

FILED  
U.S. DISTRICT COURT

2017 MAY - 8 A 10:33  
DISTRICT OF UTAH

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

BY: \_\_\_\_\_  
DEPUTY CLERK

<p>HYDRO ENGINEERING, INC., a Utah corporation, Plaintiff,</p> <p>vs.</p> <p>PETTER INVESTMENTS, INC., a Michigan corporation, et al., Defendants.</p>	<p><b>ORDER</b></p> <p>Case No. 2:14-cv-45-DB</p>
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Before the Court is Plaintiff, Hydro Engineering, Inc.’s (“Hydro”) motion for entry of judgment and award of prejudgment interest. [Dkt. 440]. Specifically, Hydro seeks: (1) entry of judgment pursuant to Federal Rule of Civil Procedure 58; (2) a judgment amount of \$5,742,000 that combines the damage amounts the jury awarded on both causes of action for which it found liability; and (3) an additional \$1,300,589 in prejudgment interest. Riveer challenges the requested judgment amount and any award of prejudgment interest. A hearing on the motion was held before the Court on 4 May 2017. Mark Miller and Brett Foster appeared on behalf of Hydro. Petter Investments, Inc. (“Riveer”) was represented by Stephen Lobbin and Lisa Rico. Based on the parties’ written and oral arguments, the facts and the law, the Court enters the

following Order.

### **BACKGROUND**

During the eleven day trial of this case in January 2017, three causes of action were presented for the jury to decide: (1) whether Riveer intentionally interfered with Hydro's contractual relations with Carl Pelletier; (2) whether Riveer was liable for civil conspiracy; and (3) whether Riveer misappropriated Hydro's trade secrets. Prior to trial, each party filed with the Court proposed jury instructions and a proposed special verdict form. At the close of evidence and outside the presence of the jury, the Court held a final jury instruction conference at which the parties discussed each of their proposed jury instructions and their proposed special verdict forms. The Court adopted the special verdict form that Hydro had proposed and ruled on which instructions would be presented to the jury. Before beginning their deliberations, the Court instructed the jury. Jury Instruction number 25 had been drafted and proposed by Hydro and adopted by the Court at the jury instruction conference. [Dkt. 400 at p. 37]. It read as follows:

If you decide to award Hydro damages, you should assess damages for each claim separately and without regard to whether you have already awarded the same damages on another claim. The Court will ensure that there is no double recovery. The verdict will not be totaled.

On January 24, 2017, following deliberations, the jury returned the special verdict form rendering its verdict. [Dkt. 436]. The special verdict form contained two questions regarding each cause of action. The first question was whether Hydro had proven the particular cause of action by the appropriate burden of proof. The second question, to be considered only if the first was answered in the affirmative, asked what amount of damages, if any, Hydro was entitled to

recover for that cause of action. [Dkt. 436]. The jury found Riveer liable for intentional interference with contractual relations and wrote in a damage amount of \$574,200. It found no liability for the civil conspiracy claim. It found Riveer liable for misappropriation of trade secrets and wrote in a damage amount of \$5,167,800. [Dkt. 436].

Following the verdict, Hydro filed its motion for entry of judgment and prejudgment interest. In its motion, Hydro seeks entry of judgment in the amount of \$7,042,589 which is comprised of the sum of the two damages figures plus an award of \$1,300,589 in prejudgment interest.

#### **DAMAGES AMOUNT**

Hydro asks the Court to add the \$574,200 that the jury awarded for the intentional interference claim to the \$5,167,800 award for the trade secret misappropriation claim for a total of \$5,742,000 in damages. It argues that ten percent of the combined total equals \$574,200 which is the amount of the jury's intentional interference verdict, while 90% of the totaled figure equals \$5,167,800, which is the amount of the jury's trade secret misappropriation verdict. Therefore, Hydro contends, the jury must have intended to award Hydro the total amount of \$5,742,000.

Riveer objects to adding the amounts together. It cites jury instruction number 25 which was proposed verbatim by Hydro and explicitly states that the Court will ensure that there is no double recovery and that the verdict will not be totaled.. The Court agrees with Riveer. The Court must follow its own instruction and accordingly denies Hydro's motion to total the damages amounts. The Court finds that the amount of \$5,167,800 is the judgment amount the

jury awarded to Hydro.

### **PREJUDGMENT INTEREST**

Hydro seeks an award of prejudgment interest. Petter objects arguing that it is impossible to know what portion, if any, of the jury's damage award was comprised of past lost profits versus future lost profits. At trial, the jury was presented with extensive expert testimony on both past and future lost profits. The special verdict form did not ask the jury to specify what comprised their damages award figures.

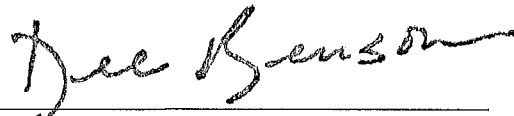
"Utah courts are reluctant to award prejudgment interest on lost profits." *ClearOne Communications, Inc., v. Chiang*, 432 Fed.Appx. 770 (10<sup>th</sup> Cir. 2011). Further, prejudgment interest on future lost profits is not permitted in Utah. *See USA Power, LLC v. PacifiCorp*, 2016 UT 20 ¶100. The jury was the fact-finder at trial. Hydro could have proposed questions on the special verdict form that would have required the jury to enumerate how much of their damages award was apportioned to past lost profits and how much to future lost profits, but it did not. It is not the Court's role to speculate. Accordingly, the Court DENIES Hydro's motion for prejudgment interest.

### **CONCLUSION**

The Court hereby GRANTS IN PART and DENIES IN PART Hydro's motion to enter judgment. The Court hereby directs the Clerk of the Court, pursuant to Federal Rules of Civil Procedure 58(b)(2), to enter judgment in the amount of \$5,167,800.00 plus post-judgment interest at the federal post-judgment interest rate of 0.85%. The Court hereby DENIES Hydro's motion for prejudgment interest.

IT IS SO ORDERED.

DATED this 5 day of May, 2017.

A handwritten signature in black ink that reads "Dee Benson". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

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Dee Benson  
United States District Judge