

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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R.E.B. COMPANY,

Plaintiff-Counter-Defendant  
Appellee-Cross-Appellant,

v

WHITTAKER ASPHALT PAVING, INC.,

Defendant- Counter-Plaintiff  
Appellant-Cross-Appellee.

UNPUBLISHED  
May 24, 1996

No. 168079  
LC No. 89-2096-CK

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Before: Saad, P.J., and McDonald and M. A. Chrzanowski\*, JJ.

MEMORANDUM.

Defendant Whittaker Asphalt Paving, Inc. appeals as of right from an August 27, 1993, judgment granting defendant damages after remand from this court. Plaintiff R.E.B. Company cross-appeals from the same judgment. We affirm.

The trial court did not err in recalculating the lost profits owed defendant. The trial court utilized the damage formula as specifically instructed by this court on remand. Had the trial court disregarded this court's instructions, as urged by defendant, it would have been acting improperly. *Barcheski v Grand Rapids Sch*, 162 Mich App 388; 412 NW2d 296 (1987). There was also no error in the trial court's refusal to consider the validity of the contested penalties. "Issues outside the scope of a remand order will not be considered on appeal following remand". *People v Burks*, 128 Mich App 255; 339 NW2d 734 (1983). This Court remanded to the trial court for new calculation of lost profits. This Court did not address the penalties included in the original judgment; therefore, it would have been improper for the lower court to address the penalties on remand. Because it was improper for the lower court to address the penalties, they remained in effect. Hence, the trial court properly included the penalties in the amended judgment. *Burks, supra*.

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\* Circuit judge, sitting on the Court of Appeals by assignment.

Affirmed.

/s/ Henry William Saad  
/s/ Gary R. McDonald  
/s/ Mary A. Chrzanowski