No. 23-1253

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

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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COUNTERSTATEMENT OF QUESTION PRESENTED

It is a misstatement for Petitioner to assert Rule 59(e) imposes the same deadline on the district court as Rule 59(d). Regardless, neither the District Court nor Eighth Circuit analyzed Rule 59 when addressing Petitioner's request for remittitur, but instead relied on the District Court's inherent authority to modify a verdict to prevent double recovery. As for prejudgment and post-judgment interest, the District Court acted well within the scope of its authority to award both parties both forms of judgment interest. Accordingly, Respondent respectfully suggests the issue before this Court is Petitioner's request to reverse the District Court's order preventing Petitioner from receiving double recovery. The correct question presented should be:

Does a district court have the discretion and inherent authority to order remittitur to prevent double recovery?

CORPORATE DISCLOSURE STATEMENT

ContiTech USA, Inc.'s parent corporations include ContiTech North America, Inc., ContiTech Global Holding Netherlands B.V., ContiTech AG, ContiTech-Universe Verwaltungs-GMBH, and Formpolster GMBH.

Continental Aktiengesellschaft is a publicly held corporation owning 10% or more of the stock of Contitech USA, Inc.

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INTRODUCTION

As the Eighth Circuit noted, "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." Pet. App. 9a. Accordingly, Petitioner's characterization of the question presented does not accurately reflect what occurred in the proceedings below and completely ignores that success for the Petitioner in this Court means receiving double recovery of damages. This case is not about the District Court's authority to act under Federal Rule of Civil Procedure 59, but the District Court's inherent authority and discretion to prevent double recovery as well as order interest on the judgment.

Both parties asserted two theories of recovery for the same harm, represented to the District Court they were not seeking double recovery (Pet. App. 44a-45a), and the parties engaged in an extensive colloquy with the District Court regarding this very concern prior to instructing the jury (Pet. App. 37a-47a). The District Court, without objection from either party, included a jury instruction addressing the issue of double recovery (Pet. App. 48a) and retained authority to modify the judgment to prevent double recovery, noting in the Judgment: "Matters related to off-setting of the verdict damages will be addressed by further order of the Court." Pet. App. 35a.

The jury awarded both parties damages for their respective unjust enrichment and fraud claims, i.e., judgment for ContiTech against McLaughlin Freight for $436,130.72 *for each claim* and judgment for McLaughlin Freight against ContiTech for $266,471.59 *for each claim*.

Following entry of judgment, Petitioner submitted a Rule 50(b) Renewed Motion for Judgment as a Matter of Law, or in the Alternative, Remittitur. Notably, Petitioner did not request a new trial under Rule 59 as an alternative, as is allowed by Rule 50(b), but only requested remittitur without citing to a specific rule of civil procedure.[1] Neither the District Court nor the Eighth Circuit analyzed Petitioner's request for remittitur to prevent double recovery under Rule 59, as noted in the above excerpt from the Eighth Circuit's opinion, but relied on years of unquestioned precedent that a party is not entitled to collect multiple awards for the same injury.

It is well-settled that a successful party is entitled to only one full recovery, no matter the number of theories of recovery claimed. *205 Corp. v. Brandow*, 517 N.W.2d 548, 551 (Iowa 1994). The District Court here properly reduced each party's damages to prevent double recovery. Respondent respectfully urges this Court not to lose sight of the fact that granting the relief Petitioner seeks will allow Petitioner to recover duplicative damages – a result Petitioner unequivocally represented to the District Court it was not seeking. Pet. App. 44a-45a.

Even assuming the District Court considered Petitioner's Renewed Motion for Judgment as a Matter of Law or, in the Alternative, Remittitur to be a motion to alter or amend the judgment under Rule 59(e), the District Court has the inherent power to make appropriate

1. Petitioner also separately filed a Rule 59(e) Motion to Alter or Amend Judgment, requesting both prejudgment and post-judgment interest. There was no mention of remittitur in that motion.

corrections, even with respect to issues not raised in the motion. *Charles v. Daley,* 799 F.2d 343, 347 (7th Cir. 1986). Thus, the District Court's award of prejudgment interest and elimination of duplicative damages as to both parties was proper.

Regarding the District Court's award of post-judgment interest, it is undisputed post-judgment interest is mandatory, per 28 U.S.C. § 1961(a), without requiring a post-trial motion.

STATEMENT OF THE CASE

Respondent agrees with Petitioner's Statement of the Case, except for the following:

Petitioner's second paragraph makes reference to "overlapping" damages. Pet. 5. For the sake of clarity, the final jury instruction stated, in part, "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." Pet. App. 48a. The term "overlap," or any derivative thereof, was not used in the jury instructions.

Petitioner's third paragraph states Petitioner "moved the court under Rule 59(d) to, among other things, remit ContiTech's judgment[.]" Pet. 5. As discussed at length below, Petitioner's motion requesting the District Court to remit the damages award to prevent double recovery was not made under Rule 59(d) or any specific rule of civil procedure.

Petitioner refers in the fifth paragraph to its request for remittitur and the District Court's order of remittitur as a "Rule 59(d) remittitur order." Pet. 5. However, this same paragraph acknowledges the Eighth Circuit did not mention a Rule 59 deadline.

Finally, Petitioner's Statement of the Case is notably lacking any discussion of the colloquy and agreement amongst counsel and the District Court regarding eliminating double recovery if the jury's verdict would so require, which is critical to provide context to the proceedings that followed. *See* Pet. App. 37a-47a.

REASONS TO DENY PETITION FOR CERTIORARI

1. THE FACTS OF THIS CASE DO NOT PRESENT THE ISSUE RAISED BY PETITIONER.

Petitioner urges this Court to answer a question that was not raised in this case. Federal Rule of Civil Procedure 59(d) establishes a twenty-eight-day deadline for courts, either on their own initiative or in granting a party's motion for reasons not stated in the motion, to *order a new trial.* Fed. R. Civ. Pro. 59(d). Petitioner attempts to stretch Rule 59(d) to apply equally to a court's order of remittitur, incorrectly asserting such an order is a "classic Rule 59 claim." Pet. 2.

Petitioner relies on *Perez-Perez v. Popular Leasing Rental, Inc.*, 993 F.2d 281, 283 (1st Cir. 1993) to support this (Pet. 2-3), but the court in *Perez-Perez* analyzed a party's motion for relief from an excessive verdict (brought under no specific rule) as a motion under Rule 59(e), not 59(d). *Perez-Perez*, 993 F.2d at 283.

Contrary to Petitioner's assertion (*see* Pet. 11), it is *not* undisputed the District Court submitted its post-trial order remitting the judgment under Rule 59(d). Indeed, the District Court did not analyze Petitioner's Renewed Motion for Judgment as a Matter of Law or, in the Alternative, for Remittitur, under Rule 59(d). Nor did the Eighth Circuit view the District Court's remittitur as granting a motion under Rule 59(e) or as acting *sua sponte* under Rule 59(d). Instead, the Eighth Circuit found the District Court properly exercised its discretion to remit both parties' damages awards to prevent double recovery, noting specifically here, "[i]t is undisputed that the jury's verdict provided double recovery for each party," and it is "undisputed that the parties agreed that the district court could modify any verdict to prevent double recovery." Pet. App. 9a. Petitioner now wholly ignores its own agreement to allow the District Court to address issues of double recovery, and with this Petition seeks an award of that very thing.

2. THE EIGHTH CIRCUIT'S DECISION DID NOT CREATE A CIRCUIT SPLIT.

Petitioner claims 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." Pet. 6. But that is not what the Eighth Circuit said. The Court did not address Rule 59 in its analysis of the remittitur issue, but rather held "[r]emittitur 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,'" concluding it is "undisputed" the jury awarded each party double recovery, the parties had agreed the district court

could modify the verdict to prevent double recovery, and the district court therefore did not err in reducing each party's award to eliminate double recovery. Pet. App. 9a.

Petitioner repeatedly – and incorrectly – avers the District Court's decision to remit the parties' respective verdicts was done pursuant to Rule 59(d). Compounding this error, Petitioner also intermixes and fails to distinguish between Rules 59(d) and 59(e) and the many circuit court rulings decided under one or the other. For example, while Petitioner claims four circuits have enforced Rule 59's time limits against late-acting district courts (Pet. 3), these cases are distinguishable as there is no dispute a district court does not have authority *to grant a new trial* on its own initiative outside the time limit prescribed under Rule 59(d). That is not what happened, nor is it the issue, in this case.

Lesende v. Borrero examines whether a district court's failure to *order a new trial* on grounds not asserted in a party's motion preserved the issue for appeal. The Third Circuit held, "Because the District Court did not comply with the jurisdictional and procedural aspects of Rule 59(d), it lacked power to *sua sponte* consider the propriety of a new trial." 752 F.3d 324, 334-335 (3d Cir. 2014).

Similarly, both the Tenth Circuit and Fifth Circuit have held that when a party does not file a motion for a new trial, the district court may order one on its own initiative, but only within the time limit prescribed by Rule 59(d). *Kain v. Winslow Mfg., Inc.*, 736 F.2d 606, 608 (10th Cir. 1984); *Tarlton v. Exxon*, 688 F.2d 973, 977–78 (5th Cir. 1982). Again, these cases are inapposite.

Notably, Petitioner includes a citation to an Eleventh Circuit decision, *Hidle v. Geneva Cnty. Bd. of Educ.*, 792 F.2d 1098, 1100 (11th Cir. 1986). This case does not provide any analysis of Rule 59(d), but instead discusses Rule 59(e) – and explicitly leaves any decision regarding the district court's authority under Rule 59(e) unresolved. In *Hidle*, the plaintiff filed a post-trial motion to amend the judgment, seeking additional damages, while the defendant did not file a post-trial motion. *Hidle,* 792 F.2d at 1100. The district court amended the judgment in favor of the defendant, for reasons not requested by either party. *Id*. The Eleventh Circuit stated: "Because of the rarity of this situation we do not attempt to lay down a rule concerning the power of the court to act at all to alter or amend a judgment to the benefit of a non-moving party when the moving party has sought to alter or amend under F.R.Civ.P. 59(e)." *Id*.

Later, the Eleventh Circuit joined numerous other circuits in deciding that "once a Rule 59(e) motion is filed, a district court has the power to make appropriate corrections even with respect to issues not raised in the motion." *Veolia Water N. Am. Operating Servs., LLC v. City of Atlanta,* 546 F. App'x 820, 827 (11th Cir. 2013) ("[W]hen Veolia filed its motion, it asked the district court to revisit the issue of prejudgment interest and correct a mistake. Significantly, that mistake was not unique to Veolia; it affected the damages award for both parties. It would be inequitable if the district court could only correct that mistake as to Veolia.") (Citing *United States v. Hollis,* 424 F.2d 188, 191 (4th Cir. 1970) ("[A] district judge is not restricted to the modifications suggested by the parties.... [He] should not be forced to perpetuate a finding of fact or conclusion of law which he discovers to be

erroneous."); *Charles v. Daley,* 799 F.2d 343, 347 (7th Cir. 1986) ("A judge may enlarge the issues to be considered in acting on a timely motion under Rule 59."); *Morganroth & Morganroth v. DeLorean,* 213 F.3d 1301, 1313 (10th Cir. 2000) ("[I]t is quite clear that ... a timely filed Rule 59 motion invests the district court with the power to amend the judgment for any reason."), *overruled on other grounds by TW Telecom Holdings, Inc. v. Carolina Internet Ltd.,* 661 F.3d 495 (10th Cir. 2011)).

Finally, Petitioner incorrectly states the Tenth Circuit's position regarding a district court's ability to amend a judgment on its own initiative under Rule 59(e). *See* Pet. 7 (citing *Nelson v. City of Albuquerque*, 921 F.3d 925, 930 (10th Cir. 2019)). In fact, the Tenth Circuit *expressly declined* to decide whether the district court could have granted relief under Rule 59(e) by acting *sua sponte. Nelson v. City of Albuquerque*, 921 F.3d at 931. This case has absolutely no application here.

Thus, Petitioner has failed to identify a circuit split requiring this Court's attention.

3. THE ISSUE IS HIGHLY FACT-SPECIFIC.

The Petition for Certiorari should be denied for the additional reason that this case is not an appropriate vehicle, much less the "ideal vehicle," to decide the Petitioner's question presented because the overarching question here is whether Petitioner is entitled to recover duplicative damages. The District Court and the parties' counsel were acutely aware the jury might award duplicative damages, discussed the issue at length and reached an agreement about how to handle any such

possibility - all before finalizing the jury instructions. As stated in the jury instructions, the parties agreed the District Court would address any issues of double recovery after the verdict. Consistent with these discussions, the District Court, in its judgment entry, reserved jurisdiction to address the damage awards. Pet. App. 35a. ("Matters related to off-setting of the verdict damages will be addressed by further order of the Court.").

The District Court properly acted within the bounds of its inherent authority and discretion to modify a jury verdict to avoid double recovery. *See EFCO Corp. v. Symons Corp.*, 219 F.3d 734, 742 (8th Cir. 2000) (upholding district court's reduction of a jury's verdict to eliminate duplicative damages after specially instructing the jury not to account for duplication in determining each claim, explaining that it would later modify the damages award to eliminate any duplicative amounts); *Revere Transducers, Inc. v. Deere & Co.*, 595 N.W.2d 751, 770-71 (Iowa 1999) (remanding the case so that judgment could be amended to remove duplicative damages); *see also Team Central, Inc. v. Teamco, Inc.*, 271 N.W.2d 914, 924-25 (Iowa 1978) (holding it was proper for the trial court to guard against duplicative damages presented on special verdict forms by setting aside judgment for one claim as duplicative of the award for another); *205 Corp. v. Brandow*, 517 N.W.2d 548, 551 (Iowa 1994) (remanding the case to amend the judgment to allow for recovery of only one claim as opposed to two, as the damages were clearly duplicative). As the District Court noted, a successful plaintiff is entitled to one, but only one, full recovery, no matter how many theories support entitlement. *See id.*

Not only does the District Court have this inherent authority, but it may also correct a judgment on its own or on motion by a party under Federal Rule of Civil Procedure 60. Fed. R. Civ. Pro. 60(a): "the district court has the power to correct omissions in its judgment so as to reflect what was understood, intended and agreed upon by the parties and the court." *United States v. Mansion House Ctr. N. Redevelopment Co.*, 855 F.2d 524, 527 (8th Cir. 1988).

4. THE AWARD OF POST-JUDGMENT INTEREST IS MANDATORY.

This Court need not analyze the District Court's award of post-judgment interest. It is undisputed, and the District Court noted in its ruling, post-judgment interest on the damages award is mandatory. 28 U.S.C. § 1961(a). "Appellees are entitled to post-judgment interest even though interest was not mentioned in the district court's judgment." *Cordero v. De Jesus-Mendez*, 922 F.2d 11 (1st Cir. 1990) (citing *United States v. Michael Schiavone & Sons, Inc.*, 450 F.2d 875, 876 (1st Cir. 1971) ("Regardless of whether the judgment itself contains a specific award of interest, once final judgment has been entered in a civil suit in a federal court the prevailing party becomes a judgment creditor and is entitled to post-judgment interest under the mandatory terms of 28 U.S.C. § 1961[,]") and *Moore–McCormack Lines, Inc. v. Amirault*, 202 F.2d 893, 895 (1st Cir. 1953); *See also Travelers Property Cas. Ins. Co. of America v. National Union Ins. Co. of Pittsburgh, Pa,* 735 F.3d 993, 1007-08 (8th Cir. 2013). Any contention a party is not entitled to post-judgment interest absent a motion requesting same is baseless and not within the language of the statute.

CONCLUSION

For all the aforementioned reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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