 50(a)). A party must "specify the judgment sought and the law and facts that entitle the movant to the judgment" in its motion. Fed. R. Civ. P. 50(a)(2). When analyzing the motion, a court must: "(1) resolve direct factual conflicts in favor of the

nonmovant, (2) assume as true all facts supporting the nonmovant which the evidence tended to prove, (3) give the nonmovant the benefit of all reasonable inferences, and (4) deny the motion if the evidence . . . would allow reasonable jurors to differ as to the conclusions." *Wilson v. Lamp*, 995 F.3d 628, 631 (8th Cir. 2021) (quoting *Porous Media*, 186 F.3d at 1080).

When the "court does not grant a motion for judgment as a matter of law," the movant may "file a renewed motion for judgment as a matter of law." Fed. R. Civ. P. 50(b). "The grounds for a renewed motion for judgment as a matter of law under Rule 50(b) are limited to those asserted in support of the pre-verdict motion for judgment as a matter of law under Rule 50(a)." *Hyundai Motor Fin. Co. v. McKay Motors I, LLC*, 574 F.3d 637, 640–41 (8th Cir. 2009) (citations omitted). The substantive standards for a Rule 50(a) motion and Rule 50(b) motion are the same. *Walmart, Inc. v. Cuker Interactive, LLC*, 949 F.3d 1101, 1108 (8th Cir. 2020). A court "must affirm the jury's verdict unless, after viewing the evidence in the light most favorable to [the non-moving party], it conclude[s] that no reasonable jury could have found in [their] favor." *Tedder v. Am. Railcar Indus., Inc.*, 739 F.3d 1104, 1109 (8th Cir. 2014) (quoting *Quigley v. Winter*, 598 F.3d 938, 946 (8th Cir. 2008)). This rigorous standard reflects the concern that judgment as a matter of law can be "misused" and "invade the jury's rightful province." *Penford Corp. v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pa.*, 662 F.3d 497, 503 (8th Cir. 2011).

B. Motion to Alter or Amend Judgment

Rule 59(e) empowers district courts to alter or amend judgments. Fed. R. Civ. P. 59(e). Rule 59(e) was adopted "to mak[e] clear that the district court possesses the power to rectify its own mistakes in the period immediately following the entry of judgment." *Norman v. Ark. Dep't of Educ.*, 79 F.3d 748, 750 (8th Cir. 1996) (quoting *White v. N.H. Dep't of Emp. Sec.*, 455 U.S. 445, 450 (1982)). Motions under Rule 59(e) serve a limited function of correcting "manifest errors of law or fact or to present newly discovered evidence." *United States v. Metro. St. Louis Sewer Dist.*, 440 F.3d 930, 933 (8th Cir. 2006) (citation and internal quotations omitted). A party may move for prejudgment interest under Rule 59(e), even if it is the first time the issue has been raised, "because it 'is an element of plaintiff 's complete compensation' and 'it does not raise issues wholly collateral to the judgment in the main cause of action." *Nicholson v. Biomet, Inc.*, 537 F. Supp. 3d 990, 1030 (N.D. Iowa 2021) (quoting *Reyher v. Champion Int'l Corp.*, 975 F.2d 483, 488 (8th Cir. 1992)); *see Old Maint. Enters., LLC v. Orascom E&C USA, Inc.*, Case No. 3:16-CV-00014-SMR-CFB, 2019 WL 13169891, at *2 (S.D. Iowa Mar. 1, 2019) (citing *Hughes v. Burlington N. R.R. Co.*, 545 N.W.2d 318, 321 (Iowa 1996)). The same is true for motions seeking postjudgment interest. *Travelers Prop. Cas. Ins. Co. of Am. v. Nat'l Union Ins. Co. of Pittsburgh, Pa.*, 735 F.3d 993, 1007 (8th Cir. 2013); *Hillside Enters. v. Carlisle Corp.*, 69 F.3d 1410, 1416 (8th Cir. 1995)).

C. Remittitur

"The decision to grant remittitur in a diversity action is a procedural matter governed by federal, rather than state, law." *Parsons v. First. Invs. Corp.*, 122 F.3d 525, 528 (8th Cir. 1997) (quoting *In re Knickerbocker*, 827 F.2d 281, 289 n.6 (8th Cir. 1987)). "Remittitur is a device for reviewing the amount of a damages award, not whether there was a basis for any award at all." *Hudson v. United Sys. of Ark., Inc.*, 709 F.3d 700, 705 (8th Cir. 2013) (citation omitted). "[A] district court should order remittitur 'only when the verdict is so grossly excessive as to shock the conscience of the court.'" *Eich v. Bd. of Regents for Cent. Mo. St. Univ.*, 350 F.3d 752, 763 (8th Cir. 2003) (quoting *Ouachita Nat'l Bank v. Tosco Corp.*, 716 F.2d 485, 488 (8th Cir. 1983)). Likewise, a court should only order a "remittitur when it believes the jury's award is unreasonable on the facts." *Zimmer v. Travelers Ins. Co.*, 521 F. Supp. 2d 910, 925 (S.D. Iowa 2007) (quoting *Ross v. Kansas City Power & Light Co.*, 293 F.3d 1041, 1049 (8th Cir. 2002)).

D. Prejudgment Interest

State law governs prejudgment interest. *Capella Univ., Inc. v. Exec. Risk Specialty Ins. Co.*, 617 F.3d 1040, 1051–52 (8th Cir. 2010) (quoting *Trinity Prods., Inc. v. Burgess Steel, L.L.C.*, 486 F.3d 325, 335 (8th Cir. 2007)). "Under Iowa law, 'in many instances interest is not recoverable on unliquidated damages prior to judgment.'" *Amera-Seiki Corp. v. Cincinnati Ins. Co.*, 721 F.3d 582, 587 (8th Cir. 2013) (quoting *Gosch v. Juelfs*, 701 N.W.2d 90,

92 (Iowa 2005)). Prejudgment interest begins to accrue on the day damages become "liquidated," which is "ordinarily the date of judgment." *Schimmelpfenning v. Eagle Nat'l Assurance Corp.*, 641 N.W.2d 814, 816 (Iowa 2002) (quoting *Midwest Mgmt. Corp. v. Stephens*, 353 N.W.2d 76, 83 (Iowa 1984)). Iowa has an exception to the rule and allows interest to start to accrue "when the damage is complete at a particular time." *Amera-Seiki Corp.*, 721 F.3d at 588 (quoting *Lemrick v. Grinnell Mut. Reins. Co.*, 263 N.W.2d 714, 720 (Iowa 1978)). The relevant Iowa statute considers damages complete when payment is due under a given contract. Iowa Code § 535.2(1) (a – b). When this occurs, prejudgment interest begins to accrue at the time money was due and at a rate of five percent annually. *Ezzone v. Riccardi*, 525 N.W.2d 388, 400 (Iowa 1994). Prejudgment interest is not available for "punitive damages." *Wilson v. IBP, Inc.*, 589 N.W.2d 729, 731 (Iowa 1999).

E. Calculation of Postjudgment Interest

Federal law decides postjudgment interest. *Capella Univ.*, 617 F.3d at 1051–52. "Interest shall be allowed on any money judgment in a civil case recovered in a district court." *Travelers Prop. Cas. Ins. Co.*, 735 F.3d at 1007 (quoting 28 U.S.C. § 1961(a)). "[I]nterest shall be calculated from the date of the entry of the judgment, at a rate equal to the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding." 28 U.S.C. § 1961(a). "Postjudgment interest is mandatory under 28 U.S.C. § 1961." *Hillside Enters.*, 69 F.3d at 1416 (citation omitted).

Appendix B

IV. ANALYSIS

A. Judgment as a Matter of Law

The same bases that Defendants assert in their Rule 50(b) motion were raised in their Rule 50(a) motion at the close of evidence. [ECF No. 133]. The first argument is the lack of evidence to support a finding that the falsified documents caused harm. *Id.* at 3–4. The second contention is there was no evidence to "substantiate any damage calculation." *Id.* at 5–6. Each ground in the instant motion was properly raised, therefore the Court addresses the merits of each contention.

i. Fraud

A party bringing a common law fraud claim must prove: (1) the defendant made a representation to the plaintiff; (2) the representation was false; (3) the representation was material; (4) the defendant knew the representation was false; (5) the defendant intended to deceive the plaintiff; (6) the plaintiff acted in justifiable reliance on the truth of the representation; (7) the representation was a proximate cause of the plaintiff's damages; and (8) the amount of damages." *Dier v. Peters*, 815 N.W.2d 1, 7 (Iowa 2012) (quoting *Spreitzer v. Hawkeye St. Bank*, 779 N.W.2d 726, 735 (Iowa 2009)). Each element of the claim must be established "by a preponderance of clear, satisfactory, and convincing proof." *Lloyd v. Drake Univ.*, 686, N.W.2d 225, 233 (Iowa 2004) (quotation omitted). Only the last two elements are at issue in this motion.

Appendix B

a. Causation

Defendants maintain the jury lacked evidence to find the submission of edited documents to DSV damaged ContiTech. [ECF No. 117-1 at 5]. ContiTech asserts that the jury had sufficient evidence to find it suffered damage from the falsified documents. [ECF No. 136-1 at 3]. The Court finds that the jury had enough evidence to conclude that Dan McLaughlin falsified approval emails, submitted them to DSV to receive payments for unapproved rounders, and this directly caused Defendants to receive payments to which they were not entitled.

"It is generally recognized [that] the causation element of a fraud claim is composed of both factual and legal causation of the loss." *Spreitzer*, 779 N.W.2d at 740 (citation omitted). "The factual causation component addresses the question whether the representation, that is believed to be true but is actually fraudulent, caused the losses." *Id.* Legal causation "address[es] the question whether the losses that in fact resulted from the reliance were connected to the misrepresentation in a way to which the law attaches legal significance." *Dier*, 815 N.W.2d at 9 (citation omitted). On proximate cause, the courts apply a two-part test: "(1) But for defendant's fault, plaintiff 's injuries would not have occurred; and (2) Defendant's fault must be a substantial factor in bringing about plaintiff 's harm." *Robinson v. Perpetual Servs. Corp.*, 412 N.W.2d 562, 567 (Iowa 1987) (quoting *Johnson v. Junkmann*, 395 N.W.2d 862, 865 (Iowa 1986)).

Appendix B

Dan McLaughlin testified he changed approval emails for rounders at trial. [ECF No. 112 at 51]. Specifically, he hit "reply all" or "forward" on the emails and changed the load number to the load corresponding to the week in which he wanted paid to be paid rounders for the delivery of rubber shipments. *Id.* at 51–52. He printed these fake approval emails and submitted them to DSV. *Id.* at 56. He knew that DSV would rely upon the documents to issue payment to him for delivery of rubber and it paid him, as he expected, based on these submissions. *Id.* at 38.

The jury had an adequate basis to find that McLaughlin's conduct was the factual and legal cause of ContiTech's injuries. *Spreitzer*, 779 N.W.2d at 740. The evidence supports a conclusion Dan McLaughlin submitted falsified documents and received unearned payments because of this. [ECF Nos. 112 at 40; 124 at 7–9 (Wilson Depo.)]. This is sufficient to provide a basis for a finding of factual causation. *Spreitzer*, 779 N.W.2d at 740; *Midwest Home Distrib., Inc. v. Domco Indus., Ltd.*, 585 N.W.2d 735, 742 (Iowa 1998). There is evidence showing McLaughlin knew submission of documents would result in payment. [ECF No. 120 at 38]. This is sufficient to provide a basis for the jury to find his conduct was the legal cause of damages. *Robinson*, 412 N.W.2d at 567. The jury's finding on causation was supported by evidence.[2]

2. Beyond these statements, there is plenty of evidence to support this finding. For example, Dan McLaughlin's testimony supports the conclusion ContiTech had no knowledge of his conduct and did not approve of it. [ECF Nos. 112 at 26 (stating nobody at ContiTech knew about his process); 131 at 19 (noting there was "no rhyme or reason" for the process)]. There is evidence Dan Cook

Defendants respond there is considerable evidence ContiTech knew of Dan McLaughlin's process and approved its use, which means Dan McLaughlin did not cause these damages. [ECF No. 117-1 at 5]. While Defendants' argument is not without support, the jury decides what evidence to believe as well as what inferences should be drawn. *White v. Pence*, 961 F.2d 776, 780–81 (8th Cir. 1992) (discussing how a "trial judge may not usurp the functions of a jury . . . [which] weighs the evidence and credibility of witnesses."). "A jury is free to disbelieve any witness, even if the testimony is uncontradicted or unimpeached." *B&B Hardware, Inc. v. Hargis Indus., Inc.*, 912 F.3d 445, 452 (8th Cir. 2018) (quoting *Willis v. St. Farm Fire & Cas. Co.*, 219 F.3d 715, 720 (8th Cir. 2000)). In short, the jury was free to disbelieve Defendants' argument on causation if there was evidence in support of the opposite conclusion, which is what occurred. The Court declines to intervene and the Renewed Motion for Judgment is therefore DENIED.

b. Damages

Defendants maintain that the jury lacked evidence necessary to determine an appropriate amount of damages. [ECF No. 117-1 at 5]. Defendants argue ContiTech's evidence relies on the unsupported assertion they would have accepted one-way rates. *Id.* They assert the damages, if any, are the difference between an alternate "carrier's charge and McLaughlin Freight's

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disapproved of rounders in all but limited circumstances. [ECF Nos. 120-20 (Email Exchange on March 12, 2019); 123-22 (emails were for "rounder[s] that I had okayed.")].

charge." *Id.* at 6. ContiTech counters this argument misapplies the governing standard, which asks "what would have happened if the fraud never occurred." [ECF No. 136-1 at 3]. There is sufficient evidence for the jury to find that appropriate payment for services was a one-way rate.

"An essential element of fraud requires the plaintiff to show the fraud resulted in damage." *Spreitzer*, 779 N.W.2d at 739 (citing *Sanford v. Meadow Gold Dairies, Inc.*, 534 N.W.2d 410, 413 (Iowa 1995)). There are two ways to calculate damages in fraud cases: "(1) benefit of the bargain plus consequential damages and (2) out of pocket expenses." *Midwest Home Distrib.*, 585 N.W.2d at 739 (citing *Cornell v. Wunschel*, 408 N.W.2d 369, 380 (Iowa 1987)). "The purpose underlying the benefit-of-the-bargain rule is to put the defrauded party in the same financial position as if the fraudulent representations had in fact been true." *Id.* Damages are limited to the harms foreseeably caused by "the tortious aspect of the [tortfeasor's] conduct." *Spreitzer*, 779 N.W.2d at 744.

Defendants were paid based on a predetermined fee schedule. [ECF Nos. 120-13; 120-14; 131 at 16 (discussing how parties negotiated the fee schedule)]. ContiTech staff – Daniel Cook and Robin Daniel – asked Regina Wilson to review billed expenses and conduct an audit. [ECF No. 124 at 15]. Wilson reviewed the materials and created an audit log to identify potentially problematic charges. [ECF Nos. 120-1; 120-2-120-12]. The review found hundreds of times where Dan McLaughlin billed a rounder rate for trips that ContiTech believed should have been billed as one-way

trips. *Id.* Wilson calculated the overbilled amount under ContiTech's theory. [ECF No. 120-1 at 1]. This evidence provides sufficient information for the jury to decide that the alternate world would have resulted in a one-way rate and the amount of damages was how much was overbilled. This would allow the jury to return a verdict in the amount of $436,130.72.

Defendants maintain the evidence shows that they would not have accepted one-way rates. [ECF No. 117-1 at 6 (discussing how "the undisputed trial testimony was that McLaughlin Freight would not, could not, have moved these loads for less than a rounder.")]. This is because they receive $1,358.88 to haul a load of rubber roundtrip and they pay the truck driver $1,167.78 to haul the rubber, which provides them a profit of $175.15 for each trip. [ECF Nos. 127-7 (Summary of Driver Trip); 127-8 (Sample Driver Trip Files); 127-9 (Historical Pay Rates)]. If they were paid for a one-way trip, they would lose money. [ECF No. 117-1 at 14]. The jury was welcome to not accept this argument as compelling. *Walker v. Fred Nesbit Distrib. Co.*, 356 F. Supp. 2d 964, 967 (S.D. Iowa 2005) (quoting *Lavender v. Kurn*, 327 U.S. 645, 652 (1946)). The Court will not reverse the jury determination because a different conclusion could have been reached. The Motion is DENIED.

c. Summary

As previously discussed, there was sufficient evidence to support the jury's finding in favor of ContiTech on its fraud claim against Defendants Dan McLaughlin and

McLaughlin Freight. The Renewed Motion for Judgment as a Matter of Law is therefore DENIED.

ii. Unjust Enrichment

The parties dispute whether the jury had enough evidence to return a verdict for ContiTech on its unjust enrichment claim. [ECF Nos. 118; 136]. Defendants maintain the jury did not have the necessary information to return the verdict because ContiTech did not provide evidence on the reasonable market value of services or a damages benchmark. [ECF No. 118-1 at 9-10]. ContiTech responds the jury had evidence "the reasonable value of the services was the amount McLaughlin contracted it would receive for a one-way rate." [ECF No. 136-1 at 7]. The jury had evidence to return a verdict for ContiTech on unjust enrichment for the awarded damages amount.

"Unjust enrichment is rooted in the principle that one party should not be unjustly enriched at the expense of another." *Endress v. Iowa Dep't of Hum. Servs.*, 944 N.W.2d 71, 80 (Iowa 2020) (citing *State ex rel. Palmer v. Unisys Corp.*, 637 N.W.2d 142, 154 (Iowa 2001)). It has "few limitations." *Id.* "The elements of unjust enrichment are (1) enrichment of the defendant, (2) at the expense of plaintiff, (3) under circumstances that make it unjust for the defendant to retain the benefit." *Behm v. City of Cedar Rapids*, 922 N.W.2d 524, 577 (Iowa 2019) (citation omitted). "Damages under a claim of unjust enrichment are limited to the value of what was inequitably retained." *Iowa Waste Sys., Inc. v. Buchanan Cnty.*, 617 N.W.2d 23, 30 (Iowa 2000) (citation omitted). The relief is generally

the "disgorgement of the entire amount by which the party was unjustly enriched." *Bohlen v. Heller*, 872 N.W.2d 199, 2015 WL 6087621, at *2 (Iowa Ct. App. 2015) (discussing how the case presented a "seeming anomaly" to this rule).

The primary evidence in support of the damage calculation on the unjust enrichment claim is the audit log created by Regina Wilson. [ECF Nos. 120-1-120-12]. Wilson constructed the log by comparing the bills of lading, approval emails, and invoices with approval information provided by ContiTech. [ECF No. 124 at 21]. Wilson did not review information from other carriers during the process. *Id.* As noted above, the audit concluded that Dan McLaughlin tendered hundreds of false documents to DSV that billed rounders for one-way trips and received $436,130.72 as a result. [ECF No. 120-1 at 1-14]. This evidence provides a basis for the jury to decide what ContiTech should have paid for the services – one-way rates – and the money that was "inequitably retained." *Iowa Waste Sys.*, 617 N.W.2d at 30. By extension, this would allow the jury to calculate unjust enrichment damages and return a verdict for ContiTech in the amount of $436,130.72.

Defendants assert ContiTech did not offer evidence "the reasonable value of McLaughlin Freight brokering six hundred forty-five loads . . . was less than the value of the amount ContiTech paid McLaughlin Freight for those loads." [ECF No. 117-1 at 9-10]. The contention asserts the jury erred in calculating damages because it determined value of the services and unjust enrichment in a different manner. *Id.* Despite these protestations, the

evidence does provide an adequate basis to conclude the value of the services may be a one-way rate in the absence of approval by ContiTech. When there is conflicting evidence and inferences, it is ultimately the role of the jury to determine which one is correct. *Guyton v. Tyson Foods, Inc.*, 936 F. Supp. 2d 1075, 1079 (S.D. Iowa 2013). Accordingly, the Court declines to intervene and overrule the decision of the jury.

There was sufficient evidence to support the jury's finding in favor of ContiTech on its unjust enrichment claim. The Renewed Motion for Judgment as a Matter of Law is DENIED.

B. Double Recovery

The parties agree that the jury verdict provides double recovery for each party. [ECF No. 117-1 at 15; 136-1 at 8]. The Court modifies it as detailed below.

"A 'successful plaintiff is entitled to one, but only one, full recovery, no matter how many theories support entitlement.'" *205 Corp. v. Brandow*, 517 N.W.2d 548, 551 (Iowa 1994) (quoting *Clark – Peterson Co. v. Indep. Ins. Assocs.*, 514 N.W.2d 912, 915 (Iowa 1994)). "Duplicate or overlapping damages are to be avoided." *Team Cent., Inc. v. Teamco, Inc.*, 271 N.W.2d 914, 925 (Iowa 1978) (citations omitted). Recovery is duplicative when the verdicts are "based on the same circumstances" and address the same injury. *Calderon v. Khan*, 966 N.W.2d 337, 2021 WL 3896892, at *3 (Iowa Ct. App. 2021). Upon finding a verdict is duplicative, a court imposes the verdict that provides

greater damages. *Revere Transducers, Inc. v. Deere & Co.*, 595 N.W.2d 751, 770–71 (Iowa 1999); *205 Corp.*, 517 N.W.2d at 549–50.

The Court begins with ContiTech's claims. The jury returned a verdict for ContiTech on two different theories of liability: fraud and unjust enrichment. [ECF No. 107 at 3–4; 7]. Each award provided ContiTech recovery for the amount it overpaid in hundreds of separate instances of overbilling. [ECF No. 120-1]. This calculation provided a compensatory damage verdict of $872,261.44 in total, awarding $436,130.72 for each theory of liability. [ECF No. 107 at 3–4]. Because the amounts represent the same recovery for the same harms, the Court finds it appropriate to reduce the total recovery to $436,130.72. This award will be based on ContiTech's fraud theory.

Having resolved the duplication issue on ContiTech's claims, the Court turns to address the potential duplicative recovery on Defendants' counterclaims. The jury considered and returned verdicts in favor of the Defendants under two theories of liability: fraud and unjust enrichment. [ECF No. 107]. For fraud, they awarded $266,471.59 in compensatory and $14,088.51 in punitive damages. *Id.* at 5–6. On unjust enrichment, Defendants received $266,471.59 in compensatory damages. *Id.* at 9. The compensatory damage amount in each award represents the same recovery for the same injuries, which is the amount of money ContiTech owes Defendants for non-payment of properly billed deliveries. [ECF No. 127 at 1]. The verdicts therefore provide double recovery. Because the Court must impose the

greater recovery, the appropriate amount is $266,471.59 in compensatory damages and $14,088.51 in punitive damages for Defendants on their fraud claim.

As discussed above, the verdict must be modified to prevent double recovery for each party. The Court awards ContiTech $436,130.72 on its theory of fraud against Defendant McLaughlin Freight. The appropriate amount of damages for Defendants is $266,471.59 in compensatory damages and $14,088.51 in punitive damages on their fraud counterclaim.

C. Prejudgment Interest

Both Defendants move for prejudgment interest under Federal Rule of Civil Procedure 59(e). [ECF Nos. 118; 135-1]. As discussed below in detail below, both parties are entitled to prejudgment interest, although in different ways.

The Court begins with Defendants' request for prejudgment interest. Defendants assert they should receive prejudgment interest in the amount of five percent because the damages were complete at a specified date prior to filing the complaint. [ECF No. 118-1 at 2]. ContiTech resists this argument to the extent payments were not officially due until thirty days after the provision of services under the contract, which shortens the time interest would accrue. [ECF No. 135-1 at 6] (citing Iowa Code § 535.2(1)(b)). The damage suffered by Defendants was complete when the thirty-day period for ContiTech to pay the outstanding invoices elapsed. At that point,

damages were suffered and due under the contract and statute. The Court imposes a five percent prejudgment interest, which shall begin to accrue when the relevant invoices became overdue.

The Court turns to ContiTech's request. Iowa law states the award of prejudgment interest "is mandatory and should be awarded even when interest has not been requested." *Hog Slat, Inc. v. Ebert*, 33 Fed. App'x 231, 232 (8th Cir. 2002) (quoting *Hughes*, 545 N.W.2d at 321). The damages suffered by ContiTech were complete on the day it paid DSV for its overpayment of McLaughlin. Until then, ContiTech had not suffered a loss and the money was not due under the statute. The judgment shall include prejudgment interest of five percent, which accrued from the time ContiTech paid DSV for the fraudulent invoices until the date of entry of judgment.

The Court has found that both parties are entitled to prejudgment interest; they shall calculate and submit the proper damages, as well as provide their methods of calculation.

D. Postjudgment Interest

Pursuant to Federal Rule of Civil Procedure 59(e), Defendants moved the Court to impose postjudgment interest on the verdict. [ECF No. 118]. ContiTech also requested postjudgment interest in its response. [ECF No. 135-1].

The imposition of postjudgment interest is mandatory and "shall be calculated from the date of the entry of the judgment, at a rate equal to the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors for the Federal Reserve System, for the calendar week preceding." 28 U.S.C. § 1961(a). The award shall accrue interest "until the judgment is satisfied." *Huntington Nat'l Bank v. Dignity Senior Living, LLC*, Case No. 21-cv-2055 (WMW/JFD), 2022 U.S. Dist. LEXIS 199218, 2022 WL 16638346, at *5 (D. Minn. Nov. 2, 2022) (quoting *Jenkins by Agyei v. Mo.*, 931 F.2d 1273, 1275 (8th Cir. 1991)). The rate of interest is 0.982%. [ECF No. 118-2 at 1–2]. The Court orders the judgment include postjudgment interest for ContiTech and Defendants at a rate of 0.982%, which shall accrue from the date of the entry of judgment – February 16, 2022.

V. CONCLUSION

The Renewed Motion for Judgment as a Matter of Law is **DENIED**. The Motion for Remittitur is **GRANTED** to the extent necessary to clarify parties shall not receive a double recovery. ContiTech is entitled to **$436,130.72** in compensatory damages on the fraud verdict the jury returned against McLaughlin Freight. Defendants are entitled to **$266,471.59** in compensatory damages and **$14,088.51** in punitive damages on their fraud counterclaim. The parties are entitled to prejudgment interest at a rate of five percent, which shall begin accruing from the time the compensatory damages were complete. Defendant is not entitled to prejudgment interest for its punitive damages. They are also both entitled to postjudgment

interest at the rate of 0.982% from the date of entry of judgment to the payment of the amount due.

IT IS SO ORDERED.

Dated this 25th day of January, 2023

/s/ Stephanie M. Rose
STEPHANIE M. ROSE, CHIEF JUDGE
UNITED STATES DISTRICT COURT

APPENDIX C — JUDGMENT IN A CIVIL CASE OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF IOWA, FILED FEBRUARY 16, 2022

CIVIL NUMBER: 3:20-cv-00075-SMR-SBJ

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

CONTITECH USA, INC.,

Plaintiff,

v.

MCLAUGHLIN FREIGHT SERVICES, INC.
AND DAN MCLAUGHLIN,

Defendants.

JUDGMENT IN A CIVIL CASE

☒ **JURY VERDICT.** This action came before the Court for trial by jury. The issues have been tried and the jury has rendered its verdict.

☐ **DECISION BY COURT.** This action came before the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED:

Judgment is entered in favor of the Plaintiff, ContiTech USA, Inc. and against the Defendant, McLaughlin Freight

Services, Inc. on the Plaintiff's fraud claim in the amount of $436,130.72. Judgment is entered in favor of the Plaintiff, ContiTech USA, Inc. and against Dan McLaughlin on the Plaintiff's fraud claim in the amount of $0. Judgment is entered in favor of the Defendant, McLaughlin Freight Services, Inc. and against the Plaintiff, ContiTech USA, Inc. on the Defendant's fraud counterclaim in the amount of $266,471.59 with $14,088.51 in punitive damages. Judgment is entered in favor of the Plaintiff, ContiTech USA, Inc. and against the Defendant, McLaughlin Freight Services, Inc. on the Plaintiff's unjust enrichment claim in the amount of $436,130.72. Judgment is entered in favor of the Defendant, McLaughlin Freight Services, Inc. and against the Plaintiff, ContiTech USA, Inc. on the Defendant's unjust enrichment counter claim in the amount of $266,471.59. Matters related to off-setting of the verdict damages will be addressed by further order of the Court.

Date: February 16, 2022

CLERK, U.S. DISTRICT COURT

/s/ Brian Phillips
By: Deputy Clerk

APPENDIX D — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT, FILED FEBRUARY 28, 2024

No. 23-1379

CONTITECH USA, INC.,

Appellee,

v.

MCLAUGHLIN FREIGHT SERVICES, INC. AND DAN MCLAUGHLIN, INDIVIDUALLY,

Appellants.

Appeal from U.S. District Court
for the Southern District of Iowa—Eastern
(3:20-cv-00075-SMR)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

Judge Colloton did not participate in the consideration or decision of this matter.

February 28, 2024

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.
/s/ Michael E. Gans

APPENDIX E — TRIAL TRANSCRIPT FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA EASTERN DIVISION, FEBRUARY 10, 2022

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
EASTERN DIVISION

Case No. 3:20-cv-00075

CONTITECH USA, INC.,

Plaintiff,

vs.

MCLAUGHLIN FREIGHT SERVICES, INC.,
AND DAN MCLAUGHLIN, INDIVIDUALLY,

Defendants.

MCLAUGHLIN FREIGHT SERVICES, INC.,

Counterclaim Plaintiff,

vs.

CONTITECH USA, INC.,

Counterclaim Defendant.

TRIAL TRANSCRIPT, Volume IV

Thursday, February 10, 2022, 8:29 a.m.

Appendix E

BEFORE: THE HONORABLE STEPHANIE M. ROSE, Chief Judge, and Jury.

APPEARANCES:

For the Plaintiff/Counterclaim Defendant:

MICHAEL A. DEE, ESQ.
CASSANDRA M. ALESCH, ESQ.
Brown, Winick, Graves, Gross and Baskerville, P.L.C.

For the Defendants/Counterclaim Plaintiff:

ABRAM V. CARLS, ESQ.
JOSEPH J. PORTER, ESQ.
Simmons Perrine Moyer Bergman PLC

* * *

[702] MS. ALESCH: Yes. And this is a small point. We would just like consistency, again, between Verdict Form A and B, that they both read, "by a preponderance of clear, satisfactory, and convincing evidence." The wording has just shifted in one versus the other.

THE COURT: Oh, yep. I intended to do that, and when I went back to the burden of proof, I missed that one. So, yes, I will fix that.

MS. ALESCH: Okay. And going back to the issue of double recovery, in the damages questions, we proposed it as written, but we are concerned about double recovery or what the jury might think as they answer these questions.

You know, we understand sitting here today that if they did find against, you know, Dan McLaughlin for $450,000 on unjust enrichment and $450,000 on fraud, we understand that's not a $900,000 judgment, but we're concerned with what the jury might do with that math in deciding what damages to allow for. And, I mean, same with any judgment that might be against ContiTech.

THE COURT: How would you propose we tackle that?

MS. ALESCH: We are open for discussion.

MR. DEE: You would have the—you'd have the liability question first and then some kind of an instruction after—well, you'd have to have the liability questions for each cause of action, Your Honor, but the instruction, you know, if yes this, then no that, obviously.

[703] And then before the damages question, whichever that would be, Question 3 or 4 or whatever, however far down we are, it would say if you answered yes to either of, essentially, the liability questions, proceed to the next question and fill in your damages number.

Do you see what I mean?

THE COURT: Yeah. So in other words, both damages are the last two questions as opposed to in the middle of the stream; is that the—

MR. DEE: Right. But then on the other hand, as Ms. Alesch pointed out to me, punitive damages are only available if there's a fraud finding.

THE COURT: Right.

MR. DEE: So, you know, if we're going to do—I mean, that was what—so either way poses a bit of a problem, but, you know, we could, you know, maybe fashion an instruction to the jury that says, you know, if you find in favor of ContiTech or you find in favor of McLaughlin Services on their respective claims and counterclaims on both causes of action, something like, you know, there won't be double counting, enter the amount that you think is appropriate.

I mean, one of our arguments in our defense in argument we're going to make is that there isn't, you know, $300,000 worth of fraud damages. So now the more I think about it, we probably do need a separate line. But the jury's—there would [704] need to be some kind of instruction to the jury to—it's not a very legal term, but to—essentially, "Don't worry, you're not going to be ordering a double recovery."

MR. CARLS: Let me propose—and just thinking out loud here rather than maybe something specific, but the experience I've had in this sort of where we have overlapping damages or claims for the same thing where damages are—you know, the same basis for damage for fraud forms the same basis for damages for unjust enrichment and we have overlapping—you get into an

issue with the jury where if you instruct them to not—to not recover—or not award damages for the same thing twice, then what you're effectively asking them to do is apportion between the claims, which is also something you can't do.

So my preference, and I think we may have proposed this—Joe, you can tell me if I'm out of bounds here—is that you have a full adjudication of each claim individually. And then in terms of double recovery, I don't know if that's probably a function of remittitur post-trial to come in and clean up the double recovery nature.

And there may be ways to take care of that in terms of either a stipulation to the maximum award or, you know, something like that, but my preference would be to get all claims adjudicated by the jury fully because anything less than that runs into apportionment and things that are just hard—[705] that we can't do.

So I don't know if there's a solution in any of that, but those are my thoughts.

THE COURT: Yeah. I agree it's a thorny issue, and I don't know how we instruct the jury other than as we are. If we give them some kind of instruction about, you know, managing the damages on one side or the other, that may affect their verdicts—

MR. CARLS: Right.

THE COURT: —and it may affect how the verdicts are upheld down the road. It's almost akin to, in a criminal

case, where there's a lesser included, you have them deliberate on both and then you set aside the one later.

MR. DEE: Would it be—if we did the verdict in roughly the form we have right now, would it be allowable during argument for us to say to the jury something along the lines of, "Look, if you find for either party on both of their causes of action," you know, "you can provide the full amount of damages you think is appropriate. The Court knows"—you know, nobody's asking for double recovery. "The Court will then take care of it afterwards."

There has to be—because Abe's right. I mean, it's the same—the jury may sit there and say, look, the damages for the counterclaims are 300,000. Let's do 150 to each because we can't award $600,000 of damages if that's what they find.

[706] So there has to be—there has to be something that tells them that if they find for either party on both causes of action that, like he said, they don't apportion it. I agree that's not appropriate, but by the same token, they may sit there thinking we just awarded one party or the other double what they're entitled to or, you know, some amount more.

THE COURT: Yeah. Yep. I'm thinking through.

I'm thinking out loud here. We could give some kind of instruction to the jury that they have to consider each claim as a stand-alone claim, as if the other claims weren't there, and then at the end we could ask them a verdict

question that says, you know, what's the total amount of—assuming both claims were—or all of the claims—you found in favor of all of the parties, or however we want to phrase that, what's the total amount of recovery you think, you know, each party is entitled to and, you know, give them an instruction, "In this instruction you may consider the whole of your verdict," or something—some piece that we can pull out to look at how the verdict comes in on the various counts but also gives us some legal finding about total recovery.

MR. DEE: Yeah. That sounds like a really good concept. How—

THE COURT: How we do it is the confusing—

MR. DEE: Well, yeah. Of course. But I'm also thinking—I can't quite think this through, but, you know, [707] what if they decide a different amount of damages is appropriate for, like, fraud claim versus, you know, the unjust enrichment claim?

THE COURT: Which may well happen—

MR. DEE: Yeah.

THE COURT: —because they are two different legal concepts.

And, again, I do more criminal cases, so that's where my mind goes, but there is an instruction that's given standardly in criminal cases where there's multiple counts

where you say you must separately consider, you know, each crime and render a separate verdict on each crime.

MR. DEE: I mean, maybe if you put something in there along those lines, you need to separately consider this and award—separately award damages, if that's what your decision is, on each cause of action.

MR. CARLS: Judge, I—

MR. DEE: Then we need something like do not—

MR. CARLS: Part of the issue here is just the overlapping nature.

THE COURT: Yeah.

MR. CARLS: And I'm not for the—I like the idea of adjudicate each claim separately, but I'm not for the idea of then give a total amount. I think that would just—that's just going to breed confusion, breed problems.

[708] I think the way to handle, once we have the separate adjudications, then we can get into, basically, if the plaintiff is awarded on both claims, we know that it's 100 percent overlap, right? They're asking for basically the same recovery under two different claims.

The defense—or the counterclaims are a little bit different because we've got the 300,000 invoices and then we've got the other—you know, because tort recovery is broader, there is going to be, you know, noted interest damages as well.

And so to the extent there is overlap, obviously, we're not asking for a double recovery either in this case, but we need those complete adjudications, and I worry that if you give the jury, then, that third instruction, you're inviting them to give you an inconsistent verdict.

THE COURT: Any opening for inconsistency, juries tend to run through, I'll tell you that.

MR. CARLS: Yeah. So I like the complete adjudication and think that once that's in, we would be able to deal with any overlap post-trial, knowing that, you know, the separate damages claimed here are pretty easy to identify what they are.

MR. DEE: Yeah. And there's no doubt that we, in this room, could deal with that if that's what they do.

THE COURT: Right.

MR. DEE: The issue is their confusion if they think, you know, on—let's just use the counterclaims. If they [709] think—if they think that there should be a $300,000 recovery for both fraud and unjust enrichment and they split it up 150 each, that's probably not what you want.

MR. CARLS: Well, I think Judge is saying she's going to instruct them on the adjudicate each of those claims separately.

THE COURT: Here again, I'm thinking back, and my mind naturally goes to criminal stuff, but I think we

could certainly give them an instruction that says you're to adjudicate each claim completely separately, consider them each separately, form your verdicts separately.

I could add a sentence much like we do in criminal cases where we say, "In the event Defendant is convicted, punishment is my decision. You should not consider that in any way." I could say, "In the event Plaintiff is awarded damages on all claims, I will be able to resolve any double"—you know, something along those lines, "the Court will be able to ensure that double recovery does not occur," or something like that.

MR. DEE: Yeah. I think that's the right concept.

THE COURT: Is that something that's workable? I'll propose some language.

Where would you suggest we do that; in the verdict form, in the instructions?

MR. DEE: How about—

MR. CARLS: We were hoping you would just propose it, [710] Your Honor.

MR. DEE: How about in the cloud?

THE COURT: This is such a great game of hot potato that we are playing with each other at this point.

I will propose something and get it back to the parties. I have an idea in my mind that I can pull from some old instructions and work with.

MR. CARLS: I'm surprised that you have not done this issue. There isn't like a stock—

THE COURT: You're hilarious. No.

MR. CARLS: —instruction you guys can pull.

THE COURT: We were laughing—my clerk and I were laughing on Tuesday when we were working on jury instructions, because Judge Bennett has an opinion where he just basically says we don't know how to instruct on these very types of cases, and if Judge Bennett hasn't found a way to do it in a 100-page opinion, then it really doesn't exist probably. And so, you know, if all hope fails, usually you can find a footnote in one of his opinions that will give you some guidance, and even he is confused at this point.

So I'll do my best and get something back to you.

Does that conclude Plaintiff 's comments on instructions and verdict?

MS. ALESCH: One final thing on the verdict form, Your Honor. Our unjust enrichment claim was only made against

* * *

APPENDIX F — FINAL INSTRUCTION NO. 11

FINAL INSTRUCTION NO. 11

SEPARATE CONSIDERATION OF EACH CLAIM

You will be asked to deliberate on five separate claims: (1) ContiTech's fraud claim against Dan McLaughlin; (2) Conti Tech's fraud claim against McLaughlin Freight; (3) McLaughlin Freight's fraud claim against ContiTech; (4) ContiTech's unjust enrichment claim against McLaughlin Freight; and (5) McLaughlin Freight's unjust enrichment claim against ContiTech.

You must give separate consideration to the evidence about each individual claim. Each claim is entitled to be treated separately, and you must return a separate verdict for each claim. If you find in favor of any party on any claim, you should not consider matters related to "double recovery." The law instructs the judge on how to apportion such a verdict to avoid double recovery. You should not be concerned with that issue during deliberations and should render a verdict on each claim as if stands alone in the case.