

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

CARRICK TRUCKING, INC.
d/b/a OUTLANDER GRAVEL

PLAINTIFF

v.

Civil No. 09-2053

RODNEY T. NIETERT; SAMARITAN
HOLDINGS, INC.; OUTLANDER TREE
SERVICES, INC.; JERRY DON HATTABAUGH;
and JAMES STEVEN BLACK d/b/a JSB
GRAVEL

DEFENDANTS

O R D E R

Now on this 3rd day of May, 2010, comes on for consideration **Plaintiff's Motion To Amend The Judgment** (document #64). Plaintiff suggests that the Court miscalculated its damages, pointing out that there was testimony "that the value of the pre- and post-crush inventory that was converted by the Defendants was worth \$270,550."

While this is an accurate observation, the Court declined to award plaintiff damages for pre-crush inventory. Plaintiff contracted to be compensated on the basis of crushed gravel, while defendants Rodney Taylor Nietert and his corporations were contracted to blast the materials preparatory to crushing them. Thus the evidence supported an award to plaintiff for post-crushed materials, but not for pre-crushed materials (blasted rock).

The Judgment awarded plaintiff the adjusted value of all post-crushed materials, and also awarded it the cost of the blast to the extent it was paid by plaintiff rather than by Rodney Taylor Nietert or his corporations. The Court believes this is accurate

and fair compensation for the damages sustained by plaintiff, and the motion will, therefore, be denied.

IT IS THEREFORE ORDERED that **Plaintiff's Motion To Amend The Judgment** (document #64) is **denied**.

IT IS SO ORDERED.

 /s/ Jimm Larry Hendren
JIMM LARRY HENDREN
UNITED STATES DISTRICT JUDGE