IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CIVIL DIVISION AA

CASE NO: 502010CA028706XXXXMB

YESSENIA SOFFIN and
WILLIAM JORDAN SOFFIN,

Plaintiffs,

v.

CLEAN COAL TECHNOLOGIES, INC.,
a Nevada Corporation, DOUGLAS HAGUE,
and DAVID DOUGLAS, as Independent
Executor of the Estate of C.J. Douglas,

Defendants.
_____/

PLAINTIFFS' MOTION FOR ADDITUR
OR, IN THE ALTERNATIVE, A NEW HEARING

Plaintiffs, YESSENIA SOFFIN and WILLIAM JORDAN SOFFIN (collectively, "Plaintiffs"), pursuant to Section 768.74, Florida Statutes, and Florida Rule of Civil Procedures 1.530, move for additur in the amount of $22,815,168 or, in the alternative, a new hearing on the issue of damages only. In support of their Motion, Plaintiffs state as follows:

INTRODUCTION

> *The law tells us that a juror can consider only the testimony and other evidence that all the other jurors have also heard when being in the presence of the judge and the lawyers. Anything else is wrong and against the law.*
>
> *****
>
> *In reaching your verdict, you must think about and weight the testimony and any documents or other material that has been received in evidence . . . . [Y]ou should not guess about things that were not covered in the trial.*
>
> Judge Oftedal, TRIAL TRANSCRIPT 9:16-9:21, 521:22-522:6 (jury instructions)

> *So these are the actual damages . . . . February 18th, 2009, the stock was trading at $4.30 cents a share. Mr. Soffin had 15,210,112 shares. That's $65 million . . . April 3rd, 2009, $41,827,880 . . . Let's come down here . . . [T]his is the date [October 20, 2009] that they can't deny and they won't deny and they in fact agreed that he had every single share and certificate and form. And that's $22,815,000.*
>
> Plaintiffs' Counsel, TRIAL TRANSCRIPT
> 561:25-563:2 (closing statement)

> *So although I hesitate to discuss damages with you very much, because I don't think we need to get to damages, the fact of the matter is, we don't believe what Mr. Soffin says ever occurred.*
>
> Defendants' Counsel, TRIAL TRANSCRIPT
> at 591:21-591:25 (closing statement)

The trial in this case took place on April 25-28, 2017. During the trial, Plaintiffs presented evidence that: (1) Defendants told Plaintiffs they would be able to remove the restrictive legends from any Clean Coal Technologies, Inc. ("CCTI") stock they acquired and sell their shares on February 18, 2009; (2) based on Defendants' representations, Plaintiffs acquired 15,210,112 shares of CCTI stock; and (3) notwithstanding their representations, Defendants subsequently prevented Plaintiffs from removing their restrictive legends and selling their stock on February 18, 2009, April 30, 2009, May 14, 2009, July 24, 2009, and October 20, 2009.

Also during the trial, Plaintiffs presented evidence that they suffered damages ranging from $22,815,168.00 to $65,403,481.60 — which equaled the different amounts that Plaintiffs would have received if they had been able to remove their restrictive legends and sell their stock on each of the five days they requested to do so (determined by multiplying the closing price of CCTI's stock on the day Plaintiffs requested to remove their restrictive legends by the number of shares that Plaintiffs owned on that day).

Defendants, on the other hand, made a deliberate, strategic decision to present evidence regarding *only* the issue of liability (presumably because they were concerned the jury would award any damage amount they presented). Accordingly, Defendants did not present any evidence

regarding Plaintiffs' damages — including whether Plaintiffs' suffered damages, the amount of Plaintiffs' damages, or how Plaintiffs' damages should be calculated. Defendants also did not present any evidence to dispute the price of CCTI's stock nor to dispute Plaintiffs' methodology for calculating their damages. Significantly, however, Defendants *stipulated* that Plaintiffs owned all of the CCTI stock at issue in certificated form on October 20, 2009.

On April 28, 2017, the jury entered a verdict in favor of Plaintiffs on their claims for negligent misrepresentation (Count I) and fraud (Count II) and awarded monetary damages totaling $810,306.72, which represents 3.55% of the minimum damages presented by Plaintiffs and 1.24% of the maximum damages presented by Plaintiffs — and 5.33% of CCTI's stock's lowest closing price in 2009.[1]

The amount of money damages awarded to Plaintiffs is "inadequate" based on the evidenced presented to the jury because it (i) does not bear a reasonable relation to the damages proved at trial, (ii) is not supported by the evidence, (iii) was arrived at by ignoring the evidence, (iv) was arrived at by speculation and conjecture, and (v) is indicative of prejudice and passion on the part of the jury. *See* FLA. STAT. § 768.74.

Accordingly, for the reasons set forth more fully below, Plaintiffs move for additur in the amount of $22,815,168, which is the amount of damages proved by Plaintiffs at trial on the date (October 20,2009) Defendants stipulated Plaintiffs owned all of the CCTI stock at issue. In the event a party adversely affected by the additur objects within 15 days of entry of an Order granting additur, Plaintiffs request a new hearing on the sole contested issue of damages.

[1] The jury awarded Plaintiffs $405,153.36 on their negligent misrepresentation claim and $405,153.36 on their fraud claim. Taken together, the jury awarded total damages in the amount of $810,306.72.

I. THE COURT MUST REVIEW THE JURY'S AWARD TO DETERMINE WHETHER IT IS "ADEQUATE" BASED ON THE FACTS PRESENTED AT TRIAL

In 1986, the Florida Legislature enacted the Tort Reform and Insurance Act, which included an additur statute and mandated that courts *must* review all awards of money damages to determine whether they are adequate in light of the facts and circumstances presented to the trier of fact. *See* FLA. STAT. § 768.74(6) ("It is the intent of the Legislature to vest the trial courts of this state with the discretionary authority to review the amounts of damages awarded by a trier of fact in light of a standard of . . . inadequacy."); *Dyes v. Spick*, 606 So.2d 700, 702-703 (Fla. 1st DCA 1992) (describing the history of Florida's additur statute).

Section 768.74 states: "In any action . . . wherein . . . a verdict is rendered which awards money damages to the plaintiff, it shall be the responsibility of the court . . . to review the amount of such award to determine if such amount is . . . inadequate in light of the facts and circumstances which were presented to the trier of fact." FLA. STAT. § 768.74(1).

Section 768.74 further provides the following list of five factors to be considered by courts in determining the adequacy of a monetary award:

> In determining whether an award is . . . inadequate in light of the facts and circumstances presented to the trier of fact and in determining the amount, if any, that such award . . . is inadequate, the court shall consider the following criteria:
>
> (a) Whether the amount awarded is indicative of prejudice, passion, or corruption on the part of the trier of fact;
>
> (b) Whether it appears that the trier of fact ignored the evidence in reaching a verdict or misconceived the merits of the case relating to the amounts of damages recoverable;
>
> (c) Whether the trier of fact took improper elements of damages into account or arrived at the amount of damages by speculation and conjecture;

(d) Whether the amount awarded bears a reasonable relation to the amount of damages proved and the injury suffered; and

(e) Whether the amount awarded is supported by the evidence and is such that it could be adduced in a logical manner by reasonable persons.

FLA. STAT. § 768.74(5).

Finally, Section 768.74 directs: "If the court finds that the amount awarded is . . . inadequate, it shall order a[n] . . . additur." FLA. STAT. § 768.74(2).

II. THE AWARD IS INADEQUATE AND REQUIRES AN ADDITUR

For the reasons discussed below, the jury's award of $810,306.72 — after Plaintiffs presented uncontroverted evidence at trial that they suffered damages ranging from $22,815,168.00 to $65,403,481.60 — is inadequate and requires additur.

A. The Amount Awarded by the Jury Does *NOT* Bear a Reasonable Relation to the Amount Proved

At trial, Plaintiffs presented evidence that when Defendants prevented them from removing the restrictive legends from their CCTI stock on February 18, 2009, April 30, 2009, May 14, 2009, July 24, 2009, and October 20, 2009:

1. The closing price of CCTI's stock was $4.30/share, $2.75/share, $2.20/share, $2.30/share, and $1.50 share, respectively. *See* TRIAL TRANSCRIPT at 189:7-191:3, 205:2-205:10, 217:3-217:10, 228:11-228:15, 239:4-239:11; PLAINTIFFS' TRIAL EXHIBIT No. 5;

2. Plaintiffs owned 15,210,112 shares of CCTI stock. *See* TRIAL TRANSCRIPT at 81:9-81:10, 84:7-84-11, 191:7-191:11, 183:12-183:20, 191:7-191:11, 205:11-205:13, 217:11-217:12, 228:19-228:22, 239:4-239:13, 243:19-244:2, 279:21-279:23, 368:22-369:18, 375:9-375:21, 377:15-377:23; SECOND AMENDED PRETRIAL JOINT STIPULATION at ¶¶ GG, HH (hereinafter, "PRETRIAL STIPULATION"); JOINT TRIAL EXHIBIT No. 1 at ¶¶ GG, HH; PLAINTIFFS' TRIAL EXHIBIT Nos. 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20; and

3. If Plaintiffs had been able to remove their restrictions when they requested to do so, they would have immediately sold all of their CCTI stock. *See* TRIAL TRANSCRIPT at 192:2-192:5, 206:17-206:20, 218:24-219:2, 229:12-229:15, 240:2-240:4, 280:13-280:17, 348:13-348:19; 387:12-387:19; 400:10-401:11.

Additionally, Plaintiffs proved that the total value of their CCTI shares on February 18, 2009, April 30, 2009, May 14, 2009, July 24, 2009, and October 20, 2009 — as determined by multiplying the closing price of CCTI's stock by the number of shares owned by Plaintiffs — was $65,403,481.60, $41,827,808.00, $33,462,242.00, $34,983,257.60, and $22,815,168.00, respectively. *See* TRIAL TRANSCRIPT at 189:7-192:1, 205:2-205:23, 217:3-217:21, 228:11-229:3, 239:4-239:17, 243:5-243:7, 243:19-244:7, 561:5-563:2.[2]

Defendants did *not* present any evidence to the jury to dispute any of the closing prices for CCTI's stock presented by Plaintiffs. *Nor* did Defendants present any evidence to prove that Plaintiffs did not own their 15,210,112 on the dates they requested to remove their restrictive legends. To the contrary, Defendants *stipulated* that Plaintiffs owned *ALL* of the 15,210,112 shares of CCTI stock at issue in certificated form on October 20, 2009. PRETRIAL STIPULATION at ¶¶ GG, HH; JOINT TRIAL EXHIBIT No. 1 at ¶¶ GG, HH. Defendants also did *not* present any evidence to prove that Plaintiffs would not have sold all their stock immediately if they had been able to remove their restrictive legends. Finally, Defendants did *not* present any evidence to dispute Plaintiffs' methodology for calculating their damages.

[2] Plaintiffs also proved at trial that in 2009 CCTI paid for services with shares of CCTI stock equal to the value of the services based on the public market price of CCTI stock. *See* TRIAL TRANSCRIPT at 86:3-86:6, 89:10-91:4 (Defendant Hague testifying that CCTI paid for $470,000 in public relations services with 200,000 shares of CCTI stock valued at $2.35/share, $625,000 in legal services with 250,000 shares of CCTI stock valued at $2.50/share, and $81,663 in services provided by its CEO with 16,666 shares of CCTI stock valued at $4.90/share).

Crucially, the *only* evidence presented by Defendants regarding Plaintiffs' damages was the testimony of CCTI's CEO, Robin Eaves, who testified — in response to a question from Defendants' attorney — that *he did NOT know* what amount Plaintiffs would have received if they had sold their CCTI stock in February 2009

> Q: [Y]esterday Mr. Soffin testified that if he had restricted legends removed from his Clean Coal stock certificates when he had first requested in February of 2009 that he would have sold them into the market and got $65 million from that sale. Does that sound like — would that have been possible?
>
> A: I understand totally what he's saying. If he got his stock unrestricted, he would sell. He has every right to do that . . . .
>
> You know, he's absolutely right. He could go to that open market, put in the brokerage account and start to sell.
>
> Now, if you're saying 15 million shares in a market for $3.00 or $4.00, whatever it might have been at that time, and trading a few thousand shares a day, you're going to take — often, who knows what the price would be. ***I can't tell you*** . . . .

TRIAL TRANSCRIPT at 419:10-420:12 (emphasis added).[3]

In light of the facts presented to the jury, the damages awarded by the jury do not bear any relation — reasonable or otherwise — to the damages proved by Plaintiffs at trial. To the contrary, as summarized below, the damages awarded by the jury represent 3.55% of the *minimum* damages proved by Plaintiffs and 1.24% of the maximum damages proved by Plaintiffs:

Date	Shares	Price/Share	Total Value	Award	%
2/18/09	15,210,112	$4.30	$65,403,481.60	$810,306.72	1.24%
4/30/09	15,210,112	$2.75	$41,827,808.00	$810,306.72	1.94%

[3] Mr. Eaves also testified that a small number of CCTI stock was traded on "some days" in 2009, but he did not offer any explanation (or opinion) as to why this would mean Plaintiffs would be unable to sell their own shares of CCTI stock on any of the five specific days they requested to remove their restrictive legends and were refused. *See* TRIAL TRANSCRIPT at 419:20-420:2. To the contrary, Mr. Eaves conceded he did not know what price Plaintiffs would get if they sold their stock. *See* TRIAL TRANSCRIPT at 420:7-420:11.

Date	Shares	Price/Share	Total Value	Award	%
5/14/09	15,210,112	$2.20	$33,462,246.40	$810,306.72	2.42%
7/24/09	15,210,112	$2.30	$34,983,257.60	$810,306.72	2.32%
10/20/09	15,210,112	$1.50	$22,815,168.00	$810,306.72	3.55%

As a matter of law and common sense, an award that is equal to 3.55% of the damages established by the evidence (much less one that is equal to 2.42% or 2.32% or 1.94% or 1.24% of the evidentiary damages) does *NOT* bear a reasonable relation to the amount of damages proved and therefore is inadequate.

The Fourth District Court of Appeal's decision in *Current Builders of Fla., Inc. v. First Sealord Surety, Inc.*, 984 So.2d 526 (Fla. 4th DCA 2008), is directly point. In *Current Builder*s, "[e]ven though [the plaintiff] presented evidence of damages between $600,000 and $800,000, the jury awarded only $30,000 in damages." *Id.* at 531.[4] Accordingly, the plaintiff "requested the court to . . . enter an additur increasing the damages award to $686,230, or, in the alternative, order a new trial on the issue of damages," which the trial court denied. *Id.* at 530. On appeal, the Fourth District Court reversed the trial court's denial of additur, stating:

> The jury awarded only 4% of that proved by [the plaintiff]. In addition, the $30,000 damages award appears to have been "arrived at . . . by speculation and conjecture." There is no evidence in the record to support this particular amount. Therefore, the trial court abused its discretion in failing to grant [the plaintiff's] motion for additur or, in the alternative, a new trial.

Id. at 532 (internal citations omitted); *see also Arena Parking, Inc. v. Lon Worth Crow Ins. Agency*, 768 So.2d 1107, 1110 (Fla. 3d DCA 2000) (finding jury award of $28,500 was inadequate where Plaintiff proved damages of $170,000 and reversing trial court's denial of additur: "There is no

[4] As in this case, the defendant in *Current Builders* did not dispute plaintiffs' damage calculations. *See id.* at 532.

logical explanation as to how reasonable persons who found liability under the promissory estoppel theory ended up awarding only 16% of the damages claimed.").[5]

Accordingly, the Court should grant additur in this case because the jury's award does not bear "a reasonable relation to the amount of damages proved and the injury suffered" by Plaintiffs. FLA. STAT. § 768.74(5)(d).

B. The Amount Awarded by the Jury Is *NOT* Supported by Evidence

In addition, the jury's award of money damages totaling $810,306.72 is not supported by the evidence. When this amount is divided by the number of CCTI shares at issue (*i.e.*, 15,210,112 shares), the jury's award equates to an award of just $0.0533/share.

Defendants did not present any evidence during the trial to support a finding that Plaintiffs would have received $0.0533/share if they had been able to remove their restrictive legends and sell their CCTI stock on February 18, 2009, April 30, 2009, May 14, 2009, July 24, 2009, or October 20, 2009.

By contrast, Plaintiffs presented evidence that on the five days they requested to remove their restrictive legends and sell their shares, the closing price of CCTI's stock was:

Date	Price/Share
2/18/09	$4.30
4/30/09	$2.75
5/14/09	$2.20
7/24/09	$2.30
10/20/09	$1.50

[5] *See also Alaqua Lakes Realty, Inc. v. Burch*, 790 So.2d 605, 607 (Fla. 5th DCA 2001) (finding jury award of $12,983.41 was inadequate where Plaintiff proved damages of $234,000 and affirming trial court's additur in the amount of $234,000); *Silverman v. Gockman*, 714 So.2d 671, 671 (Fla. 4th DCA 1998) (finding jury award of $250,000 was inadequate because it bore no reasonable relation to the "competent substantial evidence . . . that the damages sustained by [the plaintiff] were $520,975.65" and holding trial court abused discretion in denying additur).

See TRIAL TRANSCRIPT at 189:7-191:3, 205:2-205:10, 217:3-217:10, 228:11-228:15, 239:4-239:11; PLAINTIFFS' TRIAL EXHIBIT No. 5. Defendants did not dispute these closing prices.

In addition, Plaintiffs presented uncontroverted evidence that if they had been able to remove their restrictive legends, they would have immediately sold all of their CCTI stock on that same day. *See* TRIAL TRANSCRIPT at 192:2-192:5, 206:17-206:20, 218:24-219:2, 229:12-229:15, 240:2-240:4, 280:13-280:17, 348:13-348:19; 387:12-387:19; 400:10-401:11.

Even if one were to ignore the evidence presented to the jury — which established that Plaintiffs requested to remove their restrictive legends on five separate dates — and instead took into account the closing price of CCTI's stock on *every single day* that it was traded (*i.e.*, every day not including weekends, holidays, etc.) during the period from February 18, 2009 (when Plaintiffs first requested to remove their restrictive legends) through December 31, 2009 (the last day of the year):

- ✓ The *lowest* closing price for CCTI stock was $1.00/share on December 9, 2009 — which was 50 days *after* Plaintiffs made their last request to remove their restrictive legends on October 20, 2009;[6]
- ✓ The *average* closing price of CCTI's stock was $2.48/share;
- ✓ The *median* closing price was $2.20/share; and
- ✓ The most common closing price (*i.e.*, the *mode*) was $2.50/share.

See PLAINTIFFS' TRIAL EXHIBIT No. 5.

[6] In fact, the $1.00/share closing price for CCTI's stock on December 9, 2009 was the lowest closing price for CCTI's stock on <u>*any day*</u> that CCTI's stock was traded in 2009 (*i.e.*, from January 1, 2009 through December 31, 2009). *See* PLAINTIFFS' TRIAL EXHIBIT No. 5. Of course, the *only* time period discussed during trial with regards to damages was the much shorter eight-month period running from February 18, 2009 (when Plaintiffs made their first request to remove the restrictive legends from their CCTI stock and were denied) through October 20, 2009 (when Plaintiffs made their last request to remove their restrictive legends and were denied).

No matter how one slices and dices it, *NONE* of these figures support an award that equates to Plaintiffs receiving $0.0533/share if they had been permitted to sell their CCTI stock. *See Current Builders*, 984 So.2d at 526 (finding "no evidence in the record to support" to jury's award of 4% of damages proved and reversing trial court's denial of vacatur); *Arena Parking*, 768 So.2d at 1110 (reversing trial court's denial of additur: "To this day, [the defendants] have not adequately explained how to reconcile the jury's finding of liability while awarding only . . . 16% of the damages shown by the exhibits.").

Accordingly, the Court should grant additur because an award of damages equal to 3.55% of the closing price of CCTI's stock on October 20, 2009 — and equal to 5.33% and 2.15% of the *lowest* and *average* closing price of CCTI's stock in 2009, respectively — is not "supported by the evidence" nor could such damages "be adduced in a logical manner by reasonable persons." FLA. STAT. § 768.74(5)(e); *see Orange Cty. v. Buchman*, 183 So.3d 457, 459 (Fla. 5th DCA 2016) (affirming trial court's grant of additur: "[T]he trial judge [must] grant relief when the whole or any material part of a verdict is not supported by substantial, competent evidence . . . . This verdict was not internally inconsistent; it was contrary to the evidence.").

C. It Appears the Jury Ignored the Evidence Relating to the Amount of Plaintiffs' Damages or Misconceived the Merits of the Case Relating to the Amount of Damages

During the trial, Plaintiffs presented evidence to the jury that proved:

1. Plaintiffs made their last request to remove the restrictive legends from their stock on October 20, 2009. *See* TRIAL TRANSCRIPT at 230:16-240:2, 244:8-244:10; PLAINTIFFS' TRIAL EXHIBIT Nos. 15, 16, 17, 18;

2. Plaintiffs would have immediately sold their stock as soon as their restrictive legends were removed. *See* TRIAL TRANSCRIPT at 240:2-240:4, 280:13-280:17, 348:13-348:19; 387:12-387:19; 400:10-401:11;

3. On October 20, 2009, Plaintiffs owned 15,210,112 shares of CCTI stock. *See* TRIAL TRANSCRIPT at 81:9-81:10, 84:7-84-

11, 191:7-191:11, 183:12-183:20, 191:7-191:11, 205:11-205:13, 217:11-217:12, 228:19-228:22, 239:4-239:13, 243:19-244:2, 279:21-279:23, 368:22-369:18, 375:9-375:21, 377:15-377:23 PRETRIAL STIPULATION at ¶¶ GG, HH; JOINT TRIAL EXHIBIT No. 1 at ¶¶ GG, HH; PLAINTIFFS' TRIAL EXHIBIT Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20;

4. October 20, 2009, the closing price of CCTI's stock was $1.50/share. *See* TRIAL TRANSCRIPT at 239:4-239:11; PLAINTIFFS' TRIAL EXHIBIT No. 5; and

5. The total value of Plaintiffs' CCTI stock on October 20, 2009 was $22,815,168.00. *See* TRIAL TRANSCRIPT at 239:4-239:17, 243:19-244:7, 562:21-563:2.

The jury's award of $810,306.72 in money damages appears to ignore this evidence because the award equates to an award of $0.0533/share when: (i) the closing price of CCTI's stock on October 20, 2009 was $1.50/share (ii) the lowest closing price of CCTI's stock in 2009 was $1.00/share; (iii) the average closing price of CCTI's stock in 2009 was $2.48/share. *See* PLAINTIFFS' TRIAL EXHIBIT No. 5.

Alternatively, if the jury believed that it was somehow logical to award Plaintiffs $0.0533/share when the closing price of CCTI's stock was $1.50/share on October 20, 2009 — and despite the fact that the closing price never fell below $1.00/share in 2009 — then the jury appears to have misconceived the merits of the case relating to the amount of damages. *See Alaqua Lakes*, 790 So.2d at 609 (affirming additur: "The verdict . . . which awards [the plaintiff] less than the amount [the defendants] conceded would be owed . . . shows that the jury misconceived the merits of the case relating to the amount of damages."); *Arena Parking*, 768 So.2d at 1110 (concluding jury "must have misconceived the merits of the case" when awarded "16% of the damages shown by the exhibits" and reversing denial of additur).

Accordingly, the Court should grant additur because it "appears" that the jury "ignored the evidence in reaching a verdict or misconceived the merits of the case relating to the amounts of damages recoverable." FLA. STAT. § 768.74(5)(b).

D. The Jury Arrived at Its Award by Speculation and Conjecture

Plaintiffs presented specific, objective, non-speculative evidence that the total damages they suffered on October 20, 2009 was $22,815,168.00 (determined by multiplying the 15,210,112 shares of CCTI that Plaintiffs owned on October 20, 2009 by the $1.50/share closing price of CCTI's stock on October 20, 2009).

As discussed above, however, the jury's award of money damages totaling $810,306.72 equates to $0.0533/share — which is 3.55% of the closing price of CCTI's stock on October 20, 2009 and 5.33% of the lowest closing price for CCTI's stock in 2009.

To be clear: *The closing price for CCTI's stock NEVER fell below $1.00/share in 2009. See* PLAINTIFFS' TRIAL EXHIBIT No. 5.

To the extent that the jury's award is based on anything other than the closing price of CCTI's stock in 2009 — *i.e.*, the year during which Plaintiffs made their five requests to remove the restrictive legends from their CCTI stock and their requests were denied by Defendants — the jury's award is not based on the objective evidence presented to it and could only have been based on speculation and conjecture. *See Arena Parking*, 768 So.2d at 1110 (reversing trial court's denial of additur: "The amount awarded could only have been arrived at by speculation and conjecture because it bears no reasonable relation to the damages proved.").

Accordingly, the Court should grant additur because the jury "arrived at the amount of damages by speculation and conjecture." FLA. STAT. § 768.74(5)(c).

E. The Amount Awarded is Indicative of Prejudice and Passion

As discussed above, the jury's award of money damages totaling $810,306.72 is not supported by the objective evidence presented at trial and does not bear a reasonable relation to the amount of damages proved by Plaintiffs.

Tellingly, however, Defendants spent considerable time during the trial regaling the jury with irrelevant testimony — peppered with all of the current buzzwords — about the "important" work Defendants are purportedly doing to provide "environmentally friendly," "clean" energy and to "create jobs . . . in the mining industry":

> Well, primarily, right now, the company is a development company with three patented technologies. We are trying to get to commercial levels. We believe it can create jobs in the United States in the mining industry.
>
> We're working with the DOE and the government right now to help get the technology to the market. We believe it is very, very important right now. We spent seven years.
>
> *****
>
> [T]his is technology which we clean coals and make coal more efficient and a better product —
>
> *****
>
> So what it is, is it's an environmental friendly technology and I think its very, very important to get it to the market here. It's been a very tough fight because the last few years . . . . It could be and should be part of the next generation to save and create jobs in the mining industry, transportation industry and the export market
>
> *****
>
> It drives coal, it cleans it, and it stabilizes it. Whereby right now, it might burn one million tons of pre-dirty coal, with this technology you end up burning 500,000 tons of the same heat and the same value and much cleaner coal as well, so it is very important to the country.

TRIAL TRANSCRIPT at 403:18-405:10; *see also* TRIAL TRANSCRIPT at 52:4-52:17, 569:25-570:4.

In a further effort to pull at the jury's heartstrings — and paint themselves as selfless philanthropists — Defendants presented irrelevant testimony describing how they had not generated any

profits in nearly a decade notwithstanding their hard work and how they must rely on friends and family to pursue their dream of providing affordable, pollution-free, job-creating energy to the world. *See* TRIAL TRANSCRIPT at 407:4-407:23, 411:8-:411:19, 448:8-448:16; *see also* TRIAL TRANSCRIPT at 52:24-52:25; 569:16-569:25.

By contrast, when Defendants were not presenting irrelevant testimony to endear themselves to the jury, they repeatedly sought to characterize Plaintiffs as rapacious litigants who were unworthy of the jury's sympathy.

For example, in an improper effort to prejudice the jury against Plaintiffs, Defendants presented testimony regarding a late-night email sent by Mr. Soffin to CCTI's CEO, which Defendants characterized as "intimidating" because of Mr. Soffin's (unproven) "history of violence." *See* TRIAL TRANSCRIPT at 389:6-391:5, 402:12-402:25. At one point, the Judge even had to interpret Defendants' counsel and direct him to "rephrase" when he asserted (falsely) to the jury that "Mr. Soffin has a history of being very aggressive." TRIAL TRANSCRIPT at 590:11-590:17.

In addition, throughout the trial, in a further effort to prejudice the jury against Plaintiffs and inflame the jury's passion in Defendants' favor:

- ✓ Defendants contrasted their own purported altruistic goal of creating "clean" energy with Mr. Soffin's past experience as a professional poker player. *See* TRIAL TRANSCRIPT at 263:3-263:23; and
- ✓ Defendants repeatedly emphasized that William Soffin was a "sophisticated investor" — notwithstanding that financial sophistication was irrelevant to the claims and defenses at issue *See* TRIAL TRANSCRIPT at 43:23-45:24, 255:22-256:23, 259:1-260:19, 262:6-263:2;
- ✓ Defendants spent considerable time presenting testimony regarding other lawsuits filed by Plaintiffs in an effort to paint Plaintiffs as litigious whiners. *See* TRIAL TRANSCRIPT at 260:4-260-19, 266:6-266:13, 300:25-305:18, 326:14-333:13, 383:13-383:15, 384:7-384:18, 592:1-593:5.

To the extent that the jury's award is not based on the closing price of CCTI's stock on October 20, 2009 — or on *any* closing price for CCTI's stock in 2009 — the award is "indicative" of prejudice and passion on the part of the jury in favor of Defendants and against Plaintiffs resulting from the irrelevant testimony deliberated introduced by Defendants at the trial.

Accordingly, the Court should grant additur because "the amount awarded is indicative of prejudice[and] passion on the part of the [jury]." FLA. STAT. § 768.74(5)(c).

III. AMOUNT OF ADDITUR

Plaintiffs presented evidence and proved — and Defendants stipulated — that on October 20, 2009 Plaintiffs owned 15,210,112 shares of CCTI stock, all of which was in certificated form. *See* TRIAL TRANSCRIPT at 81:9-81:10, 84:7-84-11, 191:7-191:11, 183:12-183:20, 191:7-191:11, 205:11-205:13, 217:11-217:12, 228:19-228:22, 239:4-239:13, 243:19-244:2, 279:21-279:23, 368:22-369:18, 375:9-375:21, 377:15-377:23; PRETRIAL STIPULATION at ¶¶ GG, HH; JOINT TRIAL EXHIBIT No. 1 at ¶¶ GG, HH; PLAINTIFFS' TRIAL EXHIBIT Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20.

In addition, Plaintiffs presented uncontroverted evidence to the jury that their last request to remove the restrictive legends from their CCTI stock was refused by Defendants on October 20, 2009. *See* TRIAL TRANSCRIPT at 230:16-240:2, 244:8-244:10; PLAINTIFFS' TRIAL EXHIBIT Nos. 15, 16, 17, 18.

Plaintiffs also presented uncontroverted evidence to the jury would have immediately sold their stock as soon as their restrictive legends were removed. *See* TRIAL TRANSCRIPT at 240:2-240:4, 280:13-280:17, 348:13-348:19; 387:12-387:19; 400:10-401:11

Finally, Plaintiffs presented uncontroverted evidence that the closing price of CCTI's stock on October 20, 2009 was $1.50/share. *See* TRIAL TRANSCRIPT at 239:4-239:11; PLAINTIFFS' TRIAL EXHIBIT No. 5. In addition,

Based on the evidence presented and the facts proved to the jury, the total value of Plaintiffs' CCTI stock on October 20, 2009 was $22,815,168 (*i.e.*, 15,210,112 shares multiplied by $1.50/share). *See* TRIAL TRANSCRIPT at 239:4-239:17, 243:19-244:7, 562:21-563:2. This is the amount that Plaintiffs were damaged when Defendants prevented them from removing the restrictive legends from their CCTI stock and selling their shares.

Accordingly, for the reasons discussed above, Plaintiffs request that the Court grant additur in the amount of **$22,815,168**.

IV. MOTION FOR NEW HEARING

In the event a party adversely affected by additur objects to the additur, Plaintiffs request a new hearing on the sole contested issue of damages. *See* FLA. STAT. § 768.74(4) ("If the party adversely affected by . . . additur does not agree, the court shall order a new trial in the cause on the issue of damages only.").

CONCLUSION

WHEREFORE, Plaintiffs respectfully request that this Court enter an Order granting an additur in the amount of $22,815,168 or, in the alternative, a new hearing on the sole issue of damages if a party adversely affected by the additur objects within 15 days, and for any further relief that this Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 15, 2017, a true and accurate copy of the foregoing has been furnished via email through the Court's ePortal to Jan Douglas Atlas, Esq. and Kristen Lake Cardoso, Esq., KOPELOWITZ OSTROW P.A., One West Las Olas Blvd., Suite 500, Ft. Lauderdale, FL 33301; Telephone: (954) 525-4100; Facsimile: (954) 525-4300; Email: atlas@kolawyers.com and cardoso@kolawyers.com and via email (not through the Court's ePortal) to Bradley

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