

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF TENNESSEE**

In re

Case No. 90-34050

MILLERS COVE ENERGY COMPANY, INC.

Debtor

MILLERS COVE ENERGY COMPANY, INC.,
DARRELL BARNWELL, HUBERT D. BARNWELL,
JUDY BARNWELL, CAROLYN B. PETREY,
SUSAN M. KINCAID, Trustee under the Will of
Joseph A. Kincaid, deceased, and MT. AIRY FARMS,
a Virginia general partnership

Plaintiffs

v.

Adv. Proc. No. 91-3194

RONALD L. MOORE, individually, and
RUBY MOORE, ROBERT MOORE, and
RONALD L. MOORE, Co-Executors
of the Last Will and Testament of
Royce G. Moore, deceased, and
ARK LAND COMPANY

Defendants

**MEMORANDUM ON PLAINTIFFS'
MOTION TO ALTER OR AMEND JUDGMENT**

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individually, and Ruby Moore, Robert Moore,
and Ronald L. Moore, Co-Executors of the
Last Will and Testament of Royce G. Moore,
deceased

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE

The Plaintiffs, pursuant to FED. R. CIV. P. 52(b) and 59(e), incorporated into this adversary proceeding by FED. R. BANKR. P. 7052 and 9023, filed the Plaintiffs' Motion to Alter or Amend the Court's Judgment, or in the Alternative, for Entry of Additional Findings ("Motion") on October 2, 2000. By their Motion, the Plaintiffs seek various additional relief from the court.

I

The Plaintiffs first ask for a recalculation of the damages awarded by the court's September 22, 2000 Judgment. As explained in the Memorandum on Remand for Calculation of Damages that accompanied the Judgment, the Plaintiffs' damages, totaling \$12,035.23, were determined using the production schedule, lease termination date, statute of limitations, and minimum royalty credits mandated by the Sixth Circuit in *Moore v. Millers Cove Energy Co., Inc.*, No. 98-6279, 2000 WL 658052 (6th Cir. May 9, 2000) ("*Millers Cove III*"). The Plaintiffs contend that, rather than calculating damages in the manner set forth by *Millers Cove III*, the court should have simply revived its \$123,101.23 April 15, 1996 Judgment. While it is true that *Millers Cove III* endorses the production schedule, lease termination date, and statute of limitations previously applied by this court, the April 15, 1996 Judgment cannot be reinstated because it conflicts with *Millers Cove III* in regard to the credit of pre-paid annual minimum royalties.

The April 15, 1996 Judgment included credit only for annual minimum royalties actually paid to the Plaintiffs for the period within the statute of limitations. The district court reversed,¹

¹ "[T]he defendants should be given credit for minimum royalties *actually paid and those that presumably would have been paid* if mining had continued until the leases were sold." *Millers Cove Energy Co., Inc. v. Moore (In re Millers Cove Energy Co., Inc.)*, No. 2:96-CV-310, slip op. at 6-7 (E.D. Tenn. Sept. 26, 1996) (emphasis added).

however, and on remand this court allowed a \$50,000.00 minimum royalty credit for every year within the statute of limitations.² That method of calculation was not appealed by the Plaintiffs in *Millers Cove III* and was approved by both the district court and the Sixth Circuit. See *Millers Cove III*, 2000 WL 658052 at *5 (6th Cir. May 9, 2000) (“For the five years permitted by Virginia’s statute of limitations, Millers Cove is entitled to receive per-ton royalties . . . less \$50,000 *per year* in pre-paid annual minimum royalties.”) (emphasis added). If the Plaintiffs wished to take exception to this royalty offset method, the proper time to do so would have been before the district court and the Sixth Circuit on the recent appeal.

In light of the above, the court declines to recalculate the damages awarded in the September 22, 2000 Judgment.

² In addition to the royalties credited in the April 15, 1996 Judgment, this court on remand credited the 1989 payment held by the Circuit Court for Lee County, Virginia, as “actually paid.” In addition, this court offset the 1990 and 1991 payments “which presumably would have been paid if mining had continued until the leases were sold.” *Millers Cove Energy Co., Inc. v. Moore (In re Millers Cove Energy Co., Inc.)*, Ch. 11 Case No. 90-34050, Adv. No. 91-3194, slip op. at 10 (Bankr. E.D. Tenn. Dec. 2, 1996).

II

The Plaintiffs next ask the court to make additional findings as to the ownership of the 1989 and 1993 \$50,000.00 annual minimum royalty payments. The 1989 payment is held by the Circuit Court of Lee County, Virginia. The 1993 payment is in an escrow account of C. R. Bolling, attorney for the Plaintiffs.

In their Stipulation Regarding Payment of Minimum Royalties filed on February 16, 1996, the parties asked the court to resolve issues of minimum royalties for the years 1989-1995. In response to that Stipulation, the court made clear that it would abstain from determining the Plaintiffs' state law minimum royalties claim. *See Millers Cove Energy Co., Inc. v. Moore (In re Millers Cove Energy Co., Inc.)*, Ch. 11 Case No. 90-34050, Adv. No. 91-3194, slip op. at 28 (Bankr. E.D. Tenn. Apr. 15, 1996). Today, that issue remains properly before the Circuit Court of Lee County, Virginia.

The court will accordingly continue to abstain from resolving any state law minimum royalties questions. However, in the interests of clarity and judicial efficiency, the court will restate its prior treatment of the 1989 royalty payment for the benefit of the Lee County Circuit Court.

The final determination of damages in this matter included a \$50,000.00 credit for the 1989 payment. The court treated that payment as already having been constructively received by Millers

Cove.³ Had the court not treated the payment as constructively received, it would have awarded Millers Cove an additional \$50,000.00 in damages.

The court reminds the Plaintiffs that this information is offered solely for the purposes of clarity and judicial efficiency, and that the ultimate fate of the 1989 and 1993 payments rests firmly in the able hands of the Lee County Circuit Court.

III

In their present Motion, as in their prior Plaintiffs' Calculation of Damages filed at the court's request on August 21, 2000, the Plaintiffs seek post-judgment interest from the date of the court's original damage calculation, April 15, 1996, pursuant to 28 U.S.C.A. § 1961(a) and the April 15, 1996 Memorandum on Remand. The Defendants, however, in their prior Calculation of Damages Submitted on Behalf of Ronald L. Moore, et al., counter that such an award would be "inequitable," as the Plaintiffs' appeal caused the delay in payment of those damages.

Section 1961 requires interest on "any money judgment in a civil case recovered in a district court." 28 U.S.C.A. § 1961(a) (West 1993). Such interest is computed daily and compounded annually. 28 U.S.C.A. § 1961(b). Interest is calculated from the date of the entry of the judgment, at the rate set forth in the statute. 28 U.S.C.A. § 1961(a).

In cases where a previous award has been adjusted on appeal or remand, post-judgment interest is calculated from the date that the damages were first "meaningfully ascertained." See

³ See *supra*. n. 2.

Kaiser Aluminum & Chem. Corp. v. Bonjorno, 110 S. Ct. 1570, 1576 (1990). Damages are not “meaningfully ascertained” if calculated from a judgment that was completely reversed or unsupported by the evidence. *See id.*

Post-judgment interest is proper, however, “from the date of any judgment that is *not entirely set aside.*” *Skalka v. Fernald Envtl. Restoration Management Corp.*, 178 F.3d 414, 429 (6th Cir. 1999), *cert. denied*, 120 S. Ct. 2687 (2000) (emphasis added). In *Millers Cove III*, the Sixth Circuit did not “entirely set aside” the prior decision of this court, but instead remanded for mere recalculation of an award otherwise supported by the evidence. *See Millers Cove III*, 2000 WL 658052 at *3-5.

The Defendants argue that equity prevents a party from receiving post-judgment interest dating back to a judgment appealed by that party. The Defendants, however, cite no authority to support such a position and the court is unaware of any case so holding. The Defendants also fail to point out that they too appealed the April 15, 1996 Judgment. Accordingly, the court finds the Defendants’ argument to be without merit and agrees to amend its September 22, 2000 Judgment with respect to post-judgment interest.

IV

The Motion will be granted only to the extent that the Plaintiffs are entitled to post-judgment interest on \$12,035.23 from April 15, 1996, the date that damages were first

“meaningfully ascertained.” In all other respects, the Plaintiffs’ Motion will be denied. An amended judgment will be entered.

FILED: October 6, 2000

BY THE COURT

/s/ Richard Stair, Jr.

RICHARD STAIR, JR.

UNITED STATES BANKRUPTCY JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
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In re

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ARK LAND COMPANY

Defendants

ORDER

For the reasons stated in the Memorandum on Plaintiffs' Motion to Alter or Amend Judgment filed this date, the court directs that the Plaintiffs' Motion to Alter or Amend the Court's Judgment, or in the Alternative, for Entry of Additional Findings filed by the Plaintiffs on October 2, 2000, is GRANTED to the extent the Plaintiffs seek post-judgment interest, but is

otherwise DENIED. An amended judgment superseding the Judgment previously entered on September 22, 2000, will be entered.

SO ORDERED.

ENTER: October 6, 2000

BY THE COURT

/s/ Richard Stair, Jr.

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE

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AMENDED JUDGMENT

For the reasons set forth in the court's Memorandum on Remand for Calculation of Damages filed September 22, 2000, and in the Memorandum on Plaintiffs' Motion to Alter or Amend Judgment filed this date, it is ORDERED, ADJUDGED, and DECREED as follows:

1. Judgment is awarded the Plaintiffs against the Defendants for damages in the amount of \$12,035.23.

2. The Plaintiffs are entitled to interest on the judgment awarded them herein from April 15, 1996, at the rate calculated pursuant to 28 U.S.C.A. § 1961(b) (West 1993).

ENTER: October 6, 2000

BY THE COURT

/s/ Richard Stair, Jr.

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE