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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

Case No. 2016-CP-07-2541
Appellate Case No. 2022-000231

Forum Benefits, LLC,

Appellant,

v.

Brian Bannon and Assured Partners, NL,

Respondents.

RECORD ON APPEAL

VOLUME V

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STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 2016-CP-07-2541

Forum Benefits, LLC,

Plaintiff,

v.

Brian Bannon and Assured Partners, NL

Defendants.

**REPLY IN SUPPORT OF DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**

COME NOW Defendants Brian Bannon (“Bannon”) and Assured Partners, NL (“Assured Partners”), and submit this Reply in Support of Defendants’ Motion for Summary Judgment.

Plaintiff filed its Response to Defendant’s Motion for Summary Judgment on the evening of Sunday, June 7, 2020 (“Response”). While most of Defendants’ arguments and authorities are thoroughly outlined in its Motion for Summary Judgment and Exhibits (“Motion”), Defendants submit the following additional information in reply.

1. Plaintiff has not satisfied the summary judgment response requirements.

Summary judgment cannot be defeated based on speculation, conclusory allegations and the self-serving statements. However, that is exactly what the Response does – relying on the speculative, conclusory, unqualified and self-serving testimony of Brian Stritt. Stritt (the former owner of Plaintiff and current Managing Partner) is personally funding this litigation as a non-party to attempt to exact revenge on Brian Bannon for leaving Plaintiff during a time when Stritt was attempting to sell the company. (Attachment 1, additional excerpts from Rule 30 Dep. pp. 17-21.) Many of Plaintiff’s statements in the Response do not cite to the record. Almost all other citations are to the self-serving testimony of Brian Stritt. This Response is not sufficient to overcome summary judgment in this case. Defendants have established multiple independent

grounds for summary judgment and Plaintiff has not established a genuine issue of material fact on each of these issues.

“[A] court cannot properly deny the motion after only finding that a genuine issue of material fact exists as to one element of the plaintiff’s claim; rather, . . . the court must determine that a genuine issue of material fact exists for each essential element of the plaintiff’s claim.” *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 358, 650 S.E.2d 68, 71 (2007). When determining whether genuine issues of material fact exist as to all elements of a claim, the court must view the evidence and all reasonable inferences in the light most favorable to the nonmoving party. *Fleming v. Rose*, 350 S.C. 488, 493-94, 567 S.E.2d 857, 860 (2002). However, “a court cannot ignore facts unfavorable to [the nonmovant], and it must determine whether a verdict for that party would be reasonably possible under the facts.” *Bloom v. Ravoir*, 339 S.C. 417, 529 S.E.2d 710 (2000).

“To survive summary judgment, the evidence presented [by the non-movant] must amount to more than mere speculation and conjecture.” *Harris Teeter, Inc. v. Moore & Van Allen, PLLC*, 390 S.C. 275, 299, 701 S.E.2d 742, 754 (2010) (Hearn, J., concurring in part and dissenting in part) (citing *McKnight v. S.C. Dep’t of Corrs.*, 385 S.C. 380, 390, 684 S.E.2d 566, 571 (Ct. App. 2009)). “[I]dle speculation, which has no basis in the record, is clearly insufficient to overcome” summary judgment. *Richland-Lexington Airport Dist. v. Atlas Properties, Inc.*, 854 F. Supp. 400, 424 (D.S.C. 1994). A party “cannot create a genuine issue of material fact through mere speculation or the building of one inference upon another.” *Id.* (citation omitted). This is exactly what Plaintiff is attempting in this case.

2. Plaintiff cannot overcome the unavoidable legal consequences of Bannon's independent contractor status.

Bannon's independent contractor status is fatal to Plaintiff's trade secrets claim. (Motion Ex. 2.) Plaintiff's only arguments to counter Judge Goodstein's Order directly on this issue is that she was wrong. (Response p. 14.) However, Plaintiff has not cited and cannot cite to one South Carolina case that has ever ruled to the contrary. Plaintiff has not provided this Court with any reason to reject the reasoning and prior ruling of Judge Goodstein. Plaintiff's arguments would completely negate the need for any reference to "employees" in the Trade Secrets Act. S.C. Code Ann. § 39-8-30 clearly states "Every employee who is informed of or should reasonably have known from the circumstances of the existence of any employer's trade secret has a duty to refrain from using or disclosing the trade secret. . . ." If this same duty applied to all non-employees, the legislature would have simply said "everyone" has this obligation and not placed any limiting language related to employees. The South Carolina Supreme Court has ruled, "In construing statutes, we seek to effectuate legislative intent. The cardinal rule of statutory construction is that words used therein must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand its operation." *Hitachi Data Sys. Corp. v. Leatherman*, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992). For the exact reasons Judge Goodstein granted summary judgment in her order, summary judgment is proper in this case.

It is not disputed that Bannon was an independent contractor - in form and in substance. (Motion Ex. 3, p, 103-110.) This relationship is different than an employee as a matter of law. It requires less control than an employment relationship. By designating Bannon an independent contractor, Plaintiff acknowledged through its tax filings that it did not exert the same control over Bannon. Bannon considered himself to be running his clients through Plaintiff for servicing and he was paid a commission for keeping his clients at Plaintiff. (Bannon 28.) Plaintiff cannot

produce any evidence to dispute this fact. Bannon was so far removed from any employment status with Plaintiff that he stopped trying to send new clients to Plaintiff for servicing after November of 2015 and through the time he terminated that relationship in November of 2016. (Bannon 28.) Bannon was only servicing his established clients with whom he had a strong relationship. (Id.) As an independent contractor, Bannon had the right to decide how much he wanted to work and whether he wanted to try to grow his business with Plaintiff. He decided not to do so for one year prior to terminating his relationship with Plaintiff. The relationship between Bannon and Plaintiff did not remotely compare to an employment relationship. Plaintiff must be required to face the legal realities of the fact that Bannon was an independent contractor.

3. There is no signed contract. Plaintiff is solely relying on his self-serving statements and speculative evidence to attempt to defeat the clear Statute of Frauds application in this case.

Plaintiff admits it cannot produce a signed contract. Defendant's Motion cites the clear law that Plaintiff cannot rely on self-serving testimony to defeat the Statute of Frauds defense. (Motion p. 13.) Yet, that is exactly what Plaintiff is attempting to do. Plaintiff's Response only cites the testimony of Brian Stritt on this issue.

Plaintiff's Response attempts to support Stritt's self-serving testimony by making an absurd argument that because Defendants did not assert the Statute of Frauds defense in their original answer, it somehow proves that Bannon was not sure if Plaintiff was going to be able to produce the signed document. (Response 8.) This argument is not only wrong, but it is intentionally misleading. Indeed, as early as the Preliminary Injunction hearing on December 8, 2016 (seven days after the Complaint was filed and well before the answer was filed), Bannon clearly and unequivocally testified under oath that he never signed an agreement with Plaintiff. (See Response Ex. A, p. 55.)

The fact that the Statute of Frauds defense was not asserted in the original answer was simply a legal oversight that was corrected. Bannon never said he was unsure if Plaintiff was going to produce a signed agreement. This was Defendants' attorney who was giving a reason he did not put the defense in the original answer. Bannon has always maintained he did not sign the agreement. Plaintiff's efforts to confuse and mislead the Court on this issue should be rejected.

Plaintiff also makes the absurd argument that because Stritt had an attorney draft an agreement, it is evidence that Bannon signed the agreement.¹ (Response p. 9.) The fact that a contract was drafted has absolutely no bearing on whether it was actually signed. Such a ruling would allow for extreme abuse of the legal process. The fact that Plaintiff has litigated this claim since December of 2016 with no signed contract is an abuse of process. None of Plaintiff's other agents or employees were required to sign restrictive covenant agreements. (Motion Ex. 4, pp. 48, 147-148.)

Significantly, the agreement Plaintiff has produced that he contends Bannon signed is simply a blank form agreement. It does not reference Bannon's name, address, SSN, draw amount, hourly pay, all of which were left blank throughout the document. (Response Ex. M.) The exhibits to the agreement are also completely blank related to duties and benefits offered. These terms could not have just been handwritten in. If Bannon signed a document like this agreement (which he did not) it would be expected that an electronic version with the blanks completed could have been located at a minimum. It has not. Also, the blank agreement contains a section on page 5 for a "**guardian**" to sign if the employee is under 18 years old. (*Id.*) Bannon is 47 years old. This document was clearly not drafted for him as Plaintiff misrepresents.

¹ Notably, Plaintiff again cites the testimony of Stritt for this issue and has not provided any signed statement from the attorney who allegedly drafted the agreement.

Not only did Bannon not sign this agreement, the evidence is clear that none of Plaintiff's agents or employees signed this agreement. (Motion Ex. 1, p. 3.) Despite the fact that inferences are not relevant to prove a signed contract, all inferences support the fact that Bannon never signed an employment agreement with Plaintiff.

The law is clear on this issue - the Statute of Frauds bars a contract claim where there is no signed agreement produced. *Yadkin Valley Bank & Tr. v. Oaktree Homes, Inc.*, No. 2014-UP-306, 2014 S.C. App. Unpub. LEXIS 395, at *1-4 (Ct. App. July 30, 2014) (Attachment 2). "The very purpose of the Statute of Frauds is defeated where the sole proof of the existence and contents of a document relied upon to avoid the Statute is testimony of the plaintiff." (*Id.*) (internal citations omitted). The only potential exception the South Carolina Court of Appeals is even willing to consider is where there is clear and convincing evidence that it was signed that is not based on self-serving testimony. That is not the case here and summary judgment is proper.

4. Plaintiff has only specifically identified one alleged trade secret but has not shown how it is a trade secret or how its misuse caused damages.

Plaintiff admits that the raw data in Employee Navigator is not a trade secret. (Response P. 16.) Plaintiff has not demonstrated how the organization of such information could create a trade secret. Again, Plaintiff attempts to rely on conclusory allegations. The South Carolina Supreme Court recently confirmed that the plaintiff must prove that the alleged trade secret information had independent economic value and was not readily ascertainable by proper means. *Wilson v. Gandis*, No. 27980, 2020 S.C. LEXIS 88, at *48-49 (June 3, 2020). Here there is absolutely no such proof.

The only purported evidence Plaintiff has presented to attempt to establish a trade secret is the self-serving testimony of Brian Stritt. Plaintiff's Response has only alleged one specific example of a trade secret, which are allegedly mathematical formulas from a spreadsheet that Plaintiff used in renewal presentations with clients. (Response p. 16.) There has been no testimony

provided to explain how this information was developed by Plaintiff and how it provides Plaintiff some competitive advantage. There is no evidence that this information could not be easily obtained and developed through other sources. Plaintiff's Rule 30 witness on damages testified "There's absolutely value to that in the market place, if they know how to use it," and also testified that it would be "pretty difficult" to place a value on that information. (Response Ex. L p. 103.) This clearly required expert testimony to establish how this information was not easily obtainable from other sources and how it had market value. Stritt also qualified his response to these questions with "if they know how to use it." (*Id.*) There is no evidence that Bannon knew how to use it, the information was destroyed before this lawsuit was filed and before any use, and this information was never transferred to Assured Partners. Plaintiff has simply not proven the required elements of a trade secret claim.

5. Plaintiff's Response relies on speculation that Defendants used its documents to entice clients to switch.

Plaintiff misrepresents the evidence and speculates that Defendants used its documents to "entice clients to switch." (Response p. 2.) There is absolutely no evidence that Plaintiff's information was used in this manner and none is cited by Plaintiff.

Bannon testified that he simply went to his clients, told them he was leaving Plaintiff and going to Assured Partners, and told them they had a choice – they could either stay with Plaintiff or go with him. (Response Ex. E, p. 29.) It was not until after the clients said they wanted to go with Bannon that he had any discussions about transferring their information and files to Assured Partners.

None of the information was used to entice clients. The information was used to protect the client from Plaintiff intentionally causing disruption to the client during the transition. Plaintiff had a history of intentionally disrupting clients who tried to leave. Defendants have produced an

affidavit from a client who left Plaintiff and went with one of Plaintiff's other independent contractors to Assured Partners. (Motion Ex. 7, Winston Dep. Ex. 7.) She specifically confirmed the following occurred in March of 2016, which was prior to Bannon leaving Plaintiff:

Hal and I decided that the company would continue with Mack ward instead of Forum Benefits. After we informed Ms. Winston of this decision, the reporting function of Employee Navigator was removed by Forum Benefits on approximately March 17, 2016. This caused some **disruption** to the management of our account and made it difficult to transition or account to AssuredPartners.

(Motion Ex. 7 Winston Dep Ex. 7) (emphasis added.) Plaintiff cannot produce any evidence to counter this clear confirmation of Plaintiff's disruption efforts.

In addition, Mack Ward told Bannon about his experience with Plaintiff when he ended his independent contractor relationship and he told Bannon that Stritt specifically said "I want the client **disrupted** so that they come back to me." (Motion Ex. 6, p. 43.)

Plaintiff argues that the information was valuable because Defendants had urgency to get the information. (Response p. 4.) The urgency was solely related to the knowledge that Plaintiff would begin its disruption efforts as soon as it became aware of the fact that Bannon was leaving. Bannon reasonably believed he had an obligation to his client to take steps to prevent them from being disrupted.

There is absolutely no evidence that this information was in any way used to entice clients. Rather, it was done with the client's consent to ensure the client had access to their own information if they decided to transition to Assured Partners. (Motion Ex. 1, pp. 8-9.) Plaintiff's claims ignore the fact that the clients have rights to their information and files. These clients essentially paid Plaintiff for the servicing related to this information, had the right to demand the information, and Plaintiff had an obligation to provide the information. The client has the right to decide who can have access to its information, not Plaintiff.

6. Plaintiff cannot solely rely on the self-serving testimony of Brian Stritt to prove damages.

Plaintiff essentially admits that damages are speculative by providing three options for how it might present and calculate its damages at trial. (Response pp. 6-7.) This proves why expert testimony was required in this case - because there is no clear or designated formula for Plaintiff's alleged damages. Plaintiff's Rule 30(b)(6) deponent was noticed on this exact issue of damages and still was not prepared to give a straight answer:

Q. Okay. What is the amount from that, that Forum Benefits, LLC is seeking to recover? You know, based on that lost revenue, what is the amount that they will be seeking from the lawsuit to recover?

A. So the market value of that business.

Q. Okay.

A. Market saleable value.

Q. Okay.

A. That's where we can put in 35 different formulas and come up with what that number is.

Q. And what is that number?

A. Well, at 240, it really depends on how we calculate it.

Q. **Okay. And as of today, you haven't calculated that?**

A. **No**, there's a lot of different versions of how to do it.

(Motion Ex. 4. p. 170) (emphasis added.) Plaintiff never supplemented discovery to provide any additional response on the issue of damages. Plaintiff admits that damages are based on the market saleable value. Expert witness testimony is required to assess and testify about market value to a jury. Discovery has closed, summary judgment is pending, and this case is the number one case on the trial docket. Plaintiff still has not determined how it wants to calculate damages. At this stage, Plaintiff cannot simply rely on the self-serving testimony of Stritt who is not qualified to testify on the market saleable value in December of 2016. Thus, summary judgment is proper.

Ironically, Plaintiff is so confused about its alleged damages that it has given an example of potential damage calculations based on the multiplier received by one of its independent contractors (Assure South) who sold its client book to Assured Partners. Plaintiff completely

misunderstands the implication of this example. This is the value to the independent contractor like Assure South and Bannon, not Plaintiff. The value is based on the fact that independent contractor sold the client the insurance and maintained the closest client relationship. It does not represent the value to a company like Forum who was simply providing the client access to the service. Plaintiff did not have the close relationships with the clients the same as the independent contractors who actually solicited and sold them the insurance product. Thus, while the value to Bannon may have been in the range Plaintiff speculates, it does not remotely represent the market value to Plaintiff.

In fact, Plaintiff was so convinced that it would not keep Bannon's clients under any circumstances that it never made any effort to reach out to or keep any of Bannon's clients. (Motion Ex. 4, pp. 76-77.) Plaintiff admits that Bannon had strong personal relationships with his clients. (*Id.*) Specifically, Stritt (serving as the Rule 30 deponent) testified:

- Q. Right. And there -- you know, in this line of business, there's some personal relationships that if, you know, Bannon's got a good relationship and he says ---
- A. Sure.
- Q. --- "Hey, I'm leaving. Go with me," they're just going to say yes.
- A. Sure.
- Q. Regardless of even if the service is worse; right?
- A. It certainly has happened, yeah.
- Q. Yeah. And did Bannon have most of the personal relationships with his clients?
- A. Some -- yeah, he had -- obviously, he had some good relationships with some companies.

(*Id.* at p. 77.)

Bannon's clients were generally in the Beaufort area where he lived, not Greenville where Plaintiff is located, and Plaintiff made a conscious decision not to try to get those clients to stay with it over Bannon. (*Id.* at pp. 76-77.) Plaintiff admits that there is absolutely no way for Plaintiff to prove which clients would have stayed with Plaintiff had Bannon left under any other circumstances. (*Id.*) Thus, Plaintiff's damages are completely speculative.

Plaintiff's damages arguments are also inconsistent. On the one hand Plaintiff claims that the damages were to the business that continued post sale. On the other hand, Plaintiff alleges that the reduction in the purchase price provides persuasive evidence of actual damages directly caused by Defendants' conduct. Plaintiff ignores the fact that any alleged damages related to the reduction of the purchase price is damage to the seller only (Stritt). Stritt has admitted the fact that he personally was the only one harmed by the reduction in the purchase price. (Attachment 1, additional excerpts from Rule 30 Dep. pp. 44-45.) The buyer who owns the new entity gets the advantage of any reduced price. Plaintiff's damages models now include non-parties.

Plaintiff's damages arguments can be easily summarized as follows – all over the board, completely speculative, and solely based on the unqualified and self-serving testimony of Stritt who has admitted the Plaintiff has not yet calculated its damages. It is simply too late for Plaintiff to try to figure this out. The lack of non-speculative damages is fatal to all of Plaintiff's claims.

7. Plaintiff's misapplication of the law on conversion.

Plaintiff's Response improperly relies on *Gignilliat v. Gignilliat, Savitz & Bettis, L.L.P.*, 385 S.C. 452, 466, 684 S.E.2d 756, 763 (2009) in an attempt to support its conversion claim. In *Gignilliat*, the Supreme Court actually granted summary judgment to the defendant ruling that the intangible property at issue could not satisfy a conversion claim. The Court stressed its "reluctance to expand" the tort of conversion as it relates to intangible property. *Id.* Plaintiff is attempting to further expand this law contrary to this clear reluctance to intangible electronic information. No South Carolina case has recognized such claim. Rather, the Supreme Court has given direction against such expansion.

Plaintiff also improperly argues that Defendants denied it exclusive use of its trade secrets. With regard to the information on SharePoint, Plaintiff's employees and agents had unrestricted

access to the information. Plaintiff was not taking any efforts to control exclusive use when it gave it to independent contractors without restriction. Furthermore, Bannon lost the information when his computer crashed prior to this case being initiated. The information was never used or transferred to Assured Partners. Thus, Defendants never used this information and there was no denial of exclusive use of this information.

With regard to Employee Navigator, Plaintiff misrepresents that it had exclusive use of this information. It gave the clients access to the information without any restrictions related to use or sharing the information with others. The clients decided to provide this information to Defendants which was within their rights.

8. Plaintiff's Reference to Defendants' Motion and the Fourth Motion for Summary Judgment.

Plaintiff is hopeful that this Court will not fully review the pleadings in this case based on the statement and caption to its Response that this is Defendants' fourth motion for summary judgment. This is another example of Plaintiff attempting to distract from the fact that it cannot establish a genuine issue of fact on the essential elements of its claims. Defendants' prior motions do not impact the current motion and are easily explained and summarized as follows:

- March 8, 2018 – Motion for Summary Judgment. Plaintiff's response to this motion relied on the fact that the Statute of Frauds was not asserted in the Answer. Discovery had not been completed at that time. The motion was denied by Form 4 order without any explanation of the reasons and Defendants were granted leave to amend the Answer to add a Statute of Frauds defense.
- May 6, 2019 – Motion for Summary Judgment on the issue that Forum Benefits, Inc. was not the proper party in interest. The court never ruled on this motion but allowed Plaintiff to substitute Forum Benefits LLC as the named Plaintiff.

- June 11, 2019 – Motion for Summary Judgment on the issue that Plaintiff cannot prove damages. On July 25, 2019 the court issued a scheduling order allowing discovery to continue through March 6, 2020 and set a motions deadline of March 27, 2020. Defendants withdrew this motion to pursue additional discovery on these issues, including taking a Rule 30(b)(6) deposition on damages which is substantially relied upon in Defendants' current Motion.

CONCLUSION

For these reasons and the reasons outlined in the Motion, Defendants respectfully request that this Court grant their motion for summary judgment and dismiss all of Plaintiff's claims.

Date: June 9, 2020

Respectfully submitted,

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ATTACHMENT 1

Page 1

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
 COUNTY OF BEAUFORT) C.A. NO. 2016-CP-07-2541

FORUM BENEFITS, INC.,)
) 30(b)(6) DEPOSITION
 PLAINTIFF,)
) OF
 VS.)
) FORUM BENEFITS, LLC
) (BRIAN STRITT)
 BRIAN BANNON AND ASSURED)
 PARTNERS, NL,)
)
 DEFENDANT.)

THE 30(b)(6) DEPOSITION OF FORUM BENEFITS, LLC (BRIAN STRITT), TAKEN BEFORE HOLLY W. WILSON, PROFESSIONAL VERBATIM REPORTER AND NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA, COMMENCING AT THE HOUR OF 1:12 P.M., MONDAY, THE 10TH DAY OF FEBRUARY, 2020, AT FORD AND HARRISON, LLP, 100 DUNBAR STREET, SUITE 300, SPARTANBURG, SOUTH CAROLINA.

1 numbers, let's just say there's a million-dollar award.
2 That award is obviously to Forum Benefits, LLC. That's
3 the party; right?

4 A Right.

5 Q Is there any agreement about how that -- any of that
6 money would then flow to you?

7 A No.

8 Q Okay. So, it would be a hundred percent Forum
9 Benefits, LLC's money?

10 A Yeah.

11 Q Okay. All right. And then, in terms of if there is a
12 -- if there's the reverse, if there's an award against
13 Forum Benefits, LLC in the Beaufort litigation -- maybe
14 for some types of attorneys' fees or costs, or I know
15 there was an offer of judgment -- so, there's some
16 legal potential ways that fees could shift, you know,
17 to where the plaintiff, Forum Benefits, LLC, would owe
18 money to the defendants. Is there any type of
19 agreement on whether you would have to contribute to
20 any of that?

21 A No.

22 Q That would all come out of Forum Benefits, LLC?

23 A Who knows? I mean, we didn't -- it's not even been
24 discussed.

25 Q That's not -- that would have to be discussed when it

1 happened; right? Is that kind of what you're saying?

2 A Yeah, I would assume, yeah.

3 Q But there -- has there been any communication from
4 Alera Group to you that, you know, the Beaufort case is
5 kind of your baby, and that you're -- you know, you're
6 going to either reap the benefits or pay if it goes
7 south?

8 A Yeah, no. We -- that hasn't even been discussed,
9 actually.

10 Q Okay. Did the Alera group -- because the lawsuit was
11 filed prior to the transaction.

12 A That's correct.

13 Q And so you then, as the owner of Forum Benefits, Inc.,
14 made the decision to bring the lawsuit?

15 A Correct.

16 Q Did Alera request that you file the lawsuit?

17 A No.

18 Q Did they approve the filing of the lawsuit?

19 A I don't know that approve would be the proper term.
20 They understood the need for a lawsuit.

21 Q Okay.

22 A I guess would be the best way to put it.

23 Q And then, so ---

24 A There was no formal process, I guess, is -- you know.

25 Q And, so, the initial cost of the litigation -- there

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1 are filing fees, there's attorneys' fees -- were those
2 born out of Forum Benefits, Inc.?

3 A Yes.

4 Q Okay. And, so, you were kind of -- as the owner of
5 that, you know, that's impacting your profits, those
6 payments; right?

7 A Sure.

8 Q Okay. And, so, then post transaction, it moves into
9 Forum Benefits, LLC. Did that immediately switch after
10 the transaction? Meaning you stopped paying the
11 attorneys' fees out of the -- kind of the Inc. side,
12 your profit side, and it started coming out of the
13 Alera Forum Benefits, LLC side?

14 A No.

15 Q So it didn't move into LLC?

16 A So, I want to clarify. I'm required to tell you where
17 the money comes from to pay for the lawsuit?

18 Q Yes.

19 A Okay. It's coming from Brian Stritt.

20 Q Okay. So, you -- the Forum Benefits, LLC has not
21 technically paid any money for the lawsuit?

22 A That's correct.

23 Q Okay. And so -- and that's where I kind of assumed
24 that and I was getting at it a different way because --
25 so, what my thought is, is there a -- you know, you're

1 investing it, personally -- the money in this case,
2 personally; right? Right?

3 A Sure.

4 Q Okay. And, so, if you win, you obviously want to ret-
5 -- the return on investment; right?

6 A Well, clearly, I'm going to get the attorney fees back.
7 That's -- that would be the first part. But we haven't
8 sat down and discussed with Alera anything. If
9 anything happens, what that award -- how it would be
10 distributed, we haven't done that.

11 Q Okay. All right. And, so, it sounds to me like that
12 there's just a lot of faith that that's going to work
13 out in your favor; right?

14 A Yeah. I think it's pretty logical.

15 Q And, you know, you just kind of have to trust Alera to
16 -- because the money's -- if any money is awarded, it
17 goes to Forum Benefits, LLC. You understand that?

18 A Right. Right.

19 Q So then they have to agree to transfer that to you.
20 Because it doesn't -- the only benefit would be,
21 without that transfer, was it might, you know, increase
22 your stock; right?

23 A Right.

24 Q Okay. And, so -- and sometimes I ask questions that
25 may seem repetitive, but I'm trying to clear ---

1 A No, no that's fine. That's fine.

2 Q --- my thoughts here. So, let's just say there's a
3 huge influx of money. Let's just say a million dollars
4 into Forum Benefits, LLC. There's nothing in your
5 compensation, outside of your salary and your
6 commission, that you would get some benefit of a huge
7 influx of money?

8 A No.

9 Q Okay. All right. And, so, you started this lawsuit, I
10 think, December of 2016, the Beaufort lawsuit. And
11 then is that -- the money right then, that's going to
12 pay for the lawsuit, coming out of Forum Benefits,
13 Inc.?

14 A Sure, yeah.

15 Q Okay. And then -- so then, you know, Forum Benefits,
16 Inc. kind of goes away after the transaction.

17 A Correct.

18 Q It becomes LLC. There really is no Inc. anymore?

19 A Correct, correct.

20 Q And, so, at that point, do you just start paying it out
21 of like a personal account?

22 A Correct.

23 Q Okay. And do you know when that started?

24 A Well, it would have started the minute the company
25 ceased to exist, which was 12-31-16.

1 they got the earn out provision in that quickly in that
2 few days.

3 Q Yeah, and so that's what I kind of was -- my -- I was
4 curious, just because we don't have any of the other
5 drafts, if, you know, there was -- there were
6 discussions about the sale terms without any earn out.
7 Then you have the band of disclosure. And then it's
8 added, but it's really added the first time there is an
9 agreement to look at or where the -- you know, so
10 that's option 1. Or was there -- these prior drafts
11 that y'all were working on, the Bannon disclosure
12 happens, and then this earn out is just added in to
13 what y'all have already been working on -- kind option
14 B?

15 A I think it's option B.

16 Q Okay.

17 A Yeah.

18 Q All right. Okay.

19 A You know, they kind of had to figure out what to do.

20 Q And it's my understanding from your prior testimony
21 that the earn out got added into everybody's contract,
22 not just yours?

23 A Correct.

24 Q But you were the only one who had a producer actually
25 qualify for the reduction?

1 A Correct. Correct. What Genstar and the lenders were
2 afraid of was this was going to be a common occurrence.
3 But it happened once. I was the only one affected by
4 it.

5 Q Okay. All right. So, let's just look at the language,
6 and it's on page 4. It starts with paragraph 1.7,
7 Contingent Purchase Price. You see that?

8 A Uh-huh.

9 Q And just for the record, if you will, say yes or no to
10 that.

11 A Yes.

12 Q Yeah, and that's just -- you know, I'll call you out a
13 little bit on that. But it's just -- we don't ever
14 want a situation where we don't know whether your
15 response was positive or negative. So, we'll just
16 clarify a uh-huh or uh-uh.

17 A Gotcha. Okay. Yeah, I know -- words.

18 Q And so the -- you know, you've got several, it looks
19 like, potential options for a reduction in the purchase
20 price. Is that right? You know, 1.7.1 is one option.
21 1.7.2 is another option.

22 A Yeah, it looks like.

23 Q Okay. Did -- and then ---

24 A I really didn't pay attention to the other ones. But,
25 yeah.

ATTACHMENT 2

Yadkin Valley Bank & Trust v. Oaktree Homes, Inc.

Court of Appeals of South Carolina

September 12, 2013, Heard; July 30, 2014, Filed

Unpublished Opinion No. 2014-UP-306

Reporter

2014 S.C. App. Unpub. LEXIS 395 *; 2014 WL 3747342

Yadkin Valley Bank & Trust, Respondent, v. Oaktree Homes, Inc., Dawne M. Ras and Thomas C. Ras, Daniel Simpson, Above All Services, Inc., Carter Lumber Company, Efficient Painting Contractors, Inc., Creative Concepts, and Solid As a Rock, Inc., Defendants, Of whom Oaktree Homes, Inc., is the Appellant.

Notice: THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

Subsequent History: Rehearing denied by Yadkin Valley v. Oaktree Homes, 2014 S.C. App. Unpub. LEXIS 457 (S.C. Ct. App., Sept. 18, 2014)

Writ of certiorari granted Valley v. Oaktree Homes, 2015 S.C. LEXIS 89 (S.C., Feb. 20, 2015)

Affirmed by Yadkin Valley Bank & Trust v. Oaktree Homes, Inc., 2016 S.C. Unpub. LEXIS 66 (S.C., July 6, 2016)

Prior History: [*1] Appeal From York County. Appellate Case No. 2011-197970. John C. Hayes, III, Circuit Court Judge.

Disposition: AFFIRMED.

Core Terms

memorandum, convincing, counterclaims, unequivocal, clear and convincing evidence, breach of contract, statute of frauds, summary judgment, general statute, remaining issue, trial court, self-serving, extrinsic, contents, promise, defeat, lender, cases, parol

Counsel: John S. Nichols and Blake Alexander Hewitt, both of Bluestein Nichols Thompson & Delgado, LLC, of Columbia, and Chad Alan McGowan and William Angus McKinnon, both of McGowan Hood & Felder, LLC, of Rock Hill, for Appellant.

James W. Sheedy and Susan Elizabeth Driscoll, both of Driscoll Sheedy, P.A., of Charlotte, N.C., for Respondent.

Judges: HUFF, GEATHERS, and LOCKEMY, JJ., concur.

Opinion

PER CURIAM: Oaktree Homes, Inc. (Oaktree) appeals the trial court's order granting summary judgment to Yadkin Valley Bank & Trust (Yadkin Valley) on Oaktree's counterclaims for breach of contract, negligent misrepresentation, and breach of contract accompanied by a fraudulent act. Oaktree also argues the trial court erred in holding it waived its right to a jury trial on the counterclaims.

1. We find the trial court did not err in holding Oaktree's counterclaims against Yadkin Valley failed as a matter of law because it was unable to produce a written loan agreement. The lender statute of frauds precludes certain actions regarding loans for money where there is no writing evidencing the alleged promise or agreement. [*2] See S.C. Code Ann. § 37-10-107(1) (2002) (providing that no person may maintain an action or defense based upon a failure to perform an alleged commitment or agreement to lend or borrow money in excess of fifty thousand dollars unless that person "has received a writing from the party to

be charged containing the material terms and conditions of the promise, undertaking, accepted offer, commitment, or agreement and the party to be charged, or its duly authorized agent, has signed the writing"). Jurisdictions that allow a party to submit parol or extrinsic evidence to establish proof of a lost memorandum in order to "avoid" the requirements set forth in the general statute of frauds require that evidence to be clear and convincing. See *Weinsier v. Soffer*, 358 So. 2d 61, 63 (Fla. Dist. Ct. App. 1978) (stating proof of a lost document must be clear, strong and unequivocal); *Mossman v. Hawaiian Trust Co.*, 45 Haw. 1, 361 P.2d 374, 379 (Haw. 1961) (stating the proof to establish a lost memorandum must be clear and convincing); *Zander v. Ogihara Corp.*, 213 Mich. App. 438, 540 N.W.2d 702, 705 (Mich. Ct. App. 1995) (holding that extrinsic or parol evidence of alleged signature on a contract must be "'clear, strong, and unequivocal,' i.e., clear and convincing"); *Chakur v. Zena*, 233 S.W.2d 200, 202 (Tex. Civ. App. 1950) (stating proof of a lost memorandum must be clear and convincing); 72 Am. Jur. 2d *Statute of Frauds* § 194 (2012) ("Proof to establish the lost memorandum of a contract must be clear and convincing. The memorandum [*3] itself is, of course, the best evidence of its contents, and if its loss or destruction is not proved, secondary evidence is not admissible."). We hold that even if this court were to accept the lost memorandum exception to the general statute of frauds applied to the lender statute of frauds, Oaktree failed to provide the required clear and convincing evidence. See *Satcher v. Satcher*, 351 S.C. 477, 483, 570 S.E.2d 535, 538 (Ct. App. 2002) (defining clear and convincing evidence as the degree of proof that provides the fact finder with a "firm belief as to the allegations sought to be established"); *id.* ("Such measure of proof is intermediate, more than a mere preponderance but less than is required for proof beyond a reasonable doubt; it does not mean clear and unequivocal."); see also *Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 330-31, 673 S.E.2d 801, 803 (2009) ("[I]n cases requiring a heightened burden of proof or in cases applying federal law, we hold that the non-moving party must submit more than a mere scintilla of evidence to withstand a motion for summary judgment."). The evidence Oaktree submitted concerning the existence and terms of the loan commitment letter was self-serving and contradictory. See *Weinsier*, 358 So. 2d at 63 ("The very purpose of the [s]tatute of [f]rauds is defeated where the sole proof of the existence and contents of a document relied upon to avoid [*4] the [s]tatute is the testimony of the plaintiff."); *Zander*, 540 N.W.2d at 704, 706 (reversing the trial court's denial of defendant's motions for directed verdict and JNOV, and explaining it would not "permit plaintiffs to defeat the purpose and intent of this statute solely on the basis of their own self-serving testimony").

2. We need not address Oaktree's remaining issues. See *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (ruling an appellate court need not review remaining issues when its determination of a prior issue is dispositive of the appeal).

AFFIRMED.

HUFF, GEATHERS, and LOCKEMY, JJ., concur.

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**STATE OF SOUTH CAROLINA
BEAUFORT COUNTY**

**IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 2016-CP-07-2541**

Forum Benefits, LLC,

Plaintiff,

v.

Brian Bannon and Assured Partners, NL

Defendants.

**PLAINTIFF'S MOTION FOR A NEW
TRIAL**

Plaintiff Forum Benefits, LLC moves for a new trial pursuant to Rule 59 of the South Carolina Rules of Civil Procedure. The basis for this Motion is the Court's reasonable appearance of bias that was first identified on the second day of trial and, as described below in more detail, the Court's incorrect and inconsistent rulings throughout the trial that prevented Plaintiff from receiving a fair trial. Therefore, Plaintiff respectfully requests a new trial on all issues.

I. Legal Standard

"The grant or denial of new trial motions rests within the discretion of the circuit court, and its decision will not be disturbed on appeal unless its findings are wholly unsupported by the evidence or the conclusions reached are controlled by error of law." *Brinkley v. S.C. Dep't. of Corr.*, 386 S.C. 182, 185, 687 S.E.2d 54, 56 (Ct. App. 2009) (citing *Umhoefer v. Bollinger*, 298 S.C. 221, 224, 379 S.E.2d 296, 297 (Ct. App. 1989); *Boozer v. Boozer*, 300 S.C. 282, 283, 387 S.E.2d 674, 675 (Ct. App. 1988)). As described herein, the trial court made numerous rulings and conclusions unsupported by the evidence and controlled by errors of law.

"An abuse of discretion occurs when the conclusions of the circuit court are either controlled by an error of law or are based on unsupported factual conclusions." *Carson v. CSX*

Transp., Inc., 400 S.C. 221, 229, 734 S.E.2d 148, 152 (2012) (citing *Kiriakides v. School Dist. of Greenville Cty.*, 382 S.C. 8, 20, 675 S.E.2d 439, 445 (2009)).

A court may grant a motion for a directed verdict when the case presents only issues of law. S.C. R. Civ. P., Rule 50(a). “When ruling on a motion for a directed verdict, the trial court must view all evidence and all reasonable inferences in the light most favorable to the nonmoving party, and if the evidence is susceptible of more than one reasonable inference, the trial court should submit the case to the jury.” *Roddey v. Wal-Mart Stores East, LP*, 415 S.C. 580, 588, 784 S.E.2d 670, 675 (2016) (citing *Unlimited Servs., Inc., v. Macklen Enters., Inc.*, 303 S.C. 384, 386, 401 S.E.2d 153, 154 (1991). “The trial court must deny a motion for a directed verdict or JNOV if the evidence yields more than one reasonable inference or its inference is in doubt.” *RFT Mgmt. Co., LLC v. Tinsley & Adams LLP*, 399 S.C. 322, 333, 732 S.E.2d 166, 171 (2012). “In deciding such motions, neither the trial court nor the appellate court has the authority to decide credibility issues or to resolve conflicts in the testimony or the evidence.” *Id.* (citing *Welch v. Epstein*, 342 S.C. 279, 300, 536 S.E.2d 408, 419 (Ct. App. 2000)); *Erickson v. Jones Street Publishers, L.L.C.*, 368 S.C. 444, 464, 629 S.E.2d 653, 663 (2006). The trial court’s rulings in the case at bar were not faithful to such standards.

“Under Canon 3(C), a judge should disqualify himself if his impartiality might reasonably be questioned.” *Ellis v. Procter & Gamble Distrib. Co.*, 315 S.C. 283, 285, 433 S.E.2d 856, 857 (1993); *State v. Jackson*, 353 S.C. 625, 627, 578 S.E.2d 744, 745 (Ct. App. 2003). While the trial judge’s assurance of his own impartiality is accorded great weight, “a judge’s impartiality might reasonably be questioned when his factual findings are not supported by the record.” *Id.* Given particular events with the trial judge that occurred during trial, which are described herein, as well as the temperament and bias displayed by the trial judge, also

described herein, there were multiple legitimate, bona fide reasons to question the trial judge's impartiality, and he should have recused himself.

II. The Denial of Plaintiff's Motion to Recuse Prevented Plaintiff from Receiving a Fair Trial

A. The Court's Actions Created an Appearance of Bias

On the second day of the trial, during a brief recess with the jury not present, the trial judge entered the courtroom and asked counsel for both parties if he could greet a person in the courtroom whom the trial judge did not at the time identify. Neither counsel objected to the trial judge's request.

The person whom the trial judge then proceeded to greet turned out to be Mack Ward, a Vice President of Defendant Assured Partners. Both parties had identified Mack Ward as a witness anticipated to testify at trial. The interaction between the trial judge and Mack Ward in the courtroom was substantially more boisterous and affectionate than would be expected between mere acquaintances. Specifically, the two engaged in mutual hugging, back slapping, and generally rowdy laughter. After this public display, the trial judge immediately went to the front of the bench, into the court reporter's station, and announced to all present in the courtroom – which included Plaintiff's managing partner Brian Stritt – that he and Mack Ward knew each other from their days attending college at Wofford together and, if cell phones had existed then, neither would be in the position they are in now.

At no time then or thereafter did the trial judge offer any opportunity to the parties to address concern they might have as a result of this in-court display of relationship and affection between the trial judge and a principal for one of the Defendants and/or questions they might have as to bias of the trial judge from that relationship and affection.

Before trial resumed on the third day, the undersigned requested an opportunity to speak with the trial judge in chambers, off the record, with all counsel present. The undersigned specifically stated that the request to meet in chambers was to explain in a more private setting that Plaintiff would be making an oral motion for the trial judge to recuse himself from further involvement in the trial based on the reasonable appearance of bias observed from the trial judge's actions and statements the previous day involving Mack Ward.

After discussing the matter in chambers, counsel returned to the courtroom and, before the jury returned to the courtroom, Plaintiff made a motion for the trial judge to recuse himself based on the previous days' events and the appearance of bias. As reflected in the transcript of the proceedings, the trial judge appears to indicate during argument of the motion that at some point the trial judge and Mack Ward went back into chambers to continue their reunion, an event of which Plaintiff was previously not aware.

The trial judge also stated during argument of the motion (on October 13, 2021) that he does not "do Facebook" and "there's nothing on Facebook that says I'm a judge." A quick examination of Facebook® seems to contradict both of these statements. Specifically, someone named Bentley Price maintains a personal Facebook® account, is currently Facebook® friends with someone named Michelle Ward, which is the name of Mack Ward's wife, and received and responded to Facebook® messages on October 19, 2021, that include photos of someone who appears to be the trial judge in a black robe and stating, "Happy birthday Judge. We love you!"

The trial judge denied Plaintiff's motion to recuse.

B. The Court's Inconsistent Rulings Provide Evidence of Actual Bias

Plaintiff's concerns about the appearance of bias are supported by multiple rulings that were inconsistent in rationale but consistently in Defendants' favor.

Plaintiff identified in its pre-trial brief and discussed during the pre-trial hearing on October 7 that two witnesses expected to testify at trial – Marlene Gray and Sarah Hildreth – who were not available to provide live testimony in the courtroom during trial. Mrs. Gray was formerly the Chief Financial Officer of Magnolia Plantation & Gardens who testified as their designated witness in a Rule 30(b)(6) deposition. Mrs. Hildreth was formerly an account manager for Plaintiff assigned to handle the Magnolia Plantation & Gardens account, and she had also been deposed in this matter. Both witnesses were expected to testify about a meeting that Defendant Bannon and Mrs. Hildreth had with Mrs. Gray on November 10, 2016, to present Plaintiff's renewal recommendations for Magnolia Plantation & Gardens for the following year. Importantly, Defendant Bannon had been an employee of Defendant Assured Partners since October 15, 2016, had continued to represent Plaintiff as the sales person for the Magnolia Plantation & Gardens account until November 14, 2016, and had denied any such meeting took place.

Mrs. Gray currently lives in Charleston, and immediately after receiving a trial subpoena from Plaintiff, Mrs. Gray revealed that she was retired, was 72 years old, had no transportation, and was currently undergoing chemotherapy for cancer. As a result, Mrs. Gray asked Plaintiff's counsel not to require her to travel to Beaufort to testify at trial.

Mrs. Hildreth currently works for another company and lives in central Florida. Although Mrs. Hildreth was willing to travel to Beaufort to provide live testimony when the trial was scheduled for the week of August 31, she notified Plaintiff's counsel that she was not able to do so during the week of October 11 due to previous work commitments.

Although Mrs. Gray was under subpoena to testify at trial, Plaintiff proposed reading Mrs. Gray's deposition testimony at trial to avoid the substantial inconvenience to Mrs. Gray if

she were forced to provide live testimony in her current financial and medical condition. Defendants asserted that they were entitled to see live testimony from this witness and objected to Mrs. Gray testifying through her previous deposition. The Court directed Plaintiff to arrange for Mrs. Gray to provide live testimony at trial remotely from her home using a WebEx® connection.

Since Mrs. Hildreth was outside of the Court's subpoena power, Plaintiff proposed having Mrs. Hildreth provide live testimony at trial remotely from her home using a WebEx® connection. Defendants objected to Mrs. Hildreth testifying remotely from her home using a WebEx® connection and suggested that if this witness were unable to testify live in the courtroom, then Plaintiff would have to read her deposition testimony at trial. The Court ruled that Mrs. Hildreth would not be allowed to provide live testimony at trial remotely from her home using a WebEx® connection and, if she were unable to testify live in the courtroom, then Plaintiff would have to read her deposition testimony at trial.

Plaintiff expressed at the pre-trial hearing that the Court's ruling requiring Mrs. Gray to provide live testimony at trial remotely from her home using a WebEx® connection seemed inconsistent with the Court's ruling that Mrs. Hildreth could not provide live testimony at trial remotely from her home using a WebEx® connection. But both rulings by the trial court were consistent to this extent: they favored the Defendants.

Other inconsistent rulings by the Court involved the admissibility of documents into evidence. As one example, during Plaintiff's direct examination of Defendant Bannon, Plaintiff authenticated and offered into evidence Exhibit 9 – Defendant Bannon's Responses to Requests for Admission under Rule 36. This exhibit was particularly relevant to impeaching Defendant Bannon because Defendant Bannon had just provided testimony based on documents admitted

into evidence that directly refuted many of the admission requests that Defendant Bannon had denied. Defendants objected to the admissibility of this discovery response, and the Court sustained the objection, stating that the proffered exhibit was a “pleading.” Rule 7(a) of the S.C. Rules of Civil Procedure identifies the documents that constitute pleadings (*i.e.*, a complaint, an answer, a reply to a counterclaim, an answer to a cross-claim, a third-party complaint, and a third-party answer), and a discovery response is not one of the documents identified in the Rule. During Defendants’ cross-examination of Brian Stritt, Defendants sought to introduce Exhibit C to the Complaint as an exhibit. Plaintiff objected to the exhibit as a pleading pursuant to Rule 43. *See* S.C. R. Civ. P. Rule 43(g) (“The pleadings shall not be submitted to the jury for its deliberations.”). The trial judge overruled Plaintiff’s objection and admitted the pleading into evidence. The rulings were inconsistent, but both rulings were consistent to this extent: they favored the Defendants.

Another inconsistent ruling by the Court involved direct evidence of Plaintiff’s damages. Plaintiff sought to elicit factual testimony from Brian Stritt based on his own personal knowledge of the precise dollar amount of annual commissions associated with clients that switched from Plaintiff to Defendant Assured Partners and the resulting damages to Plaintiff. At the time of the events giving rise to this litigation, Stritt was the sole owner of Plaintiff and had been negotiating with a buyer for over a year to purchase Stritt’s company. After learning that Defendant Bannon had left Plaintiff, the buyer required Stritt to identify the precise dollar amount of annual commissions associated with clients for whom Defendant Bannon had been the sales person, and the buyer then reduced the previously negotiated purchase price by \$1.5M based on the information that Stritt provided to the buyer.

Defendants objected to all of this factual testimony from Brian Stritt, along with the contemporaneously-generated exhibits that documented both the annual commissions and the \$1.5M reduction in the purchase price negotiated in an arms-length transaction. In initially sustaining Defendants' objections, the Court ruled that Stritt's testimony lacked foundation and, although Stritt's testimony was based on and entirely consistent with the information that Stritt had provided to the buyer in 2016, the Court reasoned that allowing Stritt to testify regarding commissions would enable Stritt to provide false evidence of Plaintiff's damages. According to the Court, Plaintiff could **only** provide evidence of damages through a financial expert.

After a lunch break, the Court announced that, after consultation with an unidentified Business Court judge, the Court would allow Stritt to testify about the precise dollar amount of annual commissions associated with clients that switched from Plaintiff to Defendant Assured Partners. However, the Court would not allow into evidence any contemporaneously-generated exhibits to corroborate Stritt's testimony, nor would the Court allow Stritt to testify about the \$1.5M reduction in the purchase price that had been based solely on the anticipated lost commissions associated with clients taken from Plaintiff by Defendant Assured Partners. The Court's rulings that Stritt could provide first-hand, factual testimony about annual commissions, while excluding first-hand, factual testimony about the negotiated \$1.5M decrease in the purchase price, were contrary to Rules 601-603 of the South Carolina Rules of Evidence, prejudiced Plaintiff, and constitute errors as a matter of law.

Another prejudicial and inconsistent ruling by the Court involves Plaintiff's breach of contract claim against Defendant Bannon. As discussed below, the Court granted a directed verdict for Defendant Bannon on this claim, stating, "There was, obviously, no meeting of the minds." Despite ruling as a matter of law, in disregard of the evidence, that no contract existed

to be breached, which itself was error, the Court nonetheless has indicated that it will grant Defendants' motion for an award of attorneys' fees based on a clause in what the Court had deemed to be a non-existent contract. Moreover, the Court erroneously ruled that it would award Defendant Bannon his attorneys' fees before hearing any response from Plaintiff opposing the motion. The rulings were inconsistent, but both rulings were consistent to this extent: they favored Defendants.

Plaintiff respectfully asserts that the motion to recuse was based on the reasonable appearance of bias, and Plaintiff's concerns about the appearance of bias are supported by a consistent string of inconsistent rulings that consistently favored Defendants. The Court's denial of Plaintiff's motion to recuse prevented Plaintiff from receiving a fair trial, and Plaintiff therefore respectfully requests a new trial on all issues.

III. Trial Evidence Established Disputed Facts for the Jury to Decide Regarding Plaintiff's Breach of Contract Claim

The Court directed a verdict in favor of Defendant Bannon on Plaintiff's breach of contract claim. In support of this ruling, the Court noted that no signed contract was produced at trial, that there was no meeting of the minds to establish a contract, that any non-compete covenant would have expired before any breach occurred, and that any non-compete covenant would be null and void. Plaintiff never alleged or introduced any evidence to suggest that Defendant Bannon breached a non-compete covenant in the employment agreement, and the remaining reasons identified by the Court failed to acknowledge or address the evidence introduced at trial that demonstrated a factual dispute for the Jury to resolve.

A. The Trial Evidence of a Signed Employment Agreement Created a Factual Dispute for the Jury to Resolve

Courts in other states regularly allow parol evidence to prove the existence of a signed agreement that complies with the Statute of Frauds. *See, e.g., Alph C. Kaufman, Inc. v.*

Cornerstone Indus. Corp., 540 S.W.3d 803 (Ky. Ct. App. 2017); *Gipson v. Mattox*, 2006 U.S. Dist. LEXIS 86207* (S.D. Ala. 2006). In *Kaufman*, the court explained that the “clear and convincing” standard “does not mean that it must be established beyond a reasonable doubt, but that the evidence must not be vague, ambiguous, or contradictory, and must come from a credible source. It does not have to be undisputed or uncontradicted.” *Kaufman*, 540 S.W.3d at 813. In *Gipson*, the court recognized, “That no written agreement has been produced today does not require a conclusion that no such document ever existed. If a written agreement previously existed, but was lost, destroyed or purloined, then defendant can introduce evidence to that effect in order to satisfy the Statute of Frauds.” *Gipson*, at *37; *see, also, McInnis v. Lind*, 198 Ore. App. 139, 108 P.3d 578, 582 n.2 (Or. App. 2005) (observing many common-law exceptions to the statute of frauds' prohibition on parol evidence to support an agreement, including where a writing is lost or is in the possession of an adverse party); *Latino Food Marketers, LLC v. Ole Mexican Foods, Inc.*, 2003 U.S. Dist. LEXIS 26970, 2003 WL 23220142, *5 (W.D. Wis. Aug. 20, 2003) (“if the parties did indeed form a contract that met the requirements of the statutes of frauds, the contract is enforceable even if the writing is lost or destroyed”); *Connecticut Bank & Trust Co. v. Wilcox*, 201 Conn. 570, 518 A.2d 928, 931 (Conn. 1986) (“the loss or destruction of a memorandum does not deprive it of effect under the Statute of Frauds,” where the writing can be proven by secondary evidence).

The same rule should be applied in South Carolina.

Comment (a) of section 137 of the *Restatement (Second) of Contracts* echoes this line of authority, stating “In cases of loss or destruction, the contents of a memorandum may be shown by an unsigned copy or by oral evidence.” *See also, Corbin on Contracts* § 23.10 (2006) (“If the requirements of the statute of frauds are satisfied by a signed contract or memorandum, the

contract remains enforceable even though the writing is lost or destroyed. The contents of the writing can then be proved by parol testimony and the contract enforced.”).

As acknowledged by Defendants in their directed verdict motion, South Carolina courts also allow parol evidence to establish the existence of a written contract when the contract cannot be located. *See Yadkin Valley Bank & Tr. v. Oaktree Homes, Inc.*, No. 2014-UP-306, 2014 S.C. App. Unpub. LEXIS 395, * 1-4 (Ct. App. July 30, 2014) (cited in Defendants’ motion). In *Yadkin*, the court noted that to avoid a statute of fraud defense, a plaintiff would need to satisfy a heightened standard of “clear and convincing” proof that the signed document existed. Unlike the plaintiff in *Yadkin*, Plaintiff in the case at bar did not rely solely on self-serving, uncorroborated testimony and instead introduced substantial corroborating evidence to establish the existence of the missing employment contract with Defendant Bannon.

Defendant Bannon failed to assert Statute of Frauds as an affirmative defense in his Answer, and it was only after Plaintiff was unable to produce a signed employment agreement that Defendant Bannon amended his Answer to add this defense. Defendant Bannon’s failure to assert the statute of frauds defense until after Plaintiff was unable to produce a signed copy of the employment agreement is evidence that Defendant Bannon expected Plaintiff to produce a copy of the signed employment agreement because Defendant Bannon himself knew a signed employment agreement actually existed.

At trial, Defendant Bannon acknowledged that he was required to sign an employment agreement with both his previous employer and his current employer, Defendant Assured Partners; however, he nonetheless denied ever signing an employment agreement with Plaintiff. Plaintiff presented substantial corroborating evidence that refutes Defendant Bannon’s testimony.

Defendant Bannon testified that he began working for Plaintiff in Charleston in 2009, and David Wyatt testified that Brian Stritt engaged him in 2009 to prepare an employment agreement for a new employee that would be hired in Charleston. Stritt testified that Ex. 137 (Ex. A to the Complaint) is a blank employment agreement prepared by Wyatt; that Ex. 163 is a completed employment agreement signed by Chris Whatley on May 18, 2009; and that Ex. 163 is substantially identical to the completed employment agreement signed by Defendant Bannon. Stritt further testified that Defendant Bannon signed the employment agreement when Stritt delivered the first paycheck to Defendant Bannon on June 1, 2009; that Stritt placed the signed employment agreement in Defendant Bannon's employment file; and that Stritt only discovered that the signed employment agreement was missing – along with Defendant Bannon's entire employment file – shortly after Stritt learned that Defendant Bannon had been hired by Defendant Assured Partners. The suspicious nature of Defendant Bannon's "lost" employment agreement – along with the entirety of his employment file – supports a reasonable inference that it was actually taken by, or at the direction of, Defendant Bannon. These are not issues of law for the Court, but instead issues of fact for the Jury.

The trial testimony and exhibits regarding the existence of a signed employment agreement created a number of factual disputes for the jury to resolve. *Kumpf v. United Tel. Co. of the Carolinas*, 311 S.C. 533, 429 S.E.2d 869 (Ct. App. 1993) (holding that "a trial court should submit to the jury the issue of the existence of a contract when its existence is questioned and the evidence is either conflicting or admits of more than one inference."). Therefore, the factual dispute regarding whether Defendant Bannon actually signed an employment agreement with Plaintiff should have been submitted to the jury and not decided through a directed verdict; the Court's decision to do otherwise was based on errors of law and was prejudicial to Plaintiff.

B. Defendant Bannon's Breach of the Employment Agreement was a Disputed Fact for the Jury to Resolve

Stritt provided testimony, corroborated by Exhibits 137 and 163, that paragraph 12 of the employment agreement signed by Defendant Bannon included covenants not to disclose Plaintiff's trade secrets and confidential information and that these covenants were unlimited in duration. Paragraph 12(a) of the employment agreement specifically acknowledges that Plaintiff "has information that is confidential and constitutes trade secrets which [Plaintiff] uses in its business, and which is essential to its continued ability to compete and be successful in the industry." Paragraphs 12(b)-(c) incorporate the definition of "trade secrets" provided in the S.C. Trade Secret Act, section 39-8-10, *et seq.* Paragraphs 12(d)-(e) provide specific examples of Plaintiff's trade secrets, including many of the items Defendant Bannon downloaded and shared with Defendant Assured Partners. Paragraph 12(f) specifically provides that

Employee [Bannon] covenants and agrees that during Employee's [Bannon's] employment **and at all times thereafter**, Employee [Bannon] **shall not use any Trade Secrets** of the Company [Plaintiff], except as an employee of the Company [Plaintiff] with the consent of the Company [Plaintiff]. Employee [Bannon] further covenants and agrees that during Employee's [Bannon's] employment **and at all times thereafter**, Employee [Bannon] **shall not use or disclose any Trade Secrets** of the Company [Plaintiff] to any firm, company, corporation, association or other entity, for any reason or purpose whatsoever, except as an employee of the Company [Plaintiff] with the consent of the Company [Plaintiff].

Ex. 137 (emphasis added).

The clear and unambiguous language of the employment agreement prohibits Bannon from ***ever*** copying and sharing Plaintiff's confidential information and trade secrets without permission. The S.C. Trade Secret Act provides that this obligation not to use or disclose trade secrets "***must not*** be considered void or unenforceable or against public policy for lack of a durational or geographical limitation." S.C. Code § 39-8-30(D) (emphasis added). Therefore,

Bannon's contractual obligations not to disclose or use Plaintiff's trade secrets without Plaintiff's consent is not limited by duration and is enforceable in accordance with ordinary principles of contract law.

Defendant Bannon testified that he provided login credentials to Plaintiff's database of information stored in the Employee Navigator accounts to Jim Brady, and Jim Brady testified that he downloaded, copied, and took screenshots of Plaintiff's compiled data. Defendant Bannon also testified that he downloaded as many as 2,000 files from Plaintiff's SharePoint server to his laptop and desktop computers. Michael Scholz provided expert testimony that a digital forensic analysis of the desktop computer used by Defendant Bannon showed that a folder containing the same downloaded files was transferred to an external storage device on October 27, 2016. All of these actions took place while Defendant Bannon was simultaneously (1) employed by Assured Partners and (2) representing Plaintiff as a sales person.

Viewing the trial evidence in the light most favorable to Plaintiff, which is the standard ignored by the trial court, whether or not Bannon breached the covenants not to use or disclose Plaintiff's trade secrets and confidential information contained in paragraph 12 of the employment agreement was a disputed fact for the jury to resolve and could not be properly decided through a directed verdict. Accordingly, Plaintiff respectfully requests a new trial on the breach of contract claim against Defendant Bannon.

IV. The Ruling that an Independent Contractor Can Never Owe a Fiduciary Duty is Legal Error

The Court directed a verdict in favor of Defendant Bannon on Plaintiff's breach of fiduciary duty claim. The undisputed evidence was that Defendant Bannon was Plaintiff's employee from 2009-2013 and an independent contractor from 2013-2016. The Court ruled as a

matter of law that an independent contractor cannot owe a fiduciary duty; therefore, Defendant Bannon could not breach a fiduciary duty to Plaintiff.

It is well-settled and often-quoted that a “confidential or fiduciary relationship exists when one imposes a special confidence in another, so that the latter, in equity and good conscience is bound to act in good faith and with due regard to the interests of the one imposing the confidence.” *Davis v. Greenwood Sch. Dist.* 50, 365 S.C. 629, 620 S.E.2d 65, 68 (2005) (citing *Hendricks v. Clemson Univ.*, 353 S.C. 449, 578 S.E.2d 711, 716 (2003)); *Island Car Wash, Inc. v. Norris*, 292 S.C. 595, 599, 358 S.E.2d 150, 152 (Ct. App. 1987). Although Defendants cited *Computer Prods. v. Jem Rest. Group, Inc.*, 2007 S.C. App. Unpub. LEXIS 150, at *2 (Ct. App. 2007)¹ for the proposition that an independent contractor can *never* owe a fiduciary duty, the unpublished opinion made no such sweeping declaration of law. To the contrary, over thirty years ago the S.C. Court of Appeals listed the following cases in which a South Carolina appellate court held or affirmed that an independent contractor owed a fiduciary duty:

Loftis v. Eck, 288 S.C. 154, 157, 341 S.E.2d 641, 642 (Ct. App. 1986) (holding that an agent owed a fiduciary duty to the principal as a matter of law);

Lengel v. Tom Jenkins Realty, Inc., 286 S.C. 515, 518, 334 S.E.2d 834, 836 (Ct. App. 1985) (affirming that a real estate broker breached a fiduciary duty to disclose all material facts to the client);

In re Moore, 280 S.C. 178, 182, 312 S.E.2d 1, 3 (1984) (affirming that attorneys owe a fiduciary duty to clients);

¹ As noted on the face of this unpublished decision: “THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 239(d)(2), SCACR.”

Landvest Assoc. v. Owens, 276 S.C. 22, 23-25, 274 S.E.2d 433, 434 (1981) (holding that partners owe a fiduciary duty to disclose and deal in good faith with each other);

Duncan v. Brookview House, Inc., 262 S.C. 449, 456, 205 S.E.2d 707, 710 (1974) (holding that promoters of a corporation owe a fiduciary duty of good faith to the corporation);

Talbot v. James, 259 S.C. 73, 82, 190 S.E.2d 759, 764 (1972) (holding that officers and directors of a corporation owe a fiduciary duty of full disclosure to individual stockholders);

Rush v. South Carolina Nat'l Bank, 288 S.C. 560, 343 S.E.2d 667 (Ct. App. 1986) (stating that a bank that advises a customer as part of the services the bank offers may owe a fiduciary duty to the customer).

Steele v. Victory Sav. Bank, 295 S.C. 290, 293, 368 S.E.2d 91, 93 (Ct. App. 1988).

Plaintiff respectfully asserts that the Court's ruling, that Defendant Bannon did not owe a fiduciary duty as a matter of law simply because he was an independent contractor, constitutes legal error. As a result, Plaintiff requests a new trial on the breach of fiduciary duty claim against Defendant Bannon.

V. The Directed Verdict on Plaintiff's Misappropriation of Trade Secrets Claim Relies on a Combination of Legal Errors and Disputed Facts for the Jury to Decide

In a single sentence, the Court summarily adopted Defendants' legal and factual arguments in their entirety to grant Defendants a directed verdict on Plaintiff's misappropriation of trade secrets claim. Plaintiff respectfully asserts that the Court's legal rulings were erroneous and its factual conclusions improperly invaded the province of the Jury, to the prejudice of Plaintiff. As a result, Plaintiff requests a new trial on the trade secret claims against Defendants.

A. The Court Erred in Ruling that the S.C. Trade Secret Act only Applies to Employees

Defendants argued that Defendant Bannon was an independent contractor, and the S.C. Trade Secret Act only applies to employees and not independent contractors. This argument is

factually and legally unsupported. Factually, the undisputed trial evidence showed that Defendant Bannon was Plaintiff's employee from 2009-2013, and section 39-8-30(B) of the S.C. Trade Secret Act creates a duty for *every* employee – independent of and in addition to any employment contract – to refrain from using or disclosing an employer's trade secrets without the employer's permission. Legally, section 39-8-30(C) of the S.C. Trade Secret Act creates a civil cause of action for a "person aggrieved by a misappropriation, wrongful disclosure, or wrongful use of his trade secrets" regardless of the employment status of the alleged wrongdoer. The S.C. Trade Secret Act does not, and never has, included a requirement that a "person aggrieved" must establish any type of employment relationship with the alleged wrongdoer as argued by Defendants. To inject such a requirement would permit businesses like Assured Partners to misappropriate trade secrets from competitors with impunity. Therefore, Defendant Bannon's status as an independent contractor has no bearing on Plaintiff's trade secret claim, and the Court's adoption of this argument as a basis for directed verdict constitutes prejudicial legal error.

B. The Court Erred in Ruling that Plaintiff was Required to Introduce into Evidence the Substance of the Misappropriated Trade Secrets

Defendants argued that Plaintiff only provided the names of files that purportedly contained trade secrets and Plaintiff failed to introduce into evidence the actual substance of the misappropriated trade secrets. Defendants' argument is again factually and legally unsupported.

Factually, Laurie Winston and Brian Stritt described in detail Plaintiff's trade secrets misappropriated from Employee Navigator accounts and Plaintiff's Sharepoint server. Specifically, each witness described Plaintiff's proprietary build out of Employee Navigator accounts for each client, as well as Plaintiff's collection, organization, and compilation of employee census information and insurance plan information included in this proprietary

database. Both witnesses also described in detail Plaintiff's proprietary formulas included in the renewal spreadsheets for each client stored on Plaintiff's SharePoint server.

Legally, section 39-8-60 of the S.C. Trade Secret Act requires a court to preserve the secrecy of a trade secret and excludes from discovery any disclosure of the actual trade secret unless the court first determines a "substantial need by the party seeking discovery for the information." This same section defines the showing required to establish a "substantial need" for discovery of the information, including the requirement that Defendants would "be substantially prejudiced if not permitted access to the information." S.C. Code § 39-8-60(B)(3). Defendants never even attempted to show a "substantial need" for discovery of the substance Plaintiff's trade secrets, nor could they show the required "substantial need." Jim Brady testified that he downloaded, copied, and took screenshots of Plaintiff's trade secrets included in the Employee Navigator accounts for three clients, and Defendant Bannon testified that he downloaded the renewal spreadsheets for each client for which he was the sales person. Inasmuch as Defendants acknowledged copying all of the trade secrets described by Winston and Stritt, Defendants have no colorable argument that they were prejudiced by not receiving additional access to the information they had already obtained. Absent the required showing of a "substantial need" for the substance of the trade secrets, Plaintiff was not required to introduce into evidence the actual substance of the misappropriated trade secrets, and the Court's adoption of this argument as a basis for directed verdict constitutes prejudicial legal error.

C. The Court Erred in Determining as a Matter of Law that Plaintiff's Trade Secrets Had No Value

Defendants argued that Plaintiff failed to show that Plaintiff's trade secrets had any value, and the Court summarily, but improperly, concluded that Plaintiff's trade secrets provided no

benefit. Defendants' argument and the Court's conclusion completely ignore substantial evidence presented at trial of the substantial value of Plaintiff's trade secrets.

Winston and Stritt both testified that the previously described trade secrets took substantial time and effort to collect, organize, and compile and provided Plaintiff with a competitive advantage in administering benefits for clients and negotiating rates with insurance providers. Both witnesses also testified to the substantial time Defendant Assured Partners saved by being able to download, copy, and take screenshots of Plaintiff's trade secrets instead of having to design, build out, collect, organize, and compile the same database of information.

Testimony from Defendant Bannon and Jim Brady and contemporaneous emails (*e.g.*, Plaintiff's Exhibits 8, 10-12, and 45) provide uncontroverted evidence of the urgent efforts Defendants exercised to surreptitiously obtain Plaintiff's trade secrets before Plaintiff learned that Defendant Bannon was working for Defendant Assured Partners and terminated further access. Jim Brady even testified, consistent with his November 8, 2016, email included in Plaintiff's Exhibit 11, that he could not build an Employee Navigator account for a client without login credentials that would allow him to download, copy, and take screenshots of Plaintiff's Employee Navigator account for that client.

All of this uncontroverted evidence demonstrates the substantial economic value of Plaintiff's trade secrets. The Court erred by ignoring this evidence and ruling as a matter of law that Plaintiff's trade secrets had no value, to the prejudice of Plaintiff.

D. The Court Erred in Determining as a Matter of Law that Plaintiff Failed to Take Reasonable Measures to Protect Plaintiff's Trade Secrets

Defendants argued that Plaintiff did not take reasonable measures to protect Plaintiff's trade secrets. Section 39-8-20(5)(a)(ii) of the S.C. Trade Secret Act limits a "trade secret" to information that "is the subject of efforts that are reasonable under the circumstances to maintain

its secrecy.” Plaintiff not only introduced evidence of reasonable efforts to protect Plaintiff’s trade secrets, but the evidence also established that Plaintiff’s protective efforts had proven effective at preventing Mack Ward from misappropriating Plaintiff’s trade secrets several months earlier.

Winston and Stritt both testified that Plaintiff limited access to Plaintiff’s trade secrets to only authorized personnel with valid login credentials. Specifically, Winston testified that Plaintiff only provided login credentials to Plaintiff’s proprietary database of information in the Employee Navigator accounts to account managers assigned to those accounts and, on a case-by-case basis, a single client representative if a client requested the ability to generate reports from the Employee Navigator account associated with that client. Plaintiff did not provide sales people, like Mack Ward and Defendant Bannon, with any login credentials to any of Plaintiff’s Employee Navigator accounts. Winston and Stritt similarly testified that Plaintiff only provided login credentials to Plaintiff’s SharePoint server to Plaintiff’s full-time employees. Sales people who were independent contractors and not employees did not receive login credentials to Plaintiff’s SharePoint server.

As Winston and Stritt testified, Plaintiff’s protective efforts had proven effective at protecting Plaintiff’s trade secrets several months earlier in 2016. For several years prior, Plaintiff had been providing benefits administration services to clients of AssureSouth, owned by Ben Taylor and Mack Ward. In February 2016, Ben Taylor and Mack Ward notified Plaintiff that they were selling their AssureSouth business to Defendant Assured Partners. Plaintiff agreed to continue providing services to clients of AssureSouth during a two-month transition period. However, as shown in Plaintiff’s Exhibit 550 and testified by Stritt, Plaintiff also notified Ben Taylor and Mack Ward that Plaintiff would not allow third-party access to

Plaintiff's proprietary systems. Plaintiff then terminated all client access to any Employee Navigator accounts. As a result, only Plaintiff's employees and account managers continued to have active login credentials to any of Plaintiff's proprietary systems, and Plaintiff's protective efforts proved effective at preventing Mack Ward and/or Defendant Assured Partners from misappropriating Plaintiff's trade secrets.

Although Defendant Assured Partners and Mack Ward had first-hand experience with the effectiveness of Plaintiff's protective efforts, they also realized a loophole existed that would avoid Plaintiff's protective efforts and allow access to Plaintiff's proprietary systems without Plaintiff's knowledge. Specifically, Defendant Assured Partners and Mack Ward realized they could use a client's login credentials to access Plaintiff's proprietary systems to download, copy, and take screenshots of the Employee Navigator accounts for those clients. Defendant Assured Partners hired Defendant Bannon on October 15, 2016, and as shown in Plaintiff's Exhibits 8, 10-12, and 45, Defendant Bannon immediately exploited this loophole in Plaintiff's protective efforts by obtaining and forwarding client login credentials to Defendant Assured Partners. Defendant Bannon hid his new employment status from Plaintiff, allowing Defendant Assured Partners to surreptitiously download, copy, and take screenshots of the Employee Navigator accounts for those clients without Plaintiff's knowledge. At the same time, Defendant Bannon testified that he download approximately 2,000 files from Plaintiff's SharePoint server using the login credentials he had received years earlier when he was Plaintiff's employee.

Defendants claim that their ability to circumvent Plaintiff's protective efforts and access Plaintiff's trade secrets demonstrates the inadequacy of Plaintiff's protective efforts. However, Plaintiff's protective efforts had previously proven effective at preventing Defendant Assured Partners and Mack Ward from accessing Plaintiff's trade secrets, and their subsequent discovery

of a loophole around those protections does not change that. Defendants did exploit a loophole in Plaintiff's protections, but the law requires "efforts that are *reasonable under the circumstances*," not foolproof.

Plaintiff provided substantial evidence of protective efforts and the demonstrated effectiveness of those protective efforts at preventing unauthorized access to Plaintiff's trade secrets. The Court erred by ignoring Plaintiff's evidence and adopting Defendants view of the evidence, to the Plaintiff's prejudice.

E. The Court Erred in Determining as a Matter of Law that Plaintiff's Trade Secrets Were Publicly Available

Defendants variously argued that Plaintiff's collection, organization, and compilation of data in the Employee Navigator accounts was either the client's data or readily publicly available and therefore could not constitute a trade secret. This argument ignores the evidence and ignores the plain language of the S.C. Trade Secrets Act.

Defendant Bannon, Brady, Winston, and Stritt all consistently testified that Plaintiff designed the build out of each Employee Navigator account, and that Plaintiff collected, organized, and compiled the employee census data and insurance plan information that populated each account. As defined by the S.C. Trade Secrets Act, a trade secret may be a "compilation" of information – "a simple fact, item, or procedure, or a series or sequence of items or procedures which, although individually could be perceived as relatively minor or simple, collectively can make a substantial difference in the efficiency of a process or the production of a product, or may be the basis of a marketing or commercial strategy." S.C. Code § 39-8-20(5). While a client and an insurance company certainly had knowledge of *individual items* in Plaintiff's compilation, "[t]he collective effect of the items and procedures must be considered in any analysis of

whether a trade secret exists and not the general knowledge of each individual item or procedure.” *Id.*

By adopting Defendants’ argument that discounted the collective effect of Plaintiffs’ compilation of data, the Court ignored the clear language of the S.C. Trade Secrets Act and imposed its own view of the evidence, both of which constitute error to the Plaintiff’s prejudice.

F. The Court Erred in Determining as a Matter of Law that Defendant Assured Partners did not Encourage Defendant Bannon to Misappropriate Plaintiff’s Trade Secrets

In an effort to distance itself from Defendant Bannon’s actions, Defendant Assured Partners argued that it did not encourage any actions by Defendant Bannon. This argument directly contradicts substantial testimony and exhibits previously discussed.

Defendant Bannon testified that he became a full-time employee of Defendant Assured Partners on October 15, 2016, so *all* of Defendant Bannon’s actions took place after he had become a Senior V.P. of Defendant Assured Partners. Moreover, as shown in Plaintiff’s Exhibits 8, 10-12, and 45 and testified by multiple witnesses, Defendant Bannon, Mack Ward, Jim Brady and every employee of Defendant Assured Partners repeatedly exhorted all involved to expedite copying Plaintiff’s trade secrets before Plaintiff discovered what they were doing.

To the extent the Court relied on this argument to support the directed verdict in favor of Defendants, the Court committed legal error to the Plaintiff’s prejudice.

G. The Court Erred in Determining as a Matter of Law that Defendant Bannon did not Share Plaintiff’s Trade Secrets with Defendant Assured Partners

Defendants argued that Plaintiff produced no evidence that Defendant Bannon ever shared with Defendant Assured Partners any files downloaded from Plaintiff’s SharePoint server. This argument again ignores substantial trial evidence to the contrary.

Defendant Bannon testified that he became a full-time employee and Senior V.P. of Defendant Assured Partners on October 15, 2016. Every file that Defendant Bannon accessed or downloaded from Plaintiff's SharePoint served after that date was therefore immediately in Defendant Assured Partners' possession.

Plaintiff presented testimony from Nolan Zielinski who conducted a forensic analysis of Plaintiff's SharePoint server. Plaintiff's Exhibit 16 is a Log File Report generated by Zielinski that lists 2,107 files stored on Plaintiff's SharePoint server that were accessed using Defendant Bannon's SharePoint user account. As shown in the Log File Report, Defendant Bannon accessed 979 files from Plaintiff's SharePoint server *after* October 15, 2016, when he was a Senior V.P. of Defendant Assured Partners. Defendant Bannon admitted that he downloaded approximately 2,000 files from Plaintiff's SharePoint server to his laptop and desktop computers. Defendant Bannon also said that his laptop computer had crashed on November 30, 2016, so Zielinski was unable to examine Defendant Bannon's laptop computer to determine what files had been downloaded and subsequently transferred.

Plaintiff presented expert testimony from Michael Scholz who forensically examined Plaintiff's desktop computer that was used by Defendant Bannon in 2016. Scholz testified that the desktop computer included a "Palmetto Benefits Management" folder.² Plaintiff's Exhibit 77 is a printout generated by Scholz that lists each file included in the Palmetto Benefits Management folder, and as shown in Plaintiff's Exhibit 77, this folder included approximately 1,000 files having the same file names as files stored on Plaintiff's SharePoint server and included in the Log File Report (Plaintiff's Exhibit 16) generated by Zielinski. Scholz also generated a LNK File Report, Plaintiff's Exhibit 72, and Scholz testified that the LNK File

² Palmetto Benefits Management was Plaintiff's previous corporate name.

Report indicates that on October 30, 2016, an identical Palmetto Benefits Management folder was accessed on an external storage device connected to the desktop. Scholz was unable to forensically examine the external storage device identified in Plaintiff's Exhibit 72 because Defendants no longer had the device.

Although Zielinski and Scholz could not determine what files Defendant Bannon transferred to an external storage device, their forensic examinations were severely hampered by Defendants' inability to produce either the laptop or external storage devices that Defendant Bannon was using in 2016. Nonetheless, their testimony combined with Defendant Bannon's testimony, provides circumstantial evidence that Defendant Bannon did indeed copy a substantial number of files and then transfer those files to an external storage device – all while Defendant Bannon was a Senior V.P. of Defendant Assured Partners.

Defendant Bannon's own testimony provides additional evidence that he intentionally tried to transfer files from Plaintiff's SharePoint server to Defendant Assured Partners. Specifically, as shown in Plaintiff's Exhibit 64, on November 18, 2016, Michelle Fralix,³ an account manager for Assured Partners assigned to Defendant Bannon, asked Defendant Bannon for a medical plan summary for Premier Logistics – one of Plaintiff's clients that Defendant Bannon was recruiting to switch to Defendant Assured Partners. Defendant Bannon responded, "I've scoured my files but I wasn't able to pull what I wanted off Forum's website." As shown in Plaintiff's Exhibit 13, on November 30, 2016, Defendant Bannon emailed Fralix stating, "My hard drive broke an [sic] I no longer have renewal info. for these guys."

By adopting Defendants' argument that Defendant Bannon did not share with Defendant Assured Partners any files downloaded from Plaintiff's SharePoint server, the Court ignored

³ Michelle Fralix also went by the name Amy Fralix and testified at trial as Michelle Coffield.

substantial evidence to the contrary and impermissibly invaded the province of the Jury, to the Plaintiff's prejudice.

H. The Court Erred in Determining as a Matter of Law that Defendant Bannon was Justified in Misappropriating Plaintiff's Trade Secrets

Defendants further argued that Defendants were somehow justified in misappropriating Plaintiff's trade secrets before Plaintiff terminated Defendant Bannon's access to his client's information. Defendants' argument is specious and has no legal basis. To the contrary, section 39-8-20(1) of the S.C. Trade Secrets Act defines misappropriation of a trade secret by "improper means" to include "theft." Although Defendants provided the Court with a three-inch binder of legal authority, Defendants cite no authority for the proposition that a pre-emptive theft of trade secrets constitutes proper means or is otherwise excusable. Accordingly, the Court erred by adopting this argument, the Plaintiff's prejudice.

I. The Court Erred in Determining as a Matter of Law that Plaintiff Failed to Prove Damages Caused by Defendants' Misappropriation of Plaintiff's Trade Secrets

Defendants argued that Plaintiff failed to provide any evidence of damages caused by Defendants misappropriation of Plaintiff's trade secrets. According to Defendants and various evidentiary rulings by the Court, Plaintiff was required to provide testimony from each client that the client transferred its business to Defendant Assured Partners because Defendants misappropriated Plaintiff's trade secrets. Defendants further argued and the Court ruled that Stritt could not provide factual testimony based on his personal knowledge of (1) lost commissions and (2) a \$1.5M reduction in the purchase price of Plaintiff based solely on the anticipated lost commissions. According to Defendants and to the Court's dictates, Plaintiff could only present testimony of lost commissions and diminished company value through an expert witness.

Plaintiff respectfully submits that the Court's evidentiary rulings regarding causation and damages were legally incorrect and contrary to the South Carolina Rules of Evidence. As a result, the Court's adoption of Defendants' causation and damages argument constitutes error as a matter of law and those errors prejudiced Plaintiff.

VI. Conversion

In a single sentence, the Court summarily adopted Defendants' complete argument as to conversion and further determined that Plaintiff's trade secrets had no value. Defendants argued that intangible property cannot form the basis for a conversion claim, but this argument is not supported by South Carolina precedent. As previously discussed, the Court's determination that Plaintiff's trade secrets had no value completely ignores substantial evidence presented at trial of the substantial value of Plaintiff's trade secrets. For each of these reasons, the Court's complete adoption of Defendants' argument constitutes legal error and invaded the province of the Jury.

The South Carolina Supreme Court has defined conversion as "the unauthorized assumption in the exercise of the right of ownership over goods or personal chattels belonging to another to the exclusion of the owner's rights." *Gignilliat v. Gignilliat, Savitz & Bettis, L.*, 385 S.C. 452, 465, 684 S.E.2d 756, 763 (2009). South Carolina courts have held that intangible rights are normally not the proper subject for a conversion claim. *Id.* The *Gignilliat* court explained, "An action for conversion ordinarily lies only for personal property that is tangible, **or to intangible property that is merged in, or identified with, some document.**" *Id.* citing 18 Am. Jur. 2d Conversion § 7 (2004) (emphasis added) (footnote omitted); *see also*, H.D. Warren, Annotation, Nature of Property or Rights Other Than Tangible Chattels Which May Be Subject of Conversion, 44 A.L.R.2d 927, 929 (1955) ("[I]t is ordinarily held that an action for conversion lies only for personal property which is tangible, or at least represented by or connected with something tangible, and not for indefinite, intangible, and incorporeal species of property.").

Ultimately, the South Carolina Supreme Court concluded that the tort of conversion as it relates to intangible property “should be limited to intangible property rights that are identified with some document.” *Id.*

Plaintiff’s conversion claim includes a combination of both tangible and intangible property. Specifically, Defendant Bannon retained Plaintiff’s desktop computer until ordered by the Court to return it to Plaintiff. As with every computer, the desktop computer stored information in electronic form, such as formulas, compilations, processes, designs, and spreadsheets. All of the information stored on the desktop computer is the very type of intangible property contemplated by the *Gignilliat* court that is “merged in or identified with some document.” *Id.* at 763.

In *Integrated Direct Marketing, LLC v. Drew May & Merkle, Inc.*, 2016 Ark. 281, 495 S.W.3d 73 (2016), the Arkansas Supreme Court was asked to answer a certified question from the District Court for the Eastern District of Virginia: “Under Arkansas’s tort of conversion, can intangible property such as electronic data, standing alone and not deemed a trade secret, be converted?” *Id.* The Arkansas Supreme Court answered in the affirmative. The court noted that the records in the case were electronically stored documents (consisting of over 300 files an employee copied from his employer’s computer to his personal hard drive) allegedly containing confidential and proprietary information. *Id.* at 74, 76. The court concluded, “There is simply no reasonable basis for allowing a claim for conversion of paper documents but not for their electronically stored counterparts. Thus, we conclude that, under Arkansas law, intangible property, such as electronic data, standing alone and not deemed a trade secret, can be converted if the actions of the defendant are in denial of or inconsistent with the rights of the owner or person entitle to possession.” *Id.* at 76.

The decision in *Integrated Direct Marketing* is persuasive authority, consistent with the South Carolina Supreme Court's rationale in *Gignilliat*, to limit a conversion claim to actions involving intangible property "merged in or identified with some document." The type of intangible property maintained on the desktop computer is indistinguishable from the files allegedly stolen in *Integrated Direct Marketing*. Accordingly, Plaintiff's conversion claim includes the intangible property stored in the desktop computer

Plaintiff respectfully asserts that the Court's wholesale adoption of Defendants' argument, as well as the Court's determination that Plaintiff's trade secrets had no value, constitute legal error and invade the province of the Jury. As a result, Plaintiff requests a new trial on the conversion claim against Defendant Bannon.

VII. Erroneous Evidentiary Rulings Deprived Plaintiff of a Fair Trial

In addition to the rulings discussed above in Sections II and V, Plaintiff respectfully asserts that the Court made other incorrect evidentiary rulings. Each erroneous ruling prejudiced Plaintiff's ability to present admissible evidence to the Jury, and the cumulative effect of the erroneous rulings deprived Plaintiff of a fair opportunity to present evidence to the Jury. Therefore, Plaintiff respectfully requests a new trial based on the individual and cumulative effect of the Court's erroneous evidentiary rulings.

A. The Court Erred by Excluding from Evidence Documents Solely Used to Impeach Defendant Bannon

Defendant Bannon testified that when he brought new clients to Plaintiff, the new clients specifically identified Defendant Bannon by name on their Agent of Record letters. Defendant Bannon presumably made this statement to bolster his credibility with the Jury, that clients specifically sought him as their agent and would follow him wherever he worked. Credibility of

every witness is important, particularly when the witness is a party, and Defendant Bannon's statement was demonstrably false.

Plaintiff attempted to impeach Defendant Bannon's testimony with Plaintiff's Exhibit 520. Plaintiff's Exhibit 520 includes seven different Agent of Record letters from five different clients that Defendant Bannon had brought to Plaintiff. Defendant Bannon's name is not anywhere on any of these letters. Defendants objected to admitting Plaintiff's Exhibit 520 into evidence because the letters had not been previously produced and were not identified in Plaintiff's pre-trial exhibit list. Defendant did not identify a discovery request that would have elicited Plaintiff to produce the letters, and Plaintiff is not aware of any such discovery request. Nor is Plaintiff aware of any requirement to include documents used solely for impeachment in a pre-trial exhibit list. The Court sustained Defendants' objection because the letters included in Plaintiff's Exhibit 520 had not been produced in discovery.

Plaintiff also attempted to impeach Defendant Bannon's testimony with Plaintiff's Exhibit 521. Plaintiff's Exhibit 521 is one of the Agent of Record letters included in Plaintiff's Exhibit 520, except this letter bore Bates number FORU-01579 and had been produced to Defendant in discovery on May 24, 2018. Defendants then exclaimed that Plaintiff had produced *so many* documents in discovery that Defendants were unable to verify that this particular document had been produced. The Court again sustained Defendants' objection without expressing a reason.

Plaintiff respectfully asserts that excluding documents from evidence that are used solely for impeachment constitutes an abuse of discretion.

B. The Court Erred by Excluding from Evidence Documents Authenticated by a Witness Based on the Witness's Personal Knowledge

As discussed in Sections II and V.I. above, the Court excluded from evidence several documents that corroborated Stritt's testimony regarding damages. At the time of the events giving rise to this litigation, Stritt was the sole owner of Plaintiff and had been negotiating with a buyer – in a fully arms-length transaction – for over a year to purchase Stritt's company. After learning that Defendant Bannon had left Plaintiff, the buyer required Stritt to identify the precise dollar amount of annual commissions associated with clients for whom Defendant Bannon had been the sales person. Stritt prepared reports containing the requested information and provided the reports to the buyer. The buyer then reduced the previously negotiated purchase price \$1.5M based on the information that Stritt provided to the buyer.

Plaintiff sought to admit the report prepared by Stritt in 2016 into evidence, along with a single page from the purchase agreement that documented the lost commissions (Plaintiff's Exhibits 15 and 170, respectively). Stritt testified that he had personal knowledge of each exhibit and authenticated each exhibit as required by Rule 901 of the South Carolina Rules of Evidence. Defendants nonetheless objected to the admission of either document based on a purported lack of foundation. During a substantial argument outside the presence of the jury, the Court questioned the veracity of the information contained in the documents and ultimately sustained Defendants' objections and excluded the documents from evidence.

Plaintiff respectfully asserts that the Court's ruling constitutes legal error that prejudiced Plaintiff's ability to present admissible evidence to the Jury.

VIII. Conclusion

Based on the foregoing, Plaintiff respectfully requests that the Court grant Plaintiff a new trial on all issues and recuse itself.

Respectfully submitted,

s/Steven R. LeBlanc

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CERTIFICATE OF SERVICE

I certify that on October 25, 2021, I electronically filed a PLAINTIFF'S MOTION FOR A NEW TRIAL to be served on all counsel of record by means of the Court's Notice of Electronic Filing.

Respectfully submitted,

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STATE OF SOUTH CAROLINA
BEAUFORT COUNTY

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 2016-CP-07-2541

Forum Benefits, LLC,

Plaintiff,

v.

Brian Bannon and Assured Partners, NL

Defendants.

**PLAINTIFF'S RESPONSE TO
DEFENDANTS' MOTIONS FOR
ATTORNEYS' FEES**

Defendants have moved for an award of attorneys' fees based on a prevailing party clause in Defendant Bannon's employment contract with Plaintiff. Defendants have also moved for an award of attorneys' fees based on an alleged bad faith claim of trade secret misappropriation.

Plaintiff Forum Benefits, LLC provides the following response to Defendants' motions for attorneys' fees.

I. Legal Authority

The well-settled law in South Carolina is that attorneys' fees are *not* recoverable absent authorization by contract or statute. *Duke Power Co. v. S.C. Pub. Serv. Comm.*, 284 S.C. 81, 100, 326 S.E.2d 395, 406 (1985); *Maybank v. BB&T Corp.*, 416 S.C. 541, 580, 787 S.E.2d 498, 518 (2016). If an award of attorneys' fees is permitted, a court should consider the following six factors when determining a reasonable attorney's fee: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services. *Jackson v. Speed*, 326 S.C. 289, 308, 486 S.E.2d 750, 760 (1997).

II. Defendants' Motions for Attorneys' Fees are Fatally Deficient

Defendants' first motion for attorneys' fees consisted of an oral motion – a single sentence in open court – and was granted by the Court before Defendants even finished

vocalizing that single sentence. Although the basis for Defendants' request was an attorneys' fees provision in an employment contract between Plaintiff and only Defendant Bannon, Defendants appeared to request an award of attorneys' fees for both Defendants. Defendants' counsel has previously revealed that Defendant Assured Partners was providing a complete defense to Defendant Bannon, and Defendants have provided no evidence that Defendant Bannon ever incurred any attorneys' fees whatsoever in the case at bar. And Plaintiff had no such contract with the other Defendant, Assured Partners. Moreover, Defendants provided no evidence for any of the factors the Court is required to consider before awarding attorneys' fees.

Defendants' second motion for attorneys' fees based the S.C. Trade Secret Act was four sentences again enunciated in open court, again did not include any evidence for any of the factors the Court is required to consider before awarding attorneys' fees, and was again immediately granted by the Court.

Plaintiff respectfully asserts that both of Defendants' motions are procedurally and substantively deficient. Defendants failed to provide basic information needed to support either motion, including which Defendant is seeking fees, the legal authority for the fee request, the amount of the fee request, and the information needed for the Court to determine a reasonable fee award.

The Court immediately indicated that it would grant both motions without even allowing Plaintiff an opportunity to respond to either motion. The Court's instantaneous responses to Defendants' motions is particularly significant and further supportive of Plaintiff's previous motion for the trial judge to recuse himself for bias in favor of Defendants. Although the Court subsequently granted Plaintiff's request for an opportunity to respond to Defendants' motions, Plaintiff was and remains faced with a dearth of information regarding significant motions, the

outcome for which, given how they were treated by the Court, seem preordained. As a result, Plaintiff is effectively being denied adequate notice of Defendants' motions as well as any meaningful opportunity to substantively respond to Defendants' motions. Plaintiff therefore respectfully requests denial of both of Defendants' motions for attorneys' fees.

III. Awarding Attorneys' Fees Based on Plaintiff's Breach of Contract Claim would be Manifestly Unjust

Defendants seek an award of attorneys' fees based on a provision in a contract that the Court has ruled as a matter of law does not exist. The Court specifically ruled that there was no meeting of the minds to support the existence of the contract between Plaintiff and Defendant Bannon. Defendants request enforcement of a provision in the contract that the Court has ruled does not exist. It would be irreconcilable for the Court to rule as a matter of law that the contract does not exist and then enforce an attorneys' fees provision in the non-existent contract.

The well-settled law in South Carolina is that attorneys' fees are not recoverable absent authorization by contract or statute. *Duke Power Co. v. S.C. Pub. Serv. Comm.*, 284 S.C. 81, 100, 326 S.E.2d 395, 406 (1985); *Maybank v. BB&T Corp.*, 416 S.C. 541, 580, 787 S.E.2d 498, 518 (2016). Defendants' first motion for attorneys' fees is not based on either an enforceable contract, according to the Court's ruling, or on a statute. Therefore, Plaintiff respectfully requests denial of Defendants' motion for attorneys' fees.

IV. Plaintiff's Trade Secret Claim is not Frivolous as a Matter of Law

Defendants filed three separate motions seeking summary judgment on Plaintiff's trade secret claims. Defendants withdrew one of the motions, but Plaintiff filed full responses to the other two motions. Two different judges conducted a full hearing for each motion that was fully briefed, and each judge denied Defendants' motion for summary judgment.

The trial commenced October 11, and Plaintiff rested its case after two full days of testimony. After the Court granted Defendants a directed verdict on Plaintiff's trade secret claims, Defendants moved for an award of attorneys' fees based on alleged bad faith litigation.

"[W]here a party survives a summary judgment motion, it is not subject to sanctions after a trial on the merits of the surviving claims." *Southeastern Site Prep, LLC v. Atl. Coast Builders & Contrs., LLC*, 394 S.C. 97, 713 S.E.2d 650 (Ct. App. 2011) (quoting *Hanahan v. Simpson*, 326 S.C. 140, 158, 485 S.E.2d 903, 913 (1997)). In *Southeastern*, as in the present case, two different judges denied the defendants' motion for summary judgment. As in the present case, the trial judge granted a directed verdict in favor of the defendants after the plaintiffs presented their case and rested. As in the present case, the defendants sought an award of attorneys' fees for frivolous litigation. Following the Supreme Court's controlling authority in *Hanahan*, the Court of Appeals affirmed the denial of attorneys' fees because the plaintiffs' claims had survived summary judgment.

The facts, reasoning, and conclusion reached in *Southeastern* are indistinguishable from the present case. Two different judges heard summary judgment motions against Plaintiff, and both judges denied the motions. Therefore, consistent with the controlling authority of *Southeastern* and *Hanahan*, Plaintiff's trade secret claims were not frivolous as a matter of law. Accordingly, the Court should deny Defendants' motion for attorneys' fees based on the S.C. Trade Secrets Act.

V. Conclusion

For the foregoing reasons and analysis, Plaintiff respectfully requests denial of both of Defendants' motions for attorneys' fees.

Respectfully submitted,

s/Steven R. LeBlanc

Steven R. LeBlanc (SC Bar 14221)

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P.O. Box 9198

Greenville, S.C. 29604

Tel: (864) 902-4411

Steve@LeBlancLLC.com

Attorneys for Plaintiff Forum Benefits, Inc.

CERTIFICATE OF SERVICE

I certify that on October 25, 2021, I electronically filed a PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTIONS FOR ATTORNEYS' FEES to be served on all counsel of record by means of the Court's Notice of Electronic Filing.

Respectfully submitted,

s/Steven R. LeBlanc
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Attorneys for Plaintiff Forum Benefits, Inc.

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 2016-CP-07-2541

Forum Benefits, LLC,

Plaintiff,

v.

Brian Bannon and Assured Partners, NL

Defendants.

**DEFENDANTS' RESPONSE IN
OPPOSITION TO PLAINTIFF'S MOTION
FOR A NEW TRIAL**

Defendants Brian Bannon and Assured Partners, NL hereby submit their Response in Opposition to Plaintiff's Motion for a New Trial. Plaintiff's Motion for a New Trial ("Plaintiff's Motion") must be denied for the reasons discussed below. In addition, Plaintiff's continued attacks on this Court and now innocent third parties must be further admonished and sanctioned.

A. Plaintiff's completely baseless motion to recuse Judge Price

Plaintiff's Motion is primarily based on an improper allegation that Judge Price was somehow biased against Plaintiff because he went to college with someone who was identified by both parties as a potential witness, but who was never called to testify at trial. The evidence is clear that the only reason that Plaintiff made its motion to recuse the Judge was that through two days of trial, its case had completely fallen apart and most of the unavoidable weaknesses in its case had been exposed. Plaintiff's motion for recusal was an improper tactic to attempt to avoid the inevitable negative outcome in this case. Plaintiff simply will not accept the blame for its own actions. That is the reason this case has been ongoing for almost five years.

Plaintiff's personal attacks in this case are egregious and should be sanctioned. Judge Price properly admonished Plaintiff's counsel for making clearly inappropriate comments and comparing Plaintiff's recusal motion to concerns Plaintiff had related to the "Murdaugh case," something that Plaintiff's counsel likely said at the direction of Plaintiff's President, Brian Stritt. This comment was shocking and appalling to everyone in the courtroom who was not associated with Plaintiff. Plaintiff's counsel was properly admonished by Judge Price for making this comment after the trial. This is an example of the extent Plaintiff was willing to go to try to avoid the inevitable outcome in this case and to attempt to create an issue for appeal.

Plaintiff has now taken these personal attacks and false allegations one step further. In its Motion for a New Trial, Plaintiff falsely alleges that Mack Ward's wife (Michelle Ward) posted a message to Judge Price's Facebook account on October 19, 2021, that allegedly said, "Happy birthday Judge. We love you!" (Plaintiff's Motion p. 4.) As confirmed in the attached affidavit of Michelle Ward, this allegation is absolutely false and this message was never sent. This is a complete fabrication of facts by Plaintiff and an improper attempt to attack Judge Price and Ms. Ward (someone who has absolutely no relationship to this case). (**Exhibit 1 – Affidavit of Michelle Ward.**) Plaintiff has now stooped to an all-time low of fabricating evidence to disparage this Court and innocent third parties. Based on Defendants' research, Judge Price has not posted anything on Facebook since June 10, 2015, prior to becoming a Judge. Plaintiff's attack against Judge Price and attempts to dispute his truthful comment that he does not "do Facebook" must be further admonished and Plaintiff must be sanctioned.

Apart from the clearly disparaging comments by Plaintiff as discussed above, the baseless nature of Plaintiff's Motion for New Trial is revealed in the complete lack of case law Plaintiff has cited in support of its motion to recuse. That is because the true legal standard also exposes

Plaintiff's improper motives. Plaintiff's Motion generally cites to the Judicial Code of Conduct, but fails to list the basis for disqualification. That is because none of these disqualifications are remotely present in this case. The judicial canons provide direction as to when disqualification may be necessary, including instances where: (1) the judge holds personal bias or prejudice towards a litigant or counsel or has personal knowledge of evidentiary facts in dispute in the proceeding; (2) the judge either worked on the case as a lawyer, a lawyer with whom the judge previously practiced law worked on the case while the judge was associated with the lawyer's firm, or the judge has been a material witness concerning the case; (3) the judge "knows" that he or a member of his family (spouse, parent, or child) has more than a *de minimus* economic interest in the litigation and the litigation will "substantially affect[]" that interest; or (4) the judge or his spouse or a person within the third degree of relationship to them (or the spouse of such a person) is either a party or the officer, director, or trustee of a party, is a lawyer in the case, known to have more than a *de minimus* interest that could be substantially affected by the litigation, or, to the judge's knowledge, is likely to be a material witness in the proceeding. Canon 3(E)(1)(a)-(d); *Davis v. Parkview Apartments*, 409 S.C. 266, 284, 762 S.E.2d 535, 545 (2014).

None of the factors for disqualification are present in this case. Rather, the only allegation to support Plaintiff's Motion is that Judge Price greeted a witness (Mack Ward) who was subpoenaed by the Plaintiff for trial, but who was never actually called as a witness by either party. Judge Price knew Mr. Ward from college and had not seen Mr. Ward in over 17 years. Mr. Ward was obviously not a material witness in the case as he was never called to testify. Plaintiff states in conclusory fashion that Mr. Ward is a Vice President of Defendant Assured Partners. However, Plaintiff never elicited any testimony at trial to establish the details of Mr. Ward's alleged relationship to any party or to this case. Mr. Ward is an employee of AssuredPartners in its

Greenville office. Mr. Ward is not an officer, manager, trustee, or director of Defendant Assured Partners. He is not a party to the litigation. He is a commission based producer in Greenville, South Carolina. He is not the Greenville office agency President and is not listed as part of that office's leadership. (See Exhibit 2 – Affidavit of Mack Ward; see www.assuredpartners.com/GreenvilleSC.) The evidence at trial established that most insurance producers have a title of “Vice President,” but this title does not carry with it any corporate authority.

The tenuous relationship between Judge Price and Mack Ward is not sufficient to support a motion for recusal and one should have never been made in this case. Significantly, the South Carolina Supreme Court has ruled that recusal was not proper in cases involving a much closer relationship than the one at issue here. In *Davis v. Parkview Apartments*, 409 S.C. 266, 284, 762 S.E.2d 535, 545 (2014), the Supreme Court ruled that the following relationship with a party's counsel was not sufficient to warrant recusal:

1. Johnston's wife's ex-husband was a fraternity brother of the judge 40 years ago;
2. Infinger spent the night at the judge's lake house 30 years ago after both attended the wedding of another Haynsworth shareholder who is not affiliated with this case;
3. the judge's son and Johnston's son were fraternity brothers in college 14 years ago, went to Europe together 13 years ago, and have stayed in contact since then;
4. the judge and his son accepted an invitation to go fishing with Johnston's brother;
5. the judge officiated at Rosen's wedding in 2007, and the Rosen family provided him with accommodations at Fripp Island for the wedding;
6. Rosen's father, a surgeon, performed a medical procedure on the judge;
7. Rosen's parents once lived in Bamberg, South Carolina, but the judge did not see them socially; and

8. the judge has been a member of a social club that holds an annual white tie dance for approximately ten years, and in 2009, Johnston was invited to join the club.

Davis v. Parkview Apartments, 409 S.C. 266, 285, 762 S.E.2d 535, 545 (2014). Even with the allegations above, the Supreme Court in *Davis* ruled that none of the disqualification situations outlined by Canon 3(E) were present and the judge properly denied the request for recusal.

Not only are none of these factors remotely present in the instant case, but Judge Price had a duty to not recuse himself based on such a tenuous relationship with a witness who never testified. When disqualification is not required, the Code states, “A judge shall hear and decide matters assigned to the judge....” Canon 3B(1) of the Code of Judicial Conduct, Rule 501, SCACR (emphasis added).

Plaintiff was required to do more than merely allege bias on the judge's behalf. *Simpson v. Simpson*, 377 S.C. 519, 523, 660 S.E.2d 274, 277 (Ct. App. 2008). Plaintiff was required to present some evidence of judicial prejudice or bias. *Id.* “In applying Canon 3 [(E)](1), the South Carolina Supreme Court has stated that the movant or petitioner must show some evidence of the bias or prejudice of the judge.” *Lyvers v. Lyvers*, 280 S.C. 361, 367, 312 S.E.2d 590, 594 (Ct.App.1984) (internal quotations and citations omitted). When a party offers no evidence to support a claim of partiality, the trial judge is correct to deny a motion for recusal. *See Christensen v. Mikell*, 324 S.C. 70, 74, 476 S.E.2d 692, 694 (1996) (“Appellant offered no evidence to support his claim of partiality. Accordingly, the trial judge properly denied the Motion to Recuse.”).

Plaintiff’s motion for recusal was made without any basis or justification. It was made for the sole purpose of attempting to pollute the record. This case has been pending since December of 2016. It is the oldest case pending in Beaufort County. Plaintiff has wasted countless court resources in its improper prosecution of this case. To make matters worse, it came to trial completely unprepared to prove the elements of its numerous claims. Now it seeks to waste even

more resources by improperly requesting a new trial based on a fabricated belief of bias. Judge Price viewed this motion for what it was, an improper litigation tactic, and properly denied the motion.

Hypocritically, but not surprisingly, Plaintiff had no concerns about any potential for judicial bias when Judge Greenville D. Morgan was assigned to be the trial judge for this case during the August 30, 2021 term of court. Plaintiff's counsel made several comments that his brother went to college at the Citadel with Judge Morgan and that Plaintiff's counsel was also a Citadel graduate. Plaintiff's counsel also jokingly made comments that he and Judge Morgan were members of the same country club in Greenville, South Carolina. After the case was continued from that term because of Covid-19 related issues, Plaintiff's counsel sent an e-mail asking the judge to play golf the next week and copying several court personnel. (**See Exhibit 3.**) Obviously, Plaintiff's counsel did not have any concerns with an appearance of bias then. The motion for recusal in this case was clearly a motion mandated by Plaintiff's President Brian Stritt, not Plaintiff's counsel. Again, the clear evidence is that Plaintiff was willing to do anything to stop a trial that it was so obviously losing.

B. Judge Price properly and fairly ruled on evidentiary issues at trial.

Plaintiff improperly argues in its Motion that Judge Price was biased and that his rulings on evidentiary issues support such argument. Plaintiff again attempts to improperly shift the blame for its own failures. Plaintiff routinely failed to comply with the South Carolina Rules of Evidence and failed to lay a proper foundation for numerous proposed trial exhibits. Some of Plaintiff's improper evidentiary arguments will be addressed below.

1. **Plaintiff's attempt to use the depositions of Marlene Gray and Sarah Hildreth.**

At a hearing on October 7, 2021, to address the pre-trial motions filed by Defendants, Plaintiff indicated its desire to call two witnesses by either remote means or to use their deposition transcripts. The Court indicated that it would permit Marlene Gray to testify by remote means because of some serious health issues. However, the Court indicated that it would not permit Sarah Hildreth to testify by remote means because she was simply not willing to travel to court because she was busy at work. The Court encouraged Plaintiff to get her to come to the trial if she intended to provide live testimony. The decision to permit testimony by remote means at trial is within the discretion of the trial court. (See Supreme Court order No. 2021-001032 issued on September 21, 2021.) The Court had a valid basis to permit Ms. Gray's testimony and not Ms. Hildreth's. There is no inconsistency. These were both Plaintiff's named witnesses.

Plaintiff clearly did not view this response from the Court as preventing the use of deposition testimony for unavailable witnesses. Two days after this hearing, Plaintiff's counsel sent Defendants' counsel deposition designations for Ms. Hildreth, stating "in the event Ms. Hildreth cannot testify live at trial, I designate the following counter-designations to Ms. Hildreth's deposition." (**See Exhibit 4.**) Plaintiff never filed any formal motion to request the use of deposition testimony in lieu of live testimony at trial. Plaintiff never filed any motion to have a witness testify by remote means.

Plaintiff never addressed this matter again with the Court. Plaintiff never attempted to call Ms. Gray by remote means, despite such being approved by the court. Plaintiff never made any further request to use the deposition transcripts of Ms. Gray or Ms. Hildreth as an unavailable witness. Plaintiff clearly failed to preserve any objection on this issue and its attempts to claim this was an improper ruling from the Court now is a further act of bad faith.

2. **Plaintiff's improper use of responses to requests to admit.**

Plaintiff objects to the Court's denial of Plaintiff's request to introduce responses to requests to admit as a trial exhibit. This ruling was proper given that Plaintiff improperly attempted to use the response to impeach Defendant Bannon. First, Plaintiff failed to elicit testimony that was in direct contradiction to the responses. Second, Plaintiff failed to utilize the proper impeachments techniques in the event there was a prior inconsistent statement. That process was clearly to read from the responses to point out any alleged inconsistency. This process is the same as impeaching a witness by prior inconsistent deposition testimony. Plaintiff failed to lay a proper foundation to admit all of the responses and failed to employ proper impeachments techniques in accordance with the Rules of Evidence. Therefore, the Court properly denied Plaintiff's request to admit the responses as a trial exhibit.

3. **The Court Properly Admitted Exhibit C to Complaint.**

Plaintiff argues that the Court was inconsistent in its rulings related to admitting pleadings. Plaintiff points to the Court permitting Defendants to admit Exhibit C to the Complaint as a trial exhibit. Plaintiff ignores the fact that **it admitted Exhibit A** of the Complaint as a trial exhibit. The only inconsistencies in this case are the actions and arguments of Plaintiff. Exhibit C was a customer list that Plaintiff placed in the public record through attaching it to the Complaint. The Employment Agreement on which Plaintiff sued Defendant Bannon states that customer lists are trade secrets. (Complaint Ex. A, ¶12(d).) The fact that Plaintiff failed to take any reasonable measures to protect its alleged trade secrets was directly relevant to the issues in the case. Defendants actually laid a proper foundation through the questioning of Brian Stritt to properly admit Exhibit C as a trial exhibit. The admission of Exhibit C to the Complaint, similar to Plaintiff's own admission of Exhibit A to the Complaint, was proper and not inconsistent with any other ruling.

4. **Plaintiff failed to properly provide any evidence of damages.**

Plaintiff argues that the Court improperly denied its requests to admit evidence of damages. However, Plaintiff improperly attempted to admit evidence at trial regarding the \$1.5 million earn out related to the sale of Plaintiff to the Alera Group. Plaintiff amazingly claims Judge Price acted improperly when he did not permit evidence relating to a \$1.5 million earn out that Plaintiff attempted to claim as damages at trial. Judge Price correctly ruled that such allegations were not proper given the fact that the earn out was fully paid to Brian Stritt. Plaintiff failed to establish any foundation for why this evidence was relevant to any issue in the case.

What is even more shocking is that Plaintiff pursued this claim at trial despite prior representations to the Court that it was not seeking these damages. In a hearing before Judge Marvin Dukes on August 14, 2018, when Defendants were seeking to compel discovery related to the alleged earn out and sale of Plaintiff to the Alera Group, Plaintiff's counsel responded to Defendants' motion as follows:

That purchase or that earn-out clause has since been met. And so he's not pursuing a claim as a result for that earn-out.

(Exhibit 5, p. 12:16-24.) Despite this representation to the Court, Plaintiff sought to introduce this as an element of damages at trial. Plaintiff's bad faith trial tactics are again exposed and the Court properly stopped them from reaching the jury.

Plaintiff then attempted to admit a document created by Brian Stritt that simply lists what he believes are Plaintiff's alleged lost revenues. The Court properly denied the request. First, the document had clients listed that were not even Defendant Bannon's clients. This was another improper trial tactic. There was no basis for admitting a document with these clients. There was no foundation for such exhibit. After these names were redacted by Plaintiff, Plaintiff again sought to admit Mr. Stritt's wishful numbers. However, Plaintiff again failed to establish any foundation

for this exhibit. There was no evidence presented related to the underlying records that supported the alleged numbers Mr. Stritt placed in the document. Furthermore, the alleged lost revenues are not relevant to the issued of damages. As argued by Defendants on directed verdict, Plaintiff was required to establish lost profits, not lost revenues, something it never understood or attempted to do. Plaintiff's lack of ability to prove damages and improper attempts to do so were properly denied by the Court. Regardless, the Court did permit Mr. Stritt to testify as to what he believed the lost revenues to be, a ruling that clearly favored Plaintiff despite the irrelevance of such numbers.

Plaintiff inability to prove any damages was clear at trial. Plaintiff never sought to retain any type of damages expert, which is extremely uncommon in trade secrets litigation, despite Defendants' summary judgment filings pointing out the necessity of such an expert in this case in particular. Plaintiff could have easily asked Defendant Bannon to confirm any of the alleged lost revenue numbers but chose not to do so despite calling him as its second witness. Rather, Plaintiff attempted to rely solely on the self-serving testimony of its President, Brian Stritt, on the issue of damages. This is the person who was personally financing the lawsuit and who wanted to get the money he had fronted for Plaintiff's legal fees back. He could have created any numbers he wanted to support his self-serving motives. Plaintiff's trial tactics were properly denied.

5. The Court properly ruled that Defendant Bannon was a prevailing party on Plaintiff's breach of contract claim.

Plaintiff argues that the Court was inconsistent in its ruling that there was no meeting of the minds on the essential terms of the contract but also awarded Defendant Bannon prevailing party attorneys' fees. As discussed in Defendants' Reply in Support of the Award of Fees and Costs, Plaintiff's argument misrepresents the clear record. The Court granted Defendants' motion for directed verdict on the contract claim for a number of reasons, including the Statute of Frauds

and that Plaintiff failed to prove Defendant Bannon breached the Agreement. Furthermore, Plaintiff is judicially estopped from arguing there was no contract in response to Defendants' motion for attorneys' fees and costs.

6. The Court did not err in excluding certain Agent of Record letters from being admitted as evidence at trial.

Plaintiff argues that the Court improperly denied its requests to admit certain Agent of Record letters. Plaintiff attempted to admit several Agent of Record letter at trial that had not been previously produced in discovery and which Plaintiff did not identify on its exhibit list. In addition to them not being previously produced or identified as an exhibit on plaintiff's exhibit list, Plaintiff never attempted to admit these letters through a witness that had personal knowledge about the letters. Defendant Bannon was not a recipient of the letters in question.

When Plaintiff finally had the opportunity to properly admit the letters through the cross examination of Mr. Bannon's clients, it conveniently chose not to do so. Apparently, this issue was not as important as Plaintiff now represents. Specifically, Exhibit 521 (FORU-01579) identified in Plaintiff's Motion is a letter signed by Paula Gant who works at Alpha Genesis. **(Exhibit 6.)** Defendants called Paula Gant as a witness at trial. Plaintiff's counsel had Exhibit 521 in front of him during his cross examination of Ms. Gant but chose not to ask Ms. Gant about the document or to lay an easy foundation to properly admit the document. Clearly, this alleged evidence was not as important as Plaintiff now represents, or, even more concerning, Plaintiff's decision not to attempt to properly admit the exhibit was simply an attempt to create appeal issues. Plaintiff conduct and its arguments on this issue show its continued bad faith.

Furthermore, these Agent of Record letters were not relevant and not a proper means of impeachment. The evidence at trial was clear that other names were routinely placed on letters. The letters are not an indication that Defendant Bannon was not an agent of the client. Ms. Gant

confirmed that Defendant Bannon was at all relevant times the insurance agent of Alpha Genesis. That is likely why Plaintiff chose not to question Ms. Gant on an old Agent of Record letter that listed someone other than Defendant Bannon. The Court properly ruled on these issues.

C. The Court properly granted Defendants' Motion for Directed Verdict.

Plaintiff asserts a number of issues that it claims supported its arguments at directed verdict. Plaintiff, however, did not provide the Court most of these arguments or any of these cases during Plaintiff's directed verdict argument. Regardless, Defendants thoroughly explained the basis for its directed verdict motion and cited numerous cases in support of that motion. Defendants will not restate those arguments and cases here.

The Court's granting of Defendants' Motion for Directed Verdict makes many of the evidentiary rulings above moot. The Court clearly heard Plaintiff's alleged evidence and determined that the alleged evidence was not relevant, that a proper foundation was not laid, and that Plaintiff still failed to prove the essential elements of its claims.

Therefore Plaintiff's Motion for a New Trial should be denied.

Dated: November 1, 2021

RESPECTFULLY SUBMITTED:

FORD & HARRISON LLP

s/ Jeffrey A. Lehrer
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Attorneys for Defendants

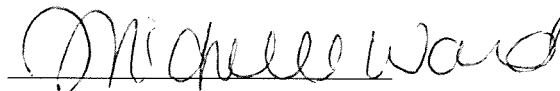
EXHIBIT 1

AFFIDAVIT OF MICHELLE WARD

I, Michelle Ward, being duly sworn, deposes and states as follows:

1. I am married to Mack Ward. I received information that Forum Benefits, LLC alleged that I communicated with Judge Bentley Price through Facebook on October 19, 2021, and that I commented "Happy Birthday Judge. We love you!" This allegation is absolutely false.
2. I have never communicated with Judge Bentley Price on Facebook and have never commented on any of his posts. I did not even remember I was connected to him on Facebook until recently.
3. Attached as Attachment 1 is a copy of my Facebook activity on October 19, 2021. It clearly does not include the alleged post.
4. I have over 2000 connections on Facebook. I have a marketing background and use Facebook partially for those purposes. My passion is marketing for the special needs community with an annual faith based event titled "Fearfully and Wonderfully Made."
5. I was so shocked by the allegations made by Forum Benefits that I did some of my own research to see what could have possibly led to this false allegation. In doing so, I looked at Judge Price's Facebook page and was able to confirm that his page does not even permit someone to post on his page.
6. I do not know what led to Forum Benefits, LLC making these false allegations against me, but I can confirm that I have not posted anything on Judge Price's Facebook page and have not communicated with him in any way for at least 19 years.

7. I certify that I have read this affidavit and that the information contained therein is true and correct based upon my personal knowledge.

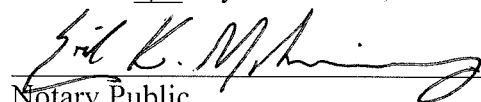


Michelle Ward

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

BEFORE ME, the undersigned authority, this day personally appeared Michelle Ward, who is known by me or provided appropriate identification and says that the above statements are true and correct to the best of her knowledge, information and belief and that she has read the above affidavit and knows the contents thereof.

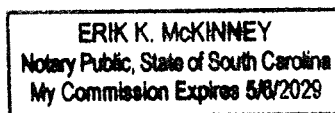
SWORN TO AND SUBSCRIBED BEFORE ME this 1 day of ^{November}~~October~~, 2021. ^(EKM)



Notary Public
State of South Carolina

My Commission Expires: 5/6/2029

WSACTIVELLP:12680452.1



**ATTACHMENT 1 TO EXHIBIT 1
AFFIDAVIT OF MICHELLE WARD**

Venmo/cash preferred

Members of...



Michelle Ward replied to Katie Terrell Hudson's **comment**.

Katie Terrell Hudson I'll message you!!!

Members of...

October 19, 2021



Michelle Ward commented on David's Table Inc.'s **video**.

Happy birthday!!!!

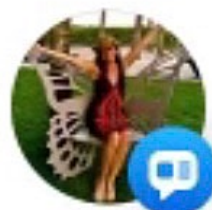
Public



Michelle Ward commented on Jill Thompson Johnson's **post**.

Hbd Andy!!!

Friends



Michelle Ward commented on Dolly Robertson Herron's **post**.

Happy birthday Becca!!!

Public

October 18, 2021



Michelle Ward replied to Debbie Way's **comment**.

Debbie Way thank you!!!! Love you

Friends



Michelle Ward replied to Harry Mims's **comment**.

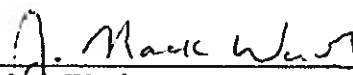
Harry Mims same!! What a treat!!!

Friends

AFFIDAVIT OF MACK WARD

I, Mack Ward, being duly sworn, deposes and states as follows:

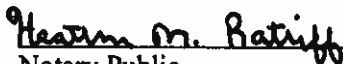
1. I am an employee of AssuredPartners in its Greenville office.
2. I am not an officer, manager, trustee, or director of AssuredPartners.
3. I work for AssuredPartners as a commission based producer in Greenville, South Carolina. I am not the Greenville office agency President and I do not have any corporate management authority.
4. I was subpoenaed by Forum Benefits to testify at trial in Beaufort, South Carolina the week of October 11, 2021. I was never called to actually testify at this trial. I am not a party to the litigation.
5. I went to college at Wofford at the same time as Judge Bentley Price. Prior to the week of October 11, 2021, I had not seen him or communicated with him in approximately 19 years.
6. I certify that I have read this affidavit and that the information contained therein is true and correct based upon my personal knowledge.


Mack Ward

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

BEFORE ME, the undersigned authority, this day personally appeared Mack Ward, who is known by me or provided appropriate identification and says that the above statements are true and correct to the best of her knowledge, information and belief and that she has read the above affidavit and knows the contents thereof.

SWORN TO AND SUBSCRIBED BEFORE ME this 1st day of November, 2021.


Notary Public
State of South Carolina

My Commission Expires: 10-13-2030
WSACTIVELLP:12687641.1

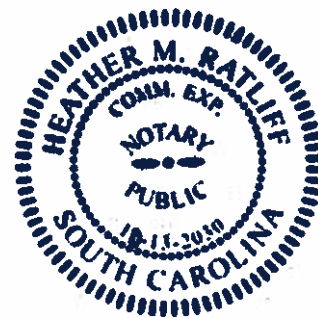


EXHIBIT 3

Jeffrey Lehrer

From: Steven LeBlanc <steve@leblancllc.com>
Sent: Wednesday, August 25, 2021 1:48 PM
To: Morgan, Grenville D. (Doc) Law Clerk (Mariana Outten); Jeffrey Lehrer; Roseneau, Jerri A.
Subject: RE: Case 2016CP0702541-Forum Benefits Inc VS Brian Bannon , defendant, et al added to Court Roster for period 2021-08-30 through 2021-09-03.

Thanks. Jeff's the one in quarantine. The only recovery in my future is from a bad tee shot, which I plan on doing tomorrow at Riverside at 12:50 if the judge wants to join us (now that he has an opening in his schedule).

From: Morgan, Grenville D. (Doc) Law Clerk (Mariana Outten) <gmorganlc@sccourts.org>
Sent: Wednesday, August 25, 2021 1:41 PM
To: Steven LeBlanc <steve@leblancllc.com>; Jeffrey Lehrer <jlehrer@fordharrison.com>; Roseneau, Jerri A. <jroseneau@bcgov.net>
Subject: RE: Case 2016CP0702541-Forum Benefits Inc VS Brian Bannon , defendant, et al added to Court Roster for period 2021-08-30 through 2021-09-03.

Steven,

Not a problem at all. Hope you and your family have a quick and easy recovery.

Best,

Anna Outten

Law Clerk to The Honorable G.D. Morgan
 Resident Circuit Judge, 13th Circuit
 305 E. North Street
 Greenville, SC 29601
 Cell: (843)-817-4416

From: Steven LeBlanc <steve@leblancllc.com>
Sent: Wednesday, August 25, 2021 1:20 PM
To: Morgan, Grenville D. (Doc) Law Clerk (Mariana Outten) <gmorganlc@sccourts.org>; Jeffrey Lehrer <jlehrer@fordharrison.com>; Roseneau, Jerri A. <jroseneau@bcgov.net>
Subject: RE: Case 2016CP0702541-Forum Benefits Inc VS Brian Bannon , defendant, et al added to Court Roster for period 2021-08-30 through 2021-09-03.

***** EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. *******

Anna,

Thank you again for scheduling a pre-trial conference with Judge Morgan for this Thursday, and please pass along our appreciation to Judge Morgan for working us in on short notice. We were at the top of the Beaufort roster, and trial with Judge Morgan was scheduled to start next Monday. Unfortunately, this case had to be continued to another term of court, and I don't know who the presiding trial judge will be yet.

Since we should probably have the pre-trial conference with whoever the presiding trial judge will be, counsel for both parties believe we should cancel tomorrow's pre-trial meeting. Please confirm receipt and that the meeting scheduled for tomorrow is cancelled. Thank you.

Steve

From: Morgan, Grenville D. (Doc) Law Clerk (Mariana Outten) <gmorganlc@sccourts.org>
Sent: Friday, August 20, 2021 9:30 AM
To: Jeffrey Lehrer <jlehrer@fordharrison.com>; Roseneau, Jerri A. <jroseneau@bcgov.net>
Cc: Steven LeBlanc <steve@leblancllc.com>
Subject: RE: Case 2016CP0702541-Forum Benefits Inc VS Brian Bannon , defendant, et al added to Court Roster for period 2021-08-30 through 2021-09-03.

Jeffrey and Steven,

Judge Morgan would have availability on Thursday morning at 10:30 for a phone call. Please let me know if this does not work for you all.

Anna Outten

Law Clerk to The Honorable G.D. Morgan
 Resident Circuit Judge, 13th Circuit
 305 E. North Street
 Greenville, SC 29601
 Cell: (843)-817-4416

From: Jeffrey Lehrer <jlehrer@fordharrison.com>
Sent: Wednesday, August 18, 2021 4:11 PM
To: Morgan, Grenville D. (Doc) Law Clerk (Mariana Outten) <gmorganlc@sccourts.org>; Roseneau, Jerri A. <jroseneau@bcgov.net>
Cc: Steven LeBlanc <steve@leblancllc.com>
Subject: Case 2016CP0702541-Forum Benefits Inc VS Brian Bannon , defendant, et al added to Court Roster for period 2021-08-30 through 2021-09-03.

***** EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Judge Morgan:

I represent the Defendants in the above referenced case. Steven LeBlanc represents the Plaintiff. We understand that our case will be the #1 jury trial before you in Beaufort the week of August 30. The claims in this case include breach of contract, breach of fiduciary duty and misappropriation of trade secrets, among other claims. We are expecting the trial will last the entire week. We anticipate approximately 19 individuals testifying at trial. We are planning on submitting our pretrial briefs by the August 25 due date, but thought it may be helpful to schedule a call with you prior to trial. Please let us know if you are open to scheduling a call and when you are available.

Thank you.



Jeffrey A. Lehrer - Attorney at Law 

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FordHarrison LLP - Ius Laboris USA | Global HR Lawyers 

100 Dunbar Street, Suite 300 | Spartanburg, SC 29306

jlehrer@fordharrison.com | P: 864-699-1152

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## **EXHIBIT 4**

**Jeffrey Lehrer**

**From:** Steven LeBlanc <steve@leblancllc.com>  
**Sent:** Saturday, October 9, 2021 7:53 PM  
**To:** Jeffrey Lehrer  
**Cc:** Kim Parker  
**Subject:** RE: Assured Partners - Forum - (Beaufort) - JAL Marked Deposition of Sarah Hildreth 9-8-21 (FOR TRIAL)  
**Attachments:** SarahHildreth\_COND - with designations.pdf

Jeff,

In the event that Ms. Hildreth cannot testify live at trial, I designate the following counter-designations to Ms. Hildreth's deposition:

p. 23, line 24 – p. 25, line 25;  
 p. 26, line 5 – p. 26, line 20;  
 p. 27, line 22 – p. 28, line 16;  
 p. 29, line 2 – p. 29, line 9;  
 p. 30, line 6 – p. 32, line 13;  
 p. 33, line 21 – p. 34, line 4;  
 p. 35, line 21 – p. 37, line 5;  
 p. 37, line 21 – p. 38, line 2;  
 p. 39, line 13 – p. 39, line 21;  
 p. 43, line 3 – p. 43, line 12;  
 p. 44, line 1 – p. 44, line 10;  
 p. 48, line 15 – p. 49, line 7.

Attached is a highlighted transcript with each of our designations. Green is for the good guys. It looks like you may have missed a yellow highlight at the bottom of p. 44, line 25.

Steve

**From:** Jeffrey Lehrer <jlehrer@fordharrison.com>  
**Sent:** Tuesday, October 5, 2021 3:04 PM  
**To:** Steven LeBlanc <steve@leblancllc.com>  
**Subject:** FW: Assured Partners - Forum - (Beaufort) - JAL Marked Deposition of Sarah Hildreth 9-8-21 (FOR TRIAL)

In the event that Ms. Hildreth is permitted to testify at trial through deposition, Defendants designations are attached.



**Jeffrey A. Lehrer - Attorney at Law**

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**FordHarrison LLP - Ius Laboris USA | Global HR Lawyers**

100 Dunbar Street, Suite 300 | Spartanburg, SC 29306

[jlehrer@fordharrison.com](mailto:jlehrer@fordharrison.com) | P: 864-699-1152

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**From:** Heather M. Ratliff

**Sent:** Tuesday, October 5, 2021 2:21 PM

**To:** Jeffrey Lehrer <[jlehrer@fordharrison.com](mailto:jlehrer@fordharrison.com)>

**Subject:** Assured Partners - Forum - (Beaufort) - JAL Marked Deposition of Sarah Hildreth 9-8-21 (FOR TRIAL)

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## EXHIBIT 5

1 State of South Carolina ) Court of Common Pleas  
2 County of Beaufort ) 14th Judicial Circuit  
3 ) No. 2016-CP-07-02541

4 Forum Benefits, Inc., )  
5 Plaintiff(s), )  
6 vs. )  
7 Brian Bannon and Assured )  
8 Partners, NL, )  
9 Defendant(s), )  
\_\_\_\_\_ )

**HEARING**

August 14, 2018

11 Hearing reported by Deborah S. Thomas,  
12 Certified Verbatim Reporter and Notary Public in and  
13 for the State of South Carolina; said hearing held  
14 before Honorable Marvin H. Dukes, III, Beaufort  
15 County Master in Equity and Special Circuit Court  
16 Judge in accordance with the South Carolina Rules of  
17 Civil Procedure, at the Beaufort County Courthouse,  
18 102 Ribaut Road, Room 212, Beaufort, South Carolina  
19 on August 14, 2018, at the hour of 1:43 p.m.

20 \_\_\_\_\_  
21 THOMAS REPORTING SERVICES  
22 156 Argent Way  
23 Bluffton, South Carolina 29909  
24 (803) 206-7390  
25

**COPY**

1       entity that then became the Alera Group, but I don't  
2       think that matters for purposes of the motion.

3               The Defendant is asking for us to produce  
4       the entire purchase agreement. And what we've done  
5       is we've produced the portion of the purchase  
6       agreement that dealt with the earn-out clause.

7               And as Mr. Harvey said, when my client was  
8       purchased by the Alera Group there was a reduction  
9       in the purchase price based on the events that are  
10      alleged in this complaint. The purchaser said  
11      because of what is going on they reduced the  
12      purchase price by about one and a half million  
13      dollars and included a clause by which the Plaintiff  
14      could earn that million and a half dollars if they  
15      accomplished certain milestones.

16              At the time of his deposition, Mr. Stritt  
17      identified that this earn-out clause had not yet  
18      been met. And so he was short about a million and a  
19      half dollars on the purchase of his company.

20              That purchase or that earn-out clause has  
21      since been met. And so he's not pursuing a claim as  
22      a result for the earn-out clause. He has been paid  
23      the full amount under the purchase agreement. So a  
24      couple things in there. One --

25              JUDGE DUKES: All right. Well, let

## **EXHIBIT 6**





AlphaGenesisInc.com  
866.789.MONK (6665)  
Fax 843.589.5290  
95 Castle Hall Road  
Yemassee, SC 29945



ELECTRONICALLY FILED - 2021 Nov 01 4:51 PM - BEAUFORT - COMMON PLEAS - CASE#2016CP0702541

November 26, 2014

BCBS  
I-20 Alpine Road  
Columbia, SC 29219

Re: Alpha Genesis  
Group #: #15-30237

To Whom It May Concern:

Please be advised that we would like to add an agent of record to our group health insurance policy to Palmetto Benefit Management/forum, 23 Cleveland Street, Ste A, Greenville, SC 29601. The Agent is Brian Stritt.

This letter supersedes previous instructions regarding our account, and we understand this removes previous representation.

Please make this change effective immediately. Should you have any questions, please do not hesitate to give me a call 843.589.5190 ext 26.

Sincerely,

Paula Gant  
Director of Accounting  
and Human Resources  
843-589-5190 ext 26  
[accounting@alphagenesisinc.com](mailto:accounting@alphagenesisinc.com)  
[hr@alphagenesisinc.com](mailto:hr@alphagenesisinc.com)  
[www.alphagenesisinc.com](http://www.alphagenesisinc.com)

Cc: Personnel File

STATE OF SOUTH CAROLINA  
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS  
CIVIL ACTION NO. 2016-CP-07-2541

Forum Benefits, LLC,

Plaintiff,

v.

Brian Bannon and Assured Partners, NL

Defendants.

**DEFENDANTS' REPLY IN SUPPORT OF  
ITS MOTION FOR ATTORNEYS'  
FEES/COSTS AND THE COURT'S  
AWARD OF FEES/COSTS**

The Court properly granted Defendants' motion for attorneys' fees and costs against Plaintiff on October 14, 2021. This decision was made in the sound discretion of the Court and was fully supported by the evidence at trial. Plaintiff's Response challenging this award is not supported by the law or any facts as outlined below.

**A. The Court properly awarded Defendant Bannon his attorneys' fees and costs as the prevailing party related to Plaintiff's breach of contract claim.**

Plaintiff has asserted throughout approximately five years of litigation that Defendant Bannon signed an Employment Agreement with Plaintiff, has claimed that the Employment Agreement was valid and enforceable, and has claimed that Defendant Bannon breached the Agreement. (Complaint ¶¶ 21-24, Complaint Ex. A.) The alleged Employment Agreement attached to Plaintiff's Complaint provides for mandatory prevailing party attorneys' fees and costs as follows:

In any litigation between the parties related to this Agreement, the prevailing party shall be entitled to recover all reasonable costs and attorneys' fees.

(Complaint Ex. A, ¶ 11) (emphasis added). Clearly, Plaintiff's contract claim related to this specific alleged Agreement because it was attached as an exhibit to the Complaint. Plaintiff's first

witness at trial was Plaintiff's attorney, David Wyatt, who drafted the Employment Agreement. Mr. Wyatt clearly testified that the intent of the Agreement was for the prevailing party in this litigation to be awarded attorneys' fees and costs. Plaintiff's own attorney who was called as a witness and waived the attorney-client privilege admitted that if Defendant Bannon prevailed related to Plaintiff's contract claim that he should be awarded his fees and costs. The Court properly granted Defendant Bannon these fees and costs within its sound discretion. The award of attorney's fees is left to the discretion of the trial judge and will not be disturbed on appeal unless an abuse of discretion is shown. *Am. Fed. Bank, FSB v. Number One Main Joint Venture*, 321 S.C. 169, 467 S.E.2d 439 (1996).

Plaintiff's Response related to the award of fees and costs under the breach of contract claim is full of hypocritical and bad faith arguments that should be summarily rejected. First, Plaintiff now alleges for the first time that there is no contract upon which to award fees. Plaintiff makes this statement despite the fact that it pursued its contract claim against Defendant Bannon for almost five years. Plaintiff has always maintained that a contract existed and sued under that alleged contract. Plaintiff is judicially estopped from taking a contrary position immediately after losing on this claim just to attempt to avoid the mandatory prevailing party fee provision in its own alleged contract.

"Judicial estoppel is an equitable concept that prevents a litigant from asserting a position inconsistent with, or in conflict with, one the litigant has previously asserted in the same or related proceeding." *See Cothran v. Brown*, 357 S.C. 210, 215–16, 592 S.E.2d 629, 631–32 (2004). The following elements are relevant in determining whether judicial estoppel applies: (1) two inconsistent positions taken by the same party or parties in privity with one another; (2) the positions must be taken in the same or related proceedings involving the same party or parties in

privity with each other; (3) the party taking the position must have been successful in maintaining that position and have received some benefit; (4) the inconsistency must be part of an intentional effort to mislead the court; and (5) the two positions must be totally inconsistent. *Id.* Here all the factors of judicial estoppel are present.

The first two elements of judicial estoppel are clearly established as discussed above. With regard to the third element, Plaintiff has been successful in advancing this contract claim by being permitted to pursue this claim against Defendant Bannon for almost five years. Plaintiff used the allegations of the contract to initially obtain an *ex parte* temporary restraining order and then later to defeat multiple motions for summary judgment. With regard to the fourth element, Plaintiff is clearly attempting to mislead the Court to avoid the repercussions of the mandatory prevailing party fee provision in its own Agreement. Plaintiff is now taking a position that is contrary to the testimony of its own attorney and witness at trial, David Wyatt. Finally, Plaintiff's positions are totally inconsistent – its Complaint says there is a contract and now it is saying there is no contract. Therefore, judicial estoppel applies in this case and Plaintiff's arguments are barred.

Defendant Bannon is clearly entitled to recover the attorneys' fees and costs that were incurred in defending him against Plaintiff's breach of contract claim. Contrary to Plaintiff's statement in its Response, the Court's directed verdict order provided multiple reasons to grant directed verdict related to this claim. The Court specifically ruled that Plaintiff's contract claim failed for multiple legal and evidentiary reasons. The Court ruled that Plaintiff failed to prove the required elements of a contract and failed to prove a breach of the alleged contract. It is indisputable that Plaintiff sued Defendant Bannon under the alleged contract and that Defendant Bannon was the prevailing party related to that claim.

Furthermore, the South Carolina Supreme Court has made clear that a defendant is entitled to prevailing party attorneys' fees even where the party prevails based on the Statute of Frauds defense. *Fici v. Koon*, 372 S.C. 341, 349, 642 S.E.2d 602, 606 (2007). In *Fici v. Koon*, the Court ruled,

The Statute of Frauds does not affect the validity of the attorneys' fee provision but is simply a defense to the conveyance. The Statute of Frauds is an affirmative defense. As with any affirmative defense, the party successfully asserting it is a prevailing party and therefore entitled to attorneys' fees where provided by contract.

*Id.* (internal citations omitted). Here, Defendant Bannon prevailed on multiple grounds, including the Statute of Frauds, and he is clearly the prevailing party in the litigation between the parties related to the Employment Agreement.

Second, Plaintiff hypocritically and in bad faith alleges that Defendant Bannon should not be awarded his fees and costs because he did not directly pay those fees. Plaintiff is clearly speculating as it has cited no evidence in the record to support this allegation. Furthermore, Plaintiff completely disregards the fact that its President, Brian Stritt, admitted at trial and in his sworn deposition as a Rule 30 deponent on damages that he was personally paying all of Plaintiff's attorneys' fees and that Plaintiff has not paid any of the fees. (Rule 30 Dep. 19-21.<sup>1</sup>) Yet, Mr. Stritt also has hypocritically admitted that he is "absolutely seeking his fees" against the Defendants in this case. (Rule 30 Dep. 113-115.) Again, Plaintiff is judicially estopped from arguing against Defendant Bannon's entitlement to fees after pursuing its own fees in this same manner for almost five years only to attempt to reverse course when its position backfires.

The fact that Defendant Bannon could not personally afford to pay his attorneys' fees and costs does not limit his entitlement to such recovery. Plaintiff is not entitled to the benefit of

---

<sup>1</sup> The cited transcript pages from Plaintiff's Rule 30 Corporate Representative (Brian Stritt) are attached as **Exhibit A**.

Assured Partners, a co-defendant, having to step in to help Mr. Bannon pay for his defense. Notably, Plaintiff has cited no authority for its argument on this issue. That is because South Carolina law does not require that Mr. Bannon actually personally incur or pay his fees to recover as the prevailing party. This issue was confirmed in *Maddux Supply Co. v. Safhi, Inc.*, 316 S.C. 404, 413–14, 450 S.E.2d 101, 106 (Ct. App. 1994) wherein the South Carolina Court of Appeals awarded fees and costs despite the actual party not incurring those fees and costs and ruled “Clearly, Benchmark's costs and attorneys' fees were incurred in this matter for the benefit and in the interest of Safhi . . . Thus, we concur in the master's ruling that “as the prevailing party, Safhi (for the benefit of Benchmark . . . and as the party to which Safhi tendered the defense of this matter) is entitled to an award of costs and attorneys' fees.”

Other jurisdictions have also completely rejected any requirement that the party actually pay the fees to be entitled to recover fees. In *Rogers v. Vulcan Mfg. Co.*, 93 So. 3d 1058, 1060 (Fla. Dist. Ct. App. 2012), the appellate court was tasked with reviewing a trial court’s order finding entitlement to attorneys’ fees under the prevailing party provision of a non-compete contract, but awarding nothing based on the fact that the attorneys’ fees in question were paid by the individual’s new employer. *Id.* at 1059. Similar to the facts of the current case, the attorney seeking fees in *Rogers* was retained and submitted bills to the individual party’s new employer. *Id.* The appellate court assessed the issue under the language of the prevailing party fee provision providing entitlement to attorneys’ fees “incurred.” *Id.* The appellate court went on to note “[t]hat a non-party may be the initial source of funds for prosecuting or defending an enforcement action is not dispositive,” and held - in no uncertain terms - that the individual former employee “was entitled to the attorney’s fees incurred to defend against [the] action, **regardless of whether his new employer paid for the legal services rendered on [the former employee’s] behalf.**” *Id.* at

1060 (emphasis added). The appellate court correctly stated, “To interpret this Agreement otherwise would result in an unwarranted windfall for the non-prevailing party, something the courts of this state greet with disapproval.” *Id.*

Significantly, the agreement in *Rogers* contained the phrase “attorney’s fees incurred” and the employer was not a party to the action. The facts of the instant case are even more favorable to Defendants Bannon and AssuredPartners. Here, AssuredPartners is a party and was required to defend itself against Plaintiff’s substantially similar allegations and allegations that flowed from the alleged contract (i.e. Plaintiff’s tortious interference with contract claim). In addition, the mandatory fee provision in Plaintiff’s Employment Agreement does not place any condition on the fees actually being “incurred by the party.” Plaintiff clearly did not want this limitation going into this trial (given that Mr. Stritt was paying Plaintiff’s fees), but wants to create the limitation now that Defendant Bannon became the prevailing party.

The reasoning and ruling in *Rogers* has been correctly adopted in several other jurisdictions wherein the prevailing party was awarded fees despite not directly paying those fees. *See Weichert Co. of Maryland, Inc. v. Faust*, 419 Md. 306, 19 A.3d 393, 408 (Md. 2011) (The Maryland Supreme Court held that in the absence of restrictive language in the contract obligating the prevailing party to personally pay her own attorney’s fees, the non-prevailing party was obligated to pay the fees incurred on behalf of the prevailing party, even when those fees were paid by someone else.); *Devs. Diversified of Tennessee, Inc. v. Tokio Marine & Fire Ins. Co.*, No. 3:04-CV-00015, 2019 WL 1861322, at \*8 (M.D. Tenn. Apr. 25, 2019)(granting prevailing party fees and ruling that the denial of attorneys’ fees when the party did not personally pay them would violate the clear language in that contract and would bestow a windfall upon the non-prevailing party.); *RCK Joint Venture v. Garrison Cove Homeowners Ass’n*, No. M2013-00630-COA-R3CV,

2014 WL 1632147, at \*8 (Tenn. Ct. App. Apr. 22, 2014)(awarding fees to the prevailing party despite the fact that the party did not personally incur them).

Moreover, any ruling that Defendant Bannon is not entitled to his prevailing party fees and costs would be against the public policy of South Carolina. South Carolina law requires that restrictive covenants be strictly construed against the employer seeking to enforce them. *Rental Unif. Serv. of Florence, Inc. v. Dudley*, 278 S.C. 674, 675, 301 S.E.2d 142, 143 (1983)(“Restrictive covenants not to compete are generally disfavored and will be strictly construed against the employer.”) This is another legal principle that was confirmed by Plaintiff’s own attorney during his cross examination at trial. The prevailing party fees provision in Plaintiff’s own Employment Agreement must be strictly construed against the Plaintiff. Thus, the Court properly awarded Defendant Bannon his fees and costs as the prevailing party on this claim.

Plaintiff’s attempt to avoid paying Defendant Bannon’s attorneys’ fees and costs after pursuing a breach of contract claim against him for almost five years is a further act of bad faith. Plaintiff must not be permitted to seek a windfall where Defendant Bannon had no ability to pay his fees directly and where he challenged the alleged contract on multiple grounds. This is especially true in this case based on Plaintiff’s own conduct in seeking to recover fees it never paid. Plaintiff’s bad faith arguments should be summarily rejected. Plaintiff’s bad faith conduct was so evident at trial that the Court properly granted Defendants’ motion for prevailing party attorneys’ fees and costs without the need to even listen to Plaintiff’s baseless, inconsistent, and hypocritical arguments outlined in its recently filed Response.

**B. The Court properly awarded Defendants their attorneys’ fees as the prevailing party related to Plaintiff’s trade secrets claim.**

Plaintiff’s arguments in its Response related to the award of fees under the South Carolina Trade Secrets Act (SCTSA) are likewise easily rejected. Plaintiff’s entire Response on this issue



is based on arguments regarding fees being awarded as sanctions in frivolous litigation. That standard and those cases are completely irrelevant here. The award of fees under the SCTSA is not based on any frivolous standard. Rather, in SCTSA cases, the court has the discretion to award the plaintiff fees as a prevailing party if the conduct at issue is determined by the court to be willful. S.C. Code Ann. § 39-8-80(3). Plaintiff was seeking those fees in this case. (Rule 30 Dep. 113.) Likewise, the court has the complete discretion to award fees to the defendants as a prevailing party if the court determines that the plaintiff made a claim of misappropriation in bad faith. S.C. Code Ann. § 39-8-80(1).

The Court properly exercised this discretion based on the clear evidence of Plaintiff's bad faith at trial. Contrary to Plaintiff's argument, the fact that the case survived a motion for summary judgment is not relevant to the trial court's determination of bad faith, just as it does not impact the willfulness issue for the Plaintiff.<sup>2</sup> The evidence of Plaintiff's bad faith became clear at the trial of this case after the Court heard the testimony of the witnesses. The evidence of bad faith in this case is overwhelming and it was elicited by a significant amount of testimony at trial, which included the following:

1. Plaintiff pursued a trade secrets claim for almost five years and never even asked the clients at issue why they left Plaintiff to move with Defendant Bannon to Defendant Assured Partners. There was no evidence presented at trial that any of Plaintiff's alleged confidential or trade secret information was used to solicit any client.

2. Plaintiff pursued a trade secrets claim for almost five years primarily based on the language in an Employment Agreement restricting the use of trade secrets despite not being able

---

<sup>2</sup> Defendants note that they argued their motion for summary judgment before Judge Buckner who retired before issuing a ruling on the motion. Defendants did not receive a new hearing on this motion and the motion was later denied by a different judge using a Form 4 type order.

to ever produce a completed or signed copy of that Agreement. The lack of even a Word document where the agreement was completed for Defendant Bannon strongly supports the conclusion that Brian Stritt falsified his sworn testimony that Defendant Bannon signed the agreement.

3. Plaintiff's President Brian Stritt and Plaintiff's employee Laurie Winston (who was Plaintiff's alleged expert on Employee Navigator) both provided a substantial amount of sworn testimony at trial that was completely contrary to their sworn depositions. Despite being impeached on these contradictions numerous times, they both continued to testify contrary to their sworn depositions, showing a complete lack of respect for the court process and the oath they took prior to taking the stand.

4. Plaintiff pursued allegations that Defendant Bannon breached HIPAA by retaining health information despite the fact that Plaintiff never reported any suspected HIPAA breach to Blue Cross Blue Shield ("BCBS"). Plaintiff called BCBS representative Robert Labine as a witness at trial and on cross examination Mr. Labine confirmed that Plaintiff had an obligation to report any suspected breach and never did so.

5. Plaintiff argued that the client's underlying plan administration data was "Plaintiff's trade secret information" despite the fact that BCBS representative Labine clearly and unequivocally confirmed that it was the "client's information" not Plaintiff's. Mr. Labine also confirmed that it was not uncommon for an insurance agent to represent two different agencies at the same time, something that was completely contrary to Plaintiff's position in this litigation. Significantly, two of Defendant Bannon's former clients confirmed that they gave Defendant Bannon authority to have access to their plan information at all times. Plaintiff never attempted to call any client to confirm that Defendant Bannon did not have such authorization, and that is because no such client exists. Furthermore, it was established at trial that South Carolina law

required Defendant Bannon to retain this client data, or at a minimum that he reasonably believed this legal requirement existed.

6. Plaintiff improperly attempted to admit evidence at trial regarding the \$1,500,000.00 earn out related to the sale of Plaintiff to the Alera Group despite previously representing to Judge Marvin Dukes on August 14, 2018, that it was no longer seeking these damages. (**Exhibit B – Transcript of Hearing, p. 12:16-24.**)

7. Plaintiff never attempted to prove any lost profits, relying solely on ridiculous claims related lost revenue for clients. Plaintiff never sought to retain any type of damages expert, which is extremely uncommon in trade secrets litigation, despite Defendants' summary judgment filings pointing out the necessity of such an expert in this case in particular. Rather, Plaintiff attempted to rely solely on the self-serving testimony of Mr. Stritt on damages, the person who wanted to get the money he had fronted for Plaintiff's legal fees back. Plaintiff never attempted to correct the clear deficiencies related to damages following the Rule 30 corporate representative deposition on the specific topic of Plaintiff's alleged damages. This deposition revealed the following:

(a) Plaintiff never calculated how the loss of Defendant Bannon's clients impacted Plaintiff's EBITDA (Rule 30 Dep. p. 56:10-14);

(b) Plaintiff does not know the market value of the lost revenue related to Defendant Bannon's clients (Rule 30 Dep. p. 170:12-25 to 171:1); and

(c) Plaintiff admitted it is speculative to place a value on Plaintiff's alleged confidential information at issue in this case (Rule 30 Dep. p. 103:9-13).

Despite these admissions and clear deficiencies in February of 2020, Plaintiff never attempted to obtain an expert, never attempted to calculate any of these alleged damages, and never

updated its discovery responses to disclose any actual lost profits or information valuation. Rather, Plaintiff attempted to improperly introduce evidence of damages at trial without any proper foundation or actual admissible evidence.

8. Plaintiff's employee Laurie Winston was proven to have directly lied to Plaintiff's own clients about not having access to the benefits plan data they requested. Plaintiff admitted cutting these clients access to plan data **without any warning and without any notice** to the clients, resulting in admitted disruption and complaints from clients. As confirmed by Ms. Winston, this was done at the direction of Mr. Stritt, Plaintiff's President, who was willing to sacrifice plan data and plan participants for his own personal and selfish gain. Plaintiff's acts of bad faith conduct toward its own clients became even more egregious when it decided to sue Defendant Bannon for trying to protect the clients' information and protect the clients from this type of disruption.

9. During cross examination, Mr. Stritt claimed that Plaintiff's customer list was a trade secret until he learned that its full customer list was placed in the public record as an attachment to the Complaint. (Complaint Ex. C.) He then quickly changed his testimony (something he was willing to do any time he believed it suited him), and said the customer list was not a trade secret. He obviously failed to read the alleged Employment Agreement he sued upon in this case, which defines a trade secret to include a "customer list." (Complaint, Ex. A, ¶12(d).) The inconsistencies in Plaintiff's position and testimony are simply amazing and the epitome of bad faith.

10. The evidence at trial indisputably proved that Plaintiff failed to take reasonable steps to protect its alleged trade secret information. The testimony of Laurie Winston revealed that Plaintiff could have easily placed an extra password on its trade secret information in the

SharePoint system and Defendant Bannon would have never had access to this alleged “super-secret information.” Plaintiff failed to take this “easy” step to protect its alleged trade secret, which was contrary to its clear obligations under S.C. Code Ann. §39-8-20(5)(a)(ii). Plaintiff, and really Mr. Stritt, has NOT been willing to accept ANY blame for Plaintiff’s own complete failures to take reasonable steps to protect alleged trade secret information. Instead, Mr. Stritt thinks he can bully an individual like Defendant Bannon without any repercussions.

11. Plaintiff pursued a trade secrets case against an admitted independent contractor despite not being able to establish any trade secrets duty. Plaintiff gave Defendant Bannon unrestricted access to its information. Thus, he at all relevant times had access to the information by proper means. Plaintiff never identified any of its information as confidential or a trade secret. Then, Plaintiff sued Defendants Bannon and Assured Partners claiming Defendants misappropriated something Plaintiff never identified in any manner as a trade secret. Plaintiff did not establish that Defendant had a contractual duty not to disclose its trade secret and did not establish how any duty could possibly exist for an independent contractor outside of such a contract. Employees have such a duty under the law, but independent contractors do not. *See* S.C. Code Ann. § 39-8-30(B). Plaintiff never attempted to establish how it created such a duty with an independent contractor like Defendant Bannon. Plaintiff’s position in this case has at all times been inconsistent with the SCTSA and Judge Goodstein’s Order granting summary judgment in *Computer Products, Inc. v. Jem Restaurant Group, Inc., et al*, Charleston County Court of Common Pleas, Case No. 04-CP-10-301 (2005).

12. Plaintiff pursued its trade secrets claim against Defendant Assured Partners despite never having any evidence that Defendant Bannon shared any of Plaintiff’s information from the SharePoint system with Assured Partners. The fact that this information was never shared with

Assured Partners was confirmed by the testimony of Defendant Bannon and Michelle Coffield (who had absolutely no interest in the outcome of this case).

13. Plaintiff pursued its trade secrets claim against Defendant Assured Partners related to Employee Navigator information despite the clear evidence that the information in Employee Navigator is the client's information and that it can be obtained from the client and the insurance carrier. There was never any basis to claim a trade secret as to Employee Navigator information and Plaintiff's attempt to basically claim "word processing" as a trade secret was an act of bad faith.

The above reasons are just a few of the multiple examples of Plaintiff's bad faith conduct revealed at trial. The instant case is the exact reason the Legislature provided the courts with discretion to award defendants their attorneys' fees for the bad faith pursuit of a trade secrets claim. If an award of fees in this case is not proper against this Plaintiff, then there is no case that will ever support an award of fees to the defendants under the SCTSA, making the Legislative language and intent meaningless. This Court properly gave meaning to the statute and properly awarded Defendants their attorneys' fees.

Therefore, the Court properly used its discretion and properly awarded Defendants their attorneys' fees and costs in this case.

Dated: November 1, 2021

RESPECTFULLY SUBMITTED:

FORD & HARRISON LLP

s/ Jeffrey A. Lehrer  
 Jeffrey A. Lehrer (SC Bar No. 16687)  
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Page 1

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF BEAUFORT ) C.A. NO. 2016-CP-07-2541

FORUM BENEFITS, INC., )  
PLAINTIFF, ) 30(b)(6) DEPOSITION  
VS. ) OF  
BRIAN BANNON AND ASSURED )  
PARTNERS, NL, ) FORUM BENEFITS, LLC  
DEFENDANT. ) (BRIAN STRITT)

THE 30(b)(6) DEPOSITION OF FORUM BENEFITS, LLC (BRIAN STRITT), TAKEN BEFORE HOLLY W. WILSON, PROFESSIONAL VERBATIM REPORTER AND NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA, COMMENCING AT THE HOUR OF 1:12 P.M., MONDAY, THE 10TH DAY OF FEBRUARY, 2020, AT FORD AND HARRISON, LLP, 100 DUNBAR STREET, SUITE 300, SPARTANBURG, SOUTH CAROLINA.

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1 are filing fees, there's attorneys' fees -- were those  
2 born out of Forum Benefits, Inc.?

3 A Yes.

4 Q Okay. And, so, you were kind of -- as the owner of  
5 that, you know, that's impacting your profits, those  
6 payments; right?

7 A Sure.

8 Q Okay. And, so, then post transaction, it moves into  
9 Forum Benefits, LLC. Did that immediately switch after  
10 the transaction? Meaning you stopped paying the  
11 attorneys' fees out of the -- kind of the Inc. side,  
12 your profit side, and it started coming out of the  
13 Alera Forum Benefits, LLC side?

14 A No.

15 Q So it didn't move into LLC?

16 A So, I want to clarify. I'm required to tell you where  
17 the money comes from to pay for the lawsuit?

18 Q Yes.

19 A Okay. It's coming from Brian Stritt.

20 Q Okay. So, you -- the Forum Benefits, LLC has not  
21 technically paid any money for the lawsuit?

22 A That's correct.

23 Q Okay. And so -- and that's where I kind of assumed  
24 that and I was getting at it a different way because --  
25 so, what my thought is, is there a -- you know, you're



Page 20

1 investing it, personally -- the money in this case,  
2 personally; right? Right?

3 A Sure.

4 Q Okay. And, so, if you win, you obviously want to ret-  
5 -- the return on investment; right?

6 A Well, clearly, I'm going to get the attorney fees back.  
7 That's -- that would be the first part. But we haven't  
8 sat down and discussed with Alera anything. If  
9 anything happens, what that award -- how it would be  
10 distributed, we haven't done that.

11 Q Okay. All right. And, so, it sounds to me like that  
12 there's just a lot of faith that that's going to work  
13 out in your favor; right?

14 A Yeah. I think it's pretty logical.

15 Q And, you know, you just kind of have to trust Alera to  
16 -- because the money's -- if any money is awarded, it  
17 goes to Forum Benefits, LLC. You understand that?

18 A Right. Right.

19 Q So then they have to agree to transfer that to you.  
20 Because it doesn't -- the only benefit would be,  
21 without that transfer, was it might, you know, increase  
22 your stock; right?

23 A Right.

24 Q Okay. And, so -- and sometimes I ask questions that  
25 may seem repetitive, but I'm trying to clear ---

Page 21

1 A No, no that's fine. That's fine.

2 Q --- my thoughts here. So, let's just say there's a  
3 huge influx of money. Let's just say a million dollars  
4 into Forum Benefits, LLC. There's nothing in your  
5 compensation, outside of your salary and your  
6 commission, that you would get some benefit of a huge  
7 influx of money?

8 A No.

9 Q Okay. All right. And, so, you started this lawsuit, I  
10 think, December of 2016, the Beaufort lawsuit. And  
11 then is that -- the money right then, that's going to  
12 pay for the lawsuit, coming out of Forum Benefits,  
13 Inc.?

14 A Sure, yeah.

15 Q Okay. And then -- so then, you know, Forum Benefits,  
16 Inc. kind of goes away after the transaction.

17 A Correct.

18 Q It becomes LLC. There really is no Inc. anymore?

19 A Correct, correct.

20 Q And, so, at that point, do you just start paying it out  
21 of like a personal account?

22 A Correct.

23 Q Okay. And do you know when that started?

24 A Well, it would have started the minute the company  
25 ceased to exist, which was 12-31-16.

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1 Q Uh-huh.

2 A I've got to get it five points above here (indicating).  
3 Bannon brought it down to here (indicating). So, I had  
4 this gap to make up (indicating). And if I got five  
5 percent above, then in 15, 18 months, I get the money.  
6 I get the remainder of the purchase price.

7 Q And you've got 12 months to do it?

8 A Correct. It was in 2000- -- so it ended at 2000 and --  
9 the end of 2017.

10 Q Okay. All right. And I believe that you testified in  
11 the last deposition that you never specifically  
12 calculated how much Bannon's clients leaving affected  
13 your EBITDA decreasing.

14 A Probably not, because I wouldn't do it on EBITDA. It  
15 would be the dollar amount would be the way I would  
16 look at it. So, now I've got to either -- to hit that  
17 dollar amount, I've either got to reduce expenses by  
18 that amount and then produce other new business to get  
19 to that figure.

20 Q Uh-huh.

21 A So I could figure it out, but it was kind of  
22 irrelevant.

23 Q And -- but as we sit here today, you've never actually  
24 calculated that?

25 A No, that would be a tough exercise.

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1 have. They took our sales process. They took all our  
2 formulas. They took all our demographic work that had  
3 took me 20 years to figure out working at Blue Cross  
4 how to do that. There's absolutely value to that in  
5 the market place, if they know how to use it. So ---

6 Q Yeah, and that -- and it's kind of the -- "If they know  
7 how to use it" is a condition; right?

8 A Yeah.

9 Q And so do you have any way of putting a value on what  
10 that -- how that has enriched them, in terms of a  
11 dollar value?

12 A Pretty difficult. I mean, it's intellectual property.  
13 It's out there.

14 Q It would be -- for you to come up with a number, it  
15 would be just speculative?

16 A Yeah, correct. Absolutely.

17 Q And so, you know, some of the stuff -- and we'll get  
18 into some more of the details, but we talked a little  
19 bit about it. I mean, some of the information that was  
20 taken -- you know, let's just say like going back to  
21 the Employee Navigator, and that's -- my understanding,  
22 was acquired through the client given passwords.

23 A Correct.

24 Q Right? And, so, you go in and you take -- you copy  
25 that. The -- it's my under- -- and I think we've

Page 113

1 A Okay.

2 Q That he breached the agreement. The agreement says  
3 that whoever -- you know, in any litigation between the  
4 parties, so Forum and Bannon, any litigation between  
5 the parties, the prevailing party shall be entitled to  
6 recover all reasonable attorneys' fees. And, so, my  
7 question to you is are you seeking attorneys' fees  
8 against Brian Bannon under this contract?

9 A I am absolutely seeking attorney fees from Brian  
10 Bannon. Whether this is part of -- ultimately, I can't  
11 answer that question.

12 Q Okay.

13 A I don't know. I mean, I understand you're saying I'm  
14 the guy that's making that decision. Didn't realize  
15 that decision had to be made now.

16 Q Okay. Well ---

17 A So, absolutely, we're going for -- absolutely, I'm  
18 going for attorneys' fees. Whether or not this even  
19 matters in the end, because of the violation of Trade  
20 Secrets Act, I don't know. You're asking me attorney  
21 questions.

22 Q Well, I'm asking you what damages you're seeking.  
23 Okay? you've got a breach of contract claim.

24 A Okay.

25 Q The contract you claim to be the contract ---

Page 114

1 A Right.

2 Q --- as says the prevailing party, whoever wins on the  
3 contract claim ---

4 A Okay.

5 Q --- gets -- is entitled to recover their reasonable  
6 attorneys' fees and costs. So, if you win on the  
7 agreement, are you seeking your attorneys' fees and  
8 costs against Brian Bannon?

9 A So the answer is I don't know, because I don't know if  
10 -- I don't understand what we're talking about. I  
11 don't understand if you're saying that this then  
12 supersedes the entire agreement or the entire lawsuit.

13 Q No, I'm not saying that. Okay. So ---

14 A Okay. You're just talking about on this little  
15 section.

16 Q Just this claim.

17 A Okay. Just this tiny claim.

18 Q Look, you've got other claims. You can seek attorneys'  
19 fees under other claims as well.

20 A Okay. Okay.

21 Q But what I'm asking is -- you know, let's assume you  
22 lose on those other claims. Okay.

23 A Right.

24 Q And this is your claim. You win on this claim, breach  
25 of contract.

Page 115

1 A Right.

2 Q And this provision in the contract says, "Prevailing  
3 party shall be entitled to reasonable attorneys' fees  
4 and costs." Are you seeking that damages against Brian  
5 Bannon?

6 A Yeah, I don't know.

7 Q Well, why wouldn't you? Why wouldn't -- if you say he  
8 signed this contract, and you've sued -- you've clearly  
9 sued him for breach of contract.

10 A Correct. Correct.

11 Q Why wouldn't you want to take the benefit of the  
12 contract?

13 A I certainly would. What I don't understand is the  
14 legal implication for not being about to produce that  
15 document, since his entire employee file has walked out  
16 the door. So, I don't know the answer to that  
17 question.

18 Q So, as we sit here today, you ---

19 A Me thinks a trick question is coming. So, my radar is  
20 up a little bit, Jeffrey.

21 Q And, listen, I'm not trying to trick you. I just need  
22 to know what it is that you're seeking.

23 A Okay.

24 Q You've admitted you're seeking a breach of this  
25 contract; right?

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1 Q Okay.

2 A To my knowledge.

3 Q All right. The -- you know, going back to this Exhibit  
4 7 -- you don't need to pull it back out. But, you  
5 know, one of the damages that was claimed was the --  
6 you know, the two -- approximately 2000 -- \$200,000 a  
7 year in lost revenue related to the Bannon accounts;  
8 right?

9 A Uh-huh.

10 Q That's a yes? You know what I'm talking about?

11 A Yeah, sure.

12 Q Okay. What is the amount from that, that Forum  
13 Benefits, LLC is seeking to recover? You know, based  
14 on that lost revenue, what is the amount that their  
15 will be seeking from the lawsuit to recover?

16 A So the market value of that business.

17 Q Okay.

18 A Market saleable value.

19 Q Okay.

20 A That's where we can put in 35 different formulas and  
21 come up with what that number is.

22 Q And what is that number?

23 A Well, at 240, it really depends on how we calculate it.

24 Q Okay. And as of today, you haven't calculated that?

25 A No, there's a lot of different versions of how to do



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1           it.

2       Q     Okay. All right.

3               MR. LEHRER: All right. Well, that's all I have.

4               MR. LEBLANC: I don't have any questions. Thanks.

5               (WHEREUPON, THE DEPOSITION CONCLUDED AT 5:04 P.M.)

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1 State of South Carolina ) Court of Common Pleas  
2 County of Beaufort ) 14th Judicial Circuit  
3 ) No. 2016-CP-07-02541

4 Forum Benefits, Inc., )  
5 Plaintiff(s), )  
6 vs. )  
7 Brian Bannon and Assured )  
8 Partners, NL, )  
9 Defendant(s), )  
\_\_\_\_\_ )

**HEARING**

August 14, 2018

11 Hearing reported by Deborah S. Thomas,  
12 Certified Verbatim Reporter and Notary Public in and  
13 for the State of South Carolina; said hearing held  
14 before Honorable Marvin H. Dukes, III, Beaufort  
15 County Master in Equity and Special Circuit Court  
16 Judge in accordance with the South Carolina Rules of  
17 Civil Procedure, at the Beaufort County Courthouse,  
18 102 Ribaut Road, Room 212, Beaufort, South Carolina  
19 on August 14, 2018, at the hour of 1:43 p.m.

20 \_\_\_\_\_  
21 THOMAS REPORTING SERVICES  
22 156 Argent Way  
23 Bluffton, South Carolina 29909  
24 (803) 206-7390  
25

**COPY**

1       entity that then became the Alera Group, but I don't  
2       think that matters for purposes of the motion.

3               The Defendant is asking for us to produce  
4       the entire purchase agreement. And what we've done  
5       is we've produced the portion of the purchase  
6       agreement that dealt with the earn-out clause.

7               And as Mr. Harvey said, when my client was  
8       purchased by the Alera Group there was a reduction  
9       in the purchase price based on the events that are  
10      alleged in this complaint. The purchaser said  
11      because of what is going on they reduced the  
12      purchase price by about one and a half million  
13      dollars and included a clause by which the Plaintiff  
14      could earn that million and a half dollars if they  
15      accomplished certain milestones.

16              At the time of his deposition, Mr. Stritt  
17      identified that this earn-out clause had not yet  
18      been met. And so he was short about a million and a  
19      half dollars on the purchase of his company.

20              That purchase or that earn-out clause has  
21      since been met. And so he's not pursuing a claim as  
22      a result for the earn-out clause. He has been paid  
23      the full amount under the purchase agreement. So a  
24      couple things in there. One --

25              JUDGE DUKES: All right. Well, let

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 2016-CP-07-2541

Forum Benefits, LLC,

Plaintiff,

v.

Brian Bannon and Assured Partners, NL

Defendants.

**AFFIDAVIT OF JEFFREY A. LEHRER  
FOR ATTORNEYS' FEES AND COSTS**

Personally appeared before me, Jeffrey A. Lehrer, who after being duly sworn states:

1. My name is Jeffrey A. Lehrer, I am an attorney representing the Defendants in the above-captioned matter.

2. The South Carolina Supreme Court has established six factors that should be considered in the setting of attorneys' fees, which include the following (none of these factors is controlling in the singular): (1) the nature, extent and difficulty of the legal service rendered; (2) the time and labor necessarily devoted to the case; (3) the professional standing of counsel; (4) the contingency of compensation; (5) the fee customarily charged in the locality for similar legal services; and (6) the beneficial results obtained. *Taylor v. Medenica*, 331 S.C. 575, 503 S.E.2d 458 (1998). Each of these factors are discussed below.

**Nature, Extent and Difficulty of Case and Time,****Labor Necessarily Devoted to the Case, and Beneficial Results Obtained**

3. This case involved claims filed by Plaintiff for breach of contract, breach of fiduciary duty, misappropriation of trade secrets, conversion and tortious interference with contract. A misappropriation of trade secrets claim is a complex issue for litigation. The

complexity of this case was compounded by Plaintiff's unreasonable position and bad faith conduct on several fronts.

4. Litigation activities in this case have been ongoing for approximately five years. Plaintiff has vigorously attempted to prosecute this case and has sought a significant amount of damages against the Defendants. This case required an extensive level of work related to Plaintiff's numerous claims and extensive damages allegations. Throughout this litigation, Plaintiff improperly sought the recovery of \$1,500,000.00 in damages related to an alleged earn out. (See **Exhibit A** – Plaintiff's discovery responses, response to interrogatory number 1.) Plaintiff took inconsistent positions regarding whether it was pursuing this earn out, but sought to introduce evidence at trial that it was entitled to the earn out value. Plaintiff also sought damages of alleged lost revenue of \$200,000.00. (*Id.*) Plaintiff sought damages related to some of Defendant Bannon's clients who followed him to Assured Partners but also improperly sought damages related to clients who were not Defendant Bannon's clients. Plaintiff also argued that its alleged lost revenue was subject to being multiplied by up to 4.25 times. (See **Exhibit B** – Plaintiff's response to Defendants' motion for summary judgment, pp. 6-7.)

5. The South Carolina Trade Secrets Act permits a doubling of any damage award and permits an award of attorney's fees. S.C. Code Ann. §§ 39-8-40 and 39-8-80. In addition, Plaintiff's tort claims created a threat of punitive damages. Therefore, Plaintiff was seeking significant seven figure damages against Defendants that required a thorough and an aggressive defense for almost five years.

6. Defendants attempted on numerous occasions to educate Plaintiff related to Plaintiff's inability to prove essential elements of its claims and its inability to establish damages. Defendants were required to file multiple motions related to discovery issues. Defendants also

filed multiple motions for summary judgment on a number of legal issues. Despite challenging and educating Plaintiff on the legal issues and problems with its claims and alleged damages, Plaintiff never changed its position and never attempted to cure the glaring deficiencies in its case.

7. Plaintiff pursued trade secrets claims against Defendants despite admitting that the information could be properly obtained from the insurance carrier and the client directly. Plaintiff pursued trade secrets claims against Defendants despite clearly failing to take reasonable steps to protect its own alleged trade secret information. Plaintiff pursued this litigation for almost five years without ever amending the complaint and without timely dropping any claims. Plaintiff dropped its tortious interference claim at the directed verdict stage, at the last possible minute before having it dismissed by the Court. Essentially, Plaintiff made sure that Defendants spent as much time, money and resources as possible before dropping this claim. Plaintiff pursued this litigation for almost five years against an independent contractor to whom it provided unrestricted access to information without ever proving the basis for any trade secrets duty or improper access.

8. In addition, Plaintiff identified 14 witnesses as potential trial witnesses, requiring Defendants to incur substantial costs to prepare for the testimony of each of these witnesses. One of the witnesses was Plaintiff's own attorney, requiring a substantial assessment of privilege and waiver issues. Two of Plaintiff's identified witnesses were Mr. Bannon's former clients and Defendant AssuredPartners' current clients. Both of them were subpoenaed by Plaintiff and then released from their subpoena at the last possible minute without being called to testify by Plaintiff. It appears that Plaintiff's tactics were to simply interfere with Defendants' relationships with these clients and that Plaintiff never had the intent to call these witnesses. Plaintiff also pursued calling Marlene Gray, a former client of Defendant Bannon, through remote means or by use of her depositions. However, at trial, Plaintiff chose to do neither of these options it had previously

pursued. Several other witnesses were required to travel from Greenville to Beaufort only to be released from their subpoena after spending considerable time waiting in the courtroom.

9. This case involved the production of thousands of pages of discovery and two computer forensic witnesses called by Plaintiff. Plaintiff identified over 125 potential trial exhibits, requiring Defendants to be prepared to respond to all of these potential exhibits at trial. Some of these exhibits were not identified or produced by Plaintiff until the week before trial. Then, Plaintiff attempted to introduce documents at trial that were not listed in the 125 potential trial exhibits and that had not been previously produced to Defendants.

10. Plaintiff's claims and litigation tactics created the need for a significant amount of work for Defendants throughout this litigation. The manner in which Plaintiff claimed damages related to the sale of the business to the Alera Group caused significant discovery and discovery disputes related to the transaction documents and proper party in interest issues. Plaintiff continually marked documents as confidential attorney eyes only documents restricting the ability of Defendants to review alleged evidence and causing additional fees and costs. Then at trial, Plaintiff attempted to introduce into the record a document it had marked confidential - attorney's eyes only (a document only the Defendants' attorneys had seen). This document was not listed as one of Plaintiff's 125 potential trial exhibits.

11. Defendants reference their Response in Opposition to Plaintiff's Motion for a New trial and Defendants' Reply in Support of its Motion for Attorneys' Fees/Costs and the Court's Award of Fees/costs related to the tactics and bad faith conduct of Plaintiff in this case. Plaintiff's litigation positions and tactics resulted in Defendants incurring substantial fees and costs.

12. The total fees and costs incurred by Defendants in this case are reasonable and were necessary to prevail against Plaintiff on all of its claims. This work helped Defendants receive

the beneficial result of the Court's Order granting Defendants Motion for Directed Verdict on all of Plaintiff's claims and the Court granting Defendants motion for attorneys' fees and costs related to Plaintiff's breach of contract and trade secrets claims.

**Professional Standing of Counsel**

13. I am a partner in the law firm of Ford & Harrison, LLP. Ford & Harrison is a national labor and employment defense firm with 28 offices and approximately 200 attorneys.

14. I graduated from the University of South Carolina School of Law in 1999 and was admitted to the South Carolina Bar in 1999. I am admitted to practice in all state courts in South Carolina, the South Carolina Supreme Court, the United States District Court for South Carolina, the United States Court of Appeals for the Fourth Circuit, and the United States Supreme Court. I have been admitted to practice *pro hac vice* in courts in California, Florida, Georgia, Kentucky, Louisiana, North Carolina, Tennessee, and Texas, many of such cases were related to restrictive covenant disputes and/or trade secrets claims.

15. I primarily practice in the area of labor and employment law. I primarily represent business entities. I have approximately 22 years of experience practicing in the area of employment law and in litigating restrictive covenant and trade secrets cases.

16. Ed Carlsedt was heavily involved in the trial of this case. He is the office managing partner of Ford Harrison's Tampa, Florida office. He graduated from Stetson University College of Law in 1997, *cum laude*, and has been admitted to practice law in Florida since 1997. He was admitted *pro hac vice* in this case. He is admitted to practice in all state courts in Florida, the United States District Courts for the Middle District of Florida and the Southern District of Florida. Mr. Carlstedt is heavily involved in Ford & Harrison's non-compete practice group and has extensive experience in matters involving trade secrets, non-compete and restrictive covenant related issues.



**Contingency of Compensation**

17. This case was not taken on a contingency fee basis.

**Fee Customarily Charged in Locality for Similar Legal Services**

18. My hourly rate in this litigation is \$380 per hour. My partner, Ed Carlstedt, was billed at an hourly rate of \$400 per hour. Other attorneys within Ford & Harrison have worked on this case at a rate at or below these rates. Ford & Harrison has not increased these rates since becoming involved in this case in April of 2019. These hourly rates are reasonable given the degree of difficulty involved in defending these types of restrictive covenant, tortious interference, fiduciary duty, and trade secrets cases. These rates are at or below the rates courts in South Carolina have approved as reasonable for these types of cases. *See Sonoco Prod. Co. v. Guven*, No. 4:12-CV-00790-BHH, 2015 WL 127990, at \*14 (D.S.C. Jan. 8, 2015)(approving a rate of \$400 per hour in a trade secrets case); *Layman v. State*, 376 S.C. 434, 460, 658 S.E.2d 320, 334 (2008)(approving rates of \$500–\$600); *Savani v. Taylor*, C.A. No.: 1:06–cv–02805–JMC, 2014 U.S. Dist. LEXIS 5092, 2014 WL 172503 (D.S.C. Jan. 15, 2014) (quoting the declaration of Professor John Freeman that the customary rate for services by experienced counsel is in the range of \$500–\$650 per hour in an ERISA case); *Palmetto Health Credit Union v. Open Solutions Inc.*, C.A. No. 3:08–cv–3848–CMC, 2011 U.S. Dist. LEXIS 692, at \*17, 2011 WL 11702 (D.S.C. Jan. 4, 2011) (approving rate of \$385 for partner).

19. I have represented the Defendants in this case since April of 2019. Prior to April of 2019, Defendants were solely represented by Bill Harvey of Harvey & Battey, P.A. Attached as **Exhibit C** is an affidavit of fees and costs from Mr. Harvey. Mr. Harvey’s firm’s fees and costs related to this case from December of 2016 through July of 2019 were \$121,754.26.

20. I have attached as **Exhibit D** a summary and itemized statement of all services which I and the attorneys within my firm have performed related to the defense of this case since

April of 2019, along with the expenses/costs incurred to-date. I have redacted the time entries that contain attorney-client privileged communications or work product information. Based on a review and compilation of billing invoices and timekeeper accounting records of the firm, done at my request (which records are maintained in the normal course of ordinary business), Ford & Harrison's fees and costs related to this case from April of 2019 through the present are \$362,557.84.<sup>1</sup> I certify that these are the attorneys' fees and costs actually billed by Ford & Harrison related to this case.

21. The total fees and costs incurred by Defendants in this case since December of 2016 is \$484,312.10.

22. Defendants' total fees and costs are consistent with the fees and costs affirmed by the South Carolina Supreme Court in *Taylor v. Medenica*, 331 S.C. 575, 582, 503 S.E.2d 458, 462 (1998), which involved an unfair trade practices claim and an award of fees and costs to the prevailing party. In *Taylor*, the South Carolina Supreme Court affirmed the award of fees and costs and ruled, "We conclude the trial judge properly considered all six factors in determining the appropriate attorney's fee and find his decision awarding \$500,000 in attorney's fees and \$24,068 in costs is supported by the record." *Id.*

23. Significantly, United States District Court Judge Michelle Childs has awarded attorneys' fees and costs in a South Carolina Trade Secrets Act case in the amount of \$1,816,494.28. *Uhlig, LLC v. Shirley*, 895 F. Supp. 2d 707, 719 (D.S.C. 2012), *see also Sonoco Prod. Co. v. Guven*, No. 4:12-CV-00790-BHH, 2015 WL 127990, at \*12 (D.S.C. Jan. 8,

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<sup>1</sup> Upon a detailed review of the bills sent in this case, I determined that there were some time entries that were billed to the wrong AssuredPartners matter. Ford & Harrison represents AssuredPartners in several other matters. As a result of this error, the following entries have been redacted and have been deducted from the fees and costs sought in this case: (1) 5/7/20, MJG, 0.70; (2) 5/7/20, MJG 0.30; (3) 5/11/20, MJG, 0.50; (4) 6/10/20, MJG 0.50; (5) 2/4/21, JAL, 1.50; (6) 2/4/21, JAL, 0.30; (7) 2/4/21, JAL, 0.40; (8) 6/13/19, JAL, 0.80; (9) 5/23/19, JAL, 0.50; (10) 1/10/20, JAL, 0.40. The total reduction was for 5.9 hours and in the amount of \$2,242.00.

2015)(approving an attorneys' fees and costs award of \$573,785.28 in a trade secrets case); *Super Duper, Inc. v. Mattel, Inc.*, C.A. No. 6:05-cv-1700-HFF-WMC, 2009 WL 866463 (D.S.C. Mar.31, 2009) (finding a request for fees in the amount of \$2,643,844.15 appropriate in a complex trademark and patent infringement case litigated over more than three years and involving experienced in-state and out-of-state counsel); *GTR Rental, LLC v. DalCanton*, 547 F.Supp.2d 510, 524 (D.S.C.2008) (awarding fees of \$550,000 in a case involving claims of breach of fiduciary duty, fraud, conversion, misappropriation of trade secrets, and unfair trade practices); *Palmetto Health Credit Union*, 2011 U.S. Dist. LEXIS 692, at \*17, 2011 WL 11702 (awarding attorney's fees of \$748,703.38 in a case involving claims of breach of contract, fraud, and unfair trade practices).

24. Pursuant to the Court's ruling granting Defendants' motion for attorneys' fees and costs as the prevailing party related to Plaintiff's breach of contract claim and trade secrets claim, Defendants request an award and judgment against Plaintiff as follows:

| Firm                                                  | Attorneys' Fees | Costs      | TOTAL               |
|-------------------------------------------------------|-----------------|------------|---------------------|
| Ford & Harrison, LLP                                  | \$355,146.00    | \$7,411.84 | \$362,557.84        |
| Harvey & Battey, PA                                   | \$113,922.65    | \$7,831.61 | \$121,754.26        |
| <b>TOTAL OF ALL DEFENDANTS' ATTORNEYS' FEES/COSTS</b> |                 |            | <b>\$484,312.10</b> |

25. Defendants seek an award of **\$484,312.10** related to their attorneys' fees and costs through October 31, 2021.

26. I certify that I have read this affidavit and that the information contained therein is true and correct based upon my personal knowledge.

RESPECTFULLY SUBMITTED:

FORD & HARRISON LLP

  
Jeffrey A. Lehrer (SC Bar No. 16687)  
[jlehrer@fordharrison.com](mailto:jlehrer@fordharrison.com)  
100 Dunbar Street, Suite 300  
Spartanburg, South Carolina 29306  
Telephone: (864) 699-1100  
*Attorneys for Defendants*

SWORN to before me this 4<sup>th</sup>  
day of November 2021

  
Notary Public for South Carolina  
My commission expires: 10-13-2030

WSACTIVELLP:12678463.1



**EXHIBIT A**  
**TO AFFIDAVIT OF JEFFREY LEHRER**

STATE OF SOUTH CAROLINA  
BEAUFORT COUNTY

IN THE COURT OF COMMON PLEAS  
CIVIL ACTION NO. 2016-CP-07-2541

Forum Benefits, Inc.,

Plaintiff,

v.

Brian Bannon and Assured Partners, NL

Defendants.

**PLAINTIFF'S RESPONSES TO  
DEFENDANTS' SECOND SET OF  
INTERROGATORIES AND REQUESTS  
FOR PRODUCTION**

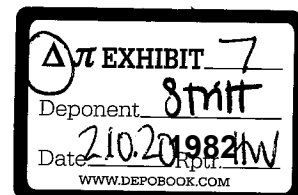
Pursuant to Rules 33 and 34 of the S.C. Rules of Civil Procedure, Forum Benefits, Inc. provides the following responses to Defendants' Second Set of Interrogatories and Requests for Production.

1. Itemize in detail each and every element of damage that the Plaintiff claims in this lawsuit. As to each element of damage, produce each and every document that Plaintiff contends supports such element of damage.

**Response:** Plaintiff claims the following damages in this lawsuit:

- a. Approximately \$200,000 per year in lost revenues. Plaintiff will produce for inspection and copying documents that identify the lost revenues.
- b. Approximately \$1,497,000 in diminished value of Forum Benefits during the purchase of Forum Benefits on November 30, 2016. Plaintiff will produce for inspection and copying documents that identify the diminished value of Forum Benefits.
- c. Amount to be determined by a jury to disgorge Defendants' unjust enrichment.
- d. Plaintiff's attorneys' fees and costs associated with this lawsuit.
2. Produce the sales or other agreement(s) pertaining to the sale of Forum Benefit, LLC to Alera Group.

**Response:** Plaintiff objects to this request as seeking documents that are not relevant to the subject matter of the litigation. Plaintiff will produce for inspection and copying the portion of



the agreement that identifies the diminished value of Forum Benefits during the purchase of Forum Benefits on November 30, 2016.

3. Produce the 2015, 2016 and 2017 tax returns of Forum Benefits, Inc.

**Response:** Plaintiff will produce for inspection and copying copies of the tax returns of Forum Benefits, LLC for 2015-2017.

4. Produce the Articles of Incorporation, and Bylaws, of Forum Benefits, LLC.

**Response:** Plaintiff will produce for inspection and copying copies of the Articles of Incorporation and Bylaws of Forum Benefits, LLC.

5. Produce all emails or other electronic communications by, to or copying Brian Stritt in connection with the sale of Forum Benefits, Inc. or Forum Benefits, LLC to Alera Group pertaining to, or in any way dealing with, Assured Partners or Brian Bannon.

**Response:** Plaintiff objects to this request as seeking documents that are not relevant to the subject matter of the litigation. In addition, identifying, collecting, and producing the requested documents is unreasonably burdensome and expensive considering the importance of the documents to the issues in the litigation.

6. Produce all documents in connection with the sale of Forum Benefits LLC to Alera Group that contain an earn-out clause applicable to Forum Benefits or Brian Stritt.

**Response:** Plaintiff will produce for inspection and copying the portion of the agreement that identifies the diminished value of Forum Benefits during the purchase of Forum Benefits on November 30, 2016.

7. Produce all emails or other electronic communications by, to or copying Brian Stritt pertaining to an earn-out clause applicable to Forum Benefits, LLC or Brian Stritt in the sale of Forum Benefits, LLC to Alera Group.

**Response:** Plaintiff will produce for inspection and copying copies of emails to Brian Stritt regarding the diminished value of Forum Benefits during the purchase of Forum Benefits on November 30, 2016.

8. Produce the license agreement between Forum Benefits, Inc. and Employee Navigator.

**Response:** Plaintiff will produce for inspection and copying copies of any license agreement between Forum Benefits, Inc. and Employee Navigator.

9. Produce all agreements that Forum Benefits, Inc. or Forum Benefits, LLC has with clients concerning the clients' data, employee and other information.

**Response:** Plaintiff will produce for inspection and copying all agreements that Forum Benefits, Inc. or Forum Benefits, LLC has with clients concerning the clients' data, employee and other information.

10. Produce all agreements or other documents that Forum Benefits, Inc. or Forum Benefits, LLC has with or gives to clients that deal with protection of alleged trade secrets of Forum Benefits.

**Response:** Plaintiff will produce for inspection and copying all documents that Forum Benefits, Inc. or Forum Benefits, LLC has with or gives to clients that deal with protection of alleged trade secrets.

11. Produce all trademarks, service marks, or other intellectual property registrations possessed by the Plaintiff in connection with any information claimed in this litigation to be a trade secret.

**Response:** Plaintiff objects to this request as being nonsensical. Plaintiff's trademarks identify the source of Plaintiff's goods and services and are not used to identify trade secrets. Plaintiff's copyrights in its proprietary trade secrets exist when the material is fixed in any tangible medium and do not require registration.

12. Produce all reports, records, emails or other communications by or between Michael Shultz/Liberty Digital Forensics pertaining to any forensic or other work performed for the Plaintiff or Brian Stritt.

**Response:** Plaintiff objects to producing emails or other communications by or between Michael Schulz/Liberty Digital Forensics pertaining to any forensic or other work performed for the Plaintiff or Brian Stritt as being protected from discovery as work product. Plaintiff has previously produced all reports and records from Michael Schulz/Liberty Digital Forensics pertaining to any forensic or other work performed for the Plaintiff or Brian Stritt.

13. Produce all reports, records, emails or other communications by or between Reid (Reed) Wilson pertaining to any forensic or other work performed for the Plaintiff or Brian Stritt.

**Response:** Plaintiff objects to producing emails or other communications by or between Reed Wilson pertaining to any forensic or other work performed for the Plaintiff or Brian Stritt as being protected from discovery as work product. Plaintiff has previously produced all reports and records from Reed Wilson pertaining to any forensic or other work performed for the Plaintiff or Brian Stritt.

14. Produce all report, records, emails or other communication by or between MarshBerry or its employees and Forum Benefits or its employees or Brian Stritt, pertaining to Assured Partners or Brian Bannon.



**Response:** Plaintiff objects to this request as seeking documents that are not relevant to the subject matter of the litigation. In addition, the requested documents are protected from discovery as work product.

15. Produce all reports, records, emails or other communications by or between MarshBerry or its employees and Forum Benefits or its employees or Brian Stritt, pertaining to any damages claimed in this litigation.

**Response:** Plaintiff objects to this request as seeking documents that are not relevant to the subject matter of the litigation. In addition, the requested documents are protected from discovery as work product.

16. Produce all checks, emails, correspondence, receipts, agreements or other documents pertaining to all payments made by the Plaintiff or Brian Stritt to Kent McKowen.

**Response:** Plaintiff objects to this request as seeking documents that are not relevant to the subject matter of the litigation.

Respectfully submitted,

s/Steven R. LeBlanc  
Steven R. LeBlanc (Fed. Id. #7000)  
Steve LeBlanc, LLC  
P.O. Box 9198  
Greenville, S.C. 29604  
Tel: (864) 902-4411  
Steve@LeBlancLLC.com

*Attorneys for Plaintiff Forum Benefits, Inc.*

**CERTIFICATE OF SERVICE**

I certify that on April 3, 2018, I served a copy of PLAINTIFF'S RESPONSES TO DEFENDANTS' SECOND SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION on all counsel of record by U.S. Mail with a courtesy copy by email.

Respectfully submitted,

s/Steven R. LeBlanc  
Steven R. LeBlanc (Fed. Id. #7000)  
Steve LeBlanc, LLC  
P.O. Box 9198  
Greenville, S.C. 29604  
Tel: (864) 902-4411  
Steve@LeBlancLLC.com

*Attorneys for Plaintiff Forum Benefits, Inc.*

**EXHIBIT B**  
**TO AFFIDAVIT OF JEFFREY LEHRER**

**STATE OF SOUTH CAROLINA  
BEAUFORT COUNTY**

**IN THE COURT OF COMMON PLEAS  
CIVIL ACTION NO. 2016-CP-07-2541**

Forum Benefits, LLC,

Plaintiff,

v.

Brian Bannon and Assured Partners, NL

Defendants.

**PLAINTIFF'S RESPONSE TO  
DEFENDANTS' FOURTH MOTION FOR  
SUMMARY JUDGMENT**

Plaintiff Forum Benefits, LLC provides the following Response to Defendants' Fourth Motion for Summary Judgment. Defendants' Fourth Motion for Summary Judgment raises many of the same arguments previously rejected by the Court in Defendants' First Motion for Summary Judgment, and as before, genuine disputes of material fact exist for each cause of action to preclude summary judgment.

**I. Introduction**

The present litigation involves claims between a former employer (Forum Benefits), its former employee (Defendant Brian Bannon), and his current employer (Defendant Assured Partners, NL). Forum Benefits and Assured Partners are competitors in the field of benefits administration, and each company services clients by identifying and tailoring insurance coverage to meet the individual needs of their respective clients. Forum Benefits employed Bannon as a W-2 employee from 2009 to 2013, and from 2013 until November 15, 2016, Bannon provided services to Forum Benefits as an independent contractor. Unbeknownst to Forum Benefits, Bannon signed an employment agreement with Assured Partners on October 4, 2016, while still providing services to Forum Benefits and having access to Forum Benefits' confidential information and proprietary trade secrets.

the SharePoint server and none of the files copied from the Employee Navigator system include any information that qualifies as a trade secret under the S.C. Trade Secret Act, despite the urgent efforts Defendants exercised to surreptitiously obtain these files.

In contrast, Forum Benefits has produced many examples of the files misappropriated by Defendants, and Stritt has testified repeatedly and extensively about the formulas, compilations, processes, designs, etc. included in the misappropriated materials that constitute proprietary trade secrets. *See, e.g.*, Ex. A, Prelim. Inj. Tr., pp. 36-37; Ex. H, Stritt Dep. Tr., pp. 69-72, 83, 85-87, 96, 114-116, 129. As a specific example of a particularly sensitive file copied by Bannon, Stritt has described in detail the enormous volume of proprietary formulas incorporated into 31 different tabs of an excel spreadsheet that forms the basis for Forum Benefits' renewal presentation for clients. Ex. H., Stritt Dep. Tr., p. 229; Ex. I, Renewal Spreadsheet.<sup>1</sup>

### **3. Forum Benefits can prove damages proximately resulting from Defendants' conduct.**

The parties also dispute whether Forum Benefits sustained any damages as a result of Defendants' conspiratorial actions to steal Forum Benefits' trade secrets. Defendants wrongfully assert that Plaintiff did not suffer any damages and even suggest that Defendants' actions increased Forum Benefits' profitability.

Forum Benefits has identified multiple ways to calculate damages caused by Defendants' actions. For example, Stritt explained that Defendants' actions caused a loss in annual revenue of \$200,232. Ex. H, Stritt Depo. Tr., pp. 148-151, Ex. 1; Ex. L, Forum Benefits 30(b)(6) Dep. Tr., pp. 100-106, Ex. 7. Stritt explained that companies generally apply a multiplier to annual revenue to calculate the present value the stream of revenue. For example, Mac Ward, a current

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<sup>1</sup> When printed as a pdf, as done for Ex. I, the cells containing the proprietary formulas are filled with shading to prevent disclosure of the proprietary formulas. *See, e.g.*, Ex. I, Renewal Spreadsheet, p. 64. Forum Benefits can provide the native excel spreadsheet for the Court's review *in camera*.

employee of Assured Partners, testified that in 2016 Assured Partners used a multiplier of 2.75 to calculate the present value of Assure South's annual stream of revenue. Ex. K, Ward Dep. Tr., pp. 8-9, 11, 14-17. Stritt testified that in 2016 the purchaser of Forum Benefits used a multiplier of 4.25 to calculate the present value of Forum Benefits' annual stream of revenue. Ex. H, Stritt Dep. Tr., pp. 148-151. Alternately, Stritt testified that in 2016 the purchaser of Forum Benefits reduced the purchase price paid to Stritt based on the anticipated loss in annual revenue caused by Defendants' actions. *Id.*, at 14-15. Therefore, competent evidence supports a jury award of actual damages in this case ranging from \$550K (according to Ward's testimony) to the reduction in the purchase price paid during the purchase of Forum Benefits in 2016.

### III. Analysis

Summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." S.C. R. Civ. P. 56(c). The moving party has the burden of establishing the absence of any genuine issue as to a material fact. *Id.*; *Carolina Alliance for Fair Employment v. South Carolina Dep't of Labor, Licensing, and Regulation*, 337 S.C. 476 (Ct. App. 1999). "In determining whether any triable issues of fact exist, the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the non-moving party." *Osborne v. Adams*, 346 S.C. 4, 7 (2001). "Because it is a drastic remedy, summary judgment should be cautiously invoked so no person will be improperly deprived of a trial of the disputed factual issues." *Carolina Alliance*, 337 S.C. at 485; *see also Holloman v. McAllister*, 289 S.C. 183, 186 (1986) (explaining that summary judgment is "an extreme remedy to be cautiously invoked.")

In this case, Defendants fail to establish the absence of a genuine dispute as to any material fact. Accordingly, the Court should deny the present Motion in its entirety.

**EXHIBIT C**  
**TO AFFIDAVIT OF JEFFREY LEHRER**

STATE OF SOUTH CAROLINA  
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS  
CIVIL ACTION NO. 2016-CP-07-2541

Forum Benefits, LLC,

Plaintiff,

v.

Brian Bannon and Assured Partners, NL

Defendants.

**AFFIDAVIT OF WILLIAM B. HARVEY,  
III FOR ATTORNEYS' FEES AND COSTS**

Personally appeared before me, William B. Harvey, III, who after being duly sworn states:

1. I am an attorney who has represented the Defendants in the above-captioned matter.  
2. I am a member in the law firm of Harvey & Battey, P.A., in Beaufort, SC, where I primarily practice in the area of civil trial litigation.

3. I graduated from the University of South Carolina School of Law in 1980 and was admitted to the South Carolina Bar in 1980. I am admitted to practice in all state courts in South Carolina, the South Carolina Supreme Court, the United States District Court for South Carolina and Georgia, the United States Court of Appeals for the Fourth Circuit and Eleventh Circuit, and the United States Supreme Court. I have been the Beaufort City Attorney since 1987.

4. My hourly rate in this litigation was \$275 per hour. Other attorneys within Harvey & Battey have worked on this case at a rate at or below these rates. Harvey & Battey did not increase these rates since becoming involved in this case in December of 2016.

5. Attached as Attachment 1 to my affidavit is a spreadsheet showing the fees and costs billed by Harvey & Battey related to this case from December of 2016 through July of 2019. The total amount billed by and paid to Harvey & Battey was **\$121,754.26**. I certify that these are the attorneys' fees and costs actually billed by and paid to Harvey & Battey related to this case.



6. Attached as Attachment 2 to my affidavit are copies of the bills submitted in this case. Time entries that contain attorney-client privileged communications and work product information have been redacted. Harvey & Battey changed accounting systems in August of 2018 and, because of that change, I do not have access to some of the actual bills sent related to work performed in this case prior to August of 2017. There was a considerable amount of work performed in December of 2016 related to Plaintiff's motion for preliminary injunction and the hearing on that motion. There was also considerable work done related to this matter in 2017. However, we do have records of the total amounts billed and paid which are reflected in Attachment 1.

7. I believe that my firm could recreate the bills from the time period prior to August of 2017 but it would involve us having to re-establish the Juris program previously used which was deleted from our server, and is no longer supported. This could involve a significant amount of work and expense. However, we are willing to attempt to retrieve this information if the Court believes these actual bills are relevant and necessary to Defendants receiving their full award of fees and costs in this case.

8. I certify that I have read this affidavit and that the information contained therein is true and correct based upon my personal knowledge.

RESPECTFULLY SUBMITTED:

HARVEY & BATTEY, P.A.



WILLIAM B. HARVEY, III

Post Office Box 1107

Beaufort, South Carolina 29901-1107

843-524-3109 telephone

843-524-6973 telefax

[bharvey@harveyandbattey.com](mailto:bharvey@harveyandbattey.com)

SWORN to before me this 4<sup>th</sup>  
day of November 2021



Notary Public for South Carolina

My commission expires: 2-10-2024

WSACTIVE LLP: 12692527.1

**ATTACHMENT 1 TO AFFIDAVIT OF  
WILLIAM B. HARVEY, III**

# HARVEY BATTEY INVOICES

| <u>Date:</u>   | <u>Invoice #:</u> | <u>Fees:</u>        | <u>Expenses/Costs:</u> | <u>Total Billed:</u> |
|----------------|-------------------|---------------------|------------------------|----------------------|
| 12/9/2016      | 24394             | \$3,932.50          |                        | \$3,932.50           |
| 1/17/2017      | 24490             | \$3,726.25          |                        | \$3,726.25           |
| 3/1/2017       | 24608             | \$660.00            |                        | \$660.00             |
| 3/16/2017      | 24685             | \$137.50            |                        | \$137.50             |
| 4/20/2017      | 24799             | \$1,663.75          |                        | \$1,663.75           |
| 6/1/2017       | 24893             | \$2,681.25          |                        | \$2,681.25           |
| 7/1/2017       | 24970             | \$811.25            |                        | \$811.25             |
| 8/7/2017       | 25056             | \$2,378.75          |                        | \$2,378.75           |
| 8/15/2017      | 25168             | \$1,856.25          | \$0.00                 | \$1,856.25           |
| 10/16/2017     | 25357             | \$10,615.00         | \$549.00               | \$11,164.00          |
| 11/15/2017     | 25470             | \$2,131.25          | \$746.07               | \$2,877.32           |
| 12/18/2017     | 26374             | \$746.40            | \$0.00                 | \$746.40             |
| 2/15/2018      | 25718             | \$5,816.25          | \$0.46                 | \$5,816.71           |
| 3/19/2018      | 25835             | \$15,166.25         | \$641.04               | \$15,807.29          |
| 4/17/2018      | 25930             | \$7,163.75          | \$1,271.53             | \$8,435.28           |
| 5/15/2018      | 26046             | \$13,227.50         | \$1,312.50             | \$14,540.00          |
| 7/19/2018      | 26226             | \$8,373.75          | \$817.34               | \$9,191.09           |
| 8/29/2018      | 26400             | \$3,863.75          | \$269.40               | \$4,133.15           |
| 9/30/2018      | 26553             | \$1,718.75          | \$221.74               | \$1,940.49           |
| 11/1/2018      | 82                | \$1,347.50          | \$0.00                 | \$1,347.50           |
| 11/30/2018     | 173               | \$3,877.50          | \$0.00                 | \$3,877.50           |
| 1/2/2019       | 280               | \$577.50            | \$6.88                 | \$584.38             |
| 2/4/2019       | 415               | \$8,030.00          | \$1,331.99             | \$9,361.99           |
| 3/1/2019       | 524               | \$2,365.00          | \$417.35               | \$2,782.35           |
| 4/1/2019       | 653               | \$3,355.00          | \$0.00                 | \$3,355.00           |
| 5/1/2019       | 737               | \$5,280.00          | \$206.61               | \$5,486.61           |
| 6/5/2019       | 848               | \$770.00            | \$39.70                | \$809.70             |
| 7/1/2019       | 963               | \$1,650.00          | \$0.00                 | \$1,650.00           |
| <b>Totals:</b> |                   | <b>\$113,922.65</b> | <b>\$7,831.61</b>      | <b>\$121,754.26</b>  |

ELECTRONICALLY FILED - 2021 Nov 04 4:01 PM - BEAUFORT - COMMON PLEAS - CASE#2016CP0702541



August 15, 2017

Billed through 08/15/2017

Bill number 25168 - 026374 - HAR

Assured Partners, Inc. attn: Walter Smith  
4905 Dickens Road, Suite 200  
Richmond, VA 23230

Brian Bannon & Assured Partners NL v. Form Benefit, Inc.

FOR PROFESSIONAL SERVICES RENDERED

|            |     |                                                                                                                                                             |           |            |          |
|------------|-----|-------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|------------|----------|
| 12/29/2016 | HAR | email exchange with Walter Smith re [REDACTED] pc with Dean Haskell; finalize Answer; review complaint; prepare interrogatories and requests for production | 2.00 hrs. | 275.00 /hr | \$550.00 |
| 07/17/2017 | HAR | email to Mack Ward                                                                                                                                          | 0.20 hrs. | 275.00 /hr | \$55.00  |
| 07/18/2017 | HAR | review spreadsheets and other materials re [REDACTED] sent by Jim Brady; pc with Dean Haskell; email exchange with Mack Ward                                | 1.30 hrs. | 275.00 /hr | \$357.50 |
| 07/18/2017 | HAR | conference call with Mack Ward; email to Mack Ward                                                                                                          | 1.25 hrs. | 275.00 /hr | \$343.75 |
| 07/20/2017 | HAR | email to Dean Haskell; email to Walter Smith                                                                                                                | 0.40 hrs. | 275.00 /hr | \$110.00 |
| 07/24/2017 | HAR | email to Dean Haskell                                                                                                                                       | 0.25 hrs. | 275.00 /hr | \$68.75  |
| 08/08/2017 | HAR | pc with Dean Haskell                                                                                                                                        | 0.25 hrs. | 275.00 /hr | \$68.75  |
| 08/09/2017 | HAR | email exchange with Dean Haskell                                                                                                                            | 0.25 hrs. | 275.00 /hr | \$68.75  |
| 08/09/2017 | HAR | pc Dean Haskell; email to Walter and Bannon                                                                                                                 | 0.60 hrs. | 275.00 /hr | \$165.00 |
| 08/11/2017 | HAR | email exchange with Brian Bannon                                                                                                                            | 0.25 hrs. | 275.00 /hr | \$68.75  |

Total fees for this matter

\$1,856.25



# HARVEY & BATTEY

ATTORNEYS AT LAW

026374 Brian Bannon & Assured Partner

Invoice# 25168

Page 2

## BILLING SUMMARY

|                                                     |                   |
|-----------------------------------------------------|-------------------|
| NET BALANCE FORWARD                                 | \$2,378.75        |
| TOTAL FEES THIS BILL                                | \$1,856.25        |
| <b>TOTAL BALANCE NOW DUE TO HARVEY &amp; BATTEY</b> | <b>\$4,235.00</b> |

|                                   |        |
|-----------------------------------|--------|
| BEGINNING TRUST ACCOUNT BALANCE   | \$0.00 |
| TRUST AMOUNT APPLIED TO THIS BILL | \$0.00 |
| ENDING TRUST ACCOUNT BALANCE      | \$0.00 |

Harvey & Bailey

October 16, 2017

Billed through 10/16/2017

Bill number 25357 - 026374 - HAR

Assured Partners, Inc. attn: Walter Smith  
4905 Dickens Road, Suite 200  
Richmond, VA 23230

Brian Bannon & Assured Partners NL v. Form Benefit, Inc.

Payment Received Sep/15/2017 \$4,235.00

FOR PROFESSIONAL SERVICES RENDERED

|            |     |                                                                                                                                                                                                                                                                                                         |           |            |          |
|------------|-----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|------------|----------|
| 08/16/2017 | HAR | review subpoenas; email to Walter Smith                                                                                                                                                                                                                                                                 | 0.30 hrs. | 275.00 /hr | \$82.50  |
| 08/23/2017 | HAR | pc with Mack Ward re [REDACTED]                                                                                                                                                                                                                                                                         | 0.35 hrs. | 275.00 /hr | \$96.25  |
| 09/01/2017 | HAR | pc Walter Smith                                                                                                                                                                                                                                                                                         | 0.25 hrs. | 275.00 /hr | \$68.75  |
| 09/12/2017 | HAR | review Mack Ward emails and attachments                                                                                                                                                                                                                                                                 | 0.50 hrs. | 275.00 /hr | \$137.50 |
| 09/22/2017 | HAR | pc with Mack Ward; email to Walter Smith                                                                                                                                                                                                                                                                | 0.40 hrs. | 275.00 /hr | \$110.00 |
| 09/26/2017 | HAR | review LeBlanc appearance notice; email to Walter Smith                                                                                                                                                                                                                                                 | 0.30 hrs. | 275.00 /hr | \$82.50  |
| 10/02/2017 | HAR | pc with Jon Taylor; email with Walter Smith; email with witnesses; email with Brian Bannon; review documents in preparation for depositions; conference call with Jon, Michelle, Mack, Brian and Walter; review documents sent by Mack Ward; pc with Mack Ward (x2); pc with Dean Haskell re [REDACTED] | 3.50 hrs. | 275.00 /hr | \$962.50 |
| 10/02/2017 | HAR | pc with Mack Ward; review additional materials from Mack Ward                                                                                                                                                                                                                                           | 0.50 hrs. | 275.00 /hr | \$137.50 |
| 10/03/2017 | HAR | travel to Charleston (160 miles travel); meeting with Michelle; depositions of Michelle Coffield and Jon Taylor; meeting afterwards with Jon and Brian; pc with Walter Smith; pc with                                                                                                                   |           |            |          |

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Invoice# 25357

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|            |     |                                                                                                                     |            |                    |
|------------|-----|---------------------------------------------------------------------------------------------------------------------|------------|--------------------|
|            |     | Mack Ward; copy deposition exhibits; email to Mack Ward                                                             |            |                    |
|            |     |                                                                                                                     | 10.90 hrs. | 275.00 /hr         |
| 10/04/2017 | HAR | pc with Mack Ward (x3); review materials from Mack; travel to Greenville                                            |            | \$2,997.50         |
|            |     |                                                                                                                     | 4.70 hrs.  | 275.00 /hr         |
| 10/05/2017 | HAR | meeting with Mack Ward in preparation for deposition; deposition of Mack Ward; travel from Greenville to Beaufort   |            | \$1,292.50         |
|            |     |                                                                                                                     | 9.50 hrs.  | 275.00 /hr         |
| 10/05/2017 | HAR | conference call with Jim Brady and Walter Smith                                                                     |            | \$2,612.50         |
|            |     |                                                                                                                     | 0.40 hrs.  | 275.00 /hr         |
| 10/06/2017 | HAR | meeting with Brian Bannon in preparation for deposition; deposition of Brian Bannon; review material from Mack Ward |            | \$110.00           |
|            |     |                                                                                                                     | 4.00 hrs.  | 275.00 /hr         |
| 10/09/2017 | HAR | email exchange with Jim Brady and others; pc with Jim Brady; email to Kelly Hagan                                   |            | \$1,100.00         |
|            |     |                                                                                                                     | 0.75 hrs.  | 275.00 /hr         |
| 10/09/2017 | HAR | email to Jim Brady; pc with Judge Dukes to get transcript of hearing                                                |            | \$206.25           |
|            |     |                                                                                                                     | 0.50 hrs.  | 275.00 /hr         |
| 10/10/2017 | HAR | review hearing transcript; email to Walter and Bannon                                                               |            | \$137.50           |
|            |     |                                                                                                                     | 0.75 hrs.  | 275.00 /hr         |
| 10/12/2017 | HAR | conference call with Brian Bannon, Jim Brady, Walter Smith, and Kelly Hagen                                         |            | \$206.25           |
|            |     |                                                                                                                     | 1.00 hrs.  | 275.00 /hr         |
|            |     |                                                                                                                     |            | \$275.00           |
|            |     | Total fees for this matter                                                                                          |            | <u>\$10,615.00</u> |

## FUNDS ADVANCED

|            |                                          |                 |
|------------|------------------------------------------|-----------------|
| 10/03/2017 | Travel Expense: Mileage to Charleston    | \$86.40         |
| 10/03/2017 | Travel Expense: Lunch in Charleston      | \$22.00         |
| 10/04/2017 | Travel Expense: Mileage to Greenville    | \$264.60        |
| 10/04/2017 | Travel Expense: Dinner Greenville        | \$21.00         |
| 10/04/2017 | Travel Expense: Quality Inn Hotel        | \$119.00        |
| 10/05/2017 | Travel Expense: Breakfast with Mack Ward | \$24.00         |
| 10/05/2017 | Travel Expense: Lunch                    | \$12.00         |
|            | Total funds advanced for this matter     | <u>\$549.00</u> |



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Invoice# 25357

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## BILLING SUMMARY

|                                                     |                    |
|-----------------------------------------------------|--------------------|
| TOTAL FEES THIS BILL                                | \$10,615.00        |
| TOTAL FUNDS ADVANCED THIS BILL                      | \$549.00           |
| <b>TOTAL BALANCE NOW DUE TO HARVEY &amp; BATTEY</b> | <b>\$11,164.00</b> |

|                                   |        |
|-----------------------------------|--------|
| BEGINNING TRUST ACCOUNT BALANCE   | \$0.00 |
| TRUST AMOUNT APPLIED TO THIS BILL | \$0.00 |
| ENDING TRUST ACCOUNT BALANCE      | \$0.00 |



November 15, 2017

Billed through 11/15/2017

Bill number 25470 - 026374 - HAR

Assured Partners, Inc. attn: Walter Smith  
4905 Dickens Road, Suite 200  
Richmond, VA 23230

Brian Bannon & Assured Partners NL v. Form Benefit, Inc.

FOR PROFESSIONAL SERVICES RENDERED

|            |     |                                                                                                        |           |            |          |
|------------|-----|--------------------------------------------------------------------------------------------------------|-----------|------------|----------|
| 10/24/2017 | HAR | pc with Dean Haskell; email exchange with Dean; email to Walter                                        | 0.75 hrs. | 275.00 /hr | \$206.25 |
| 10/24/2017 | HAR | prepare Anthem affidavit                                                                               | 0.75 hrs. | 275.00 /hr | \$206.25 |
| 10/25/2017 | HAR | email with Walter Smith; pc with Walter Smith                                                          | 0.45 hrs. | 275.00 /hr | \$123.75 |
| 10/25/2017 | HAR | pc with Dean Haskell; prepare Notice                                                                   | 0.30 hrs. | 275.00 /hr | \$82.50  |
| 10/26/2017 | HAR | pc Walter Smith; review [REDACTED]<br>[REDACTED] email to Jim Brady                                    | 1.00 hrs. | 275.00 /hr | \$275.00 |
| 10/31/2017 | HAR | pc Dean Haskell                                                                                        | 0.25 hrs. | 275.00 /hr | \$68.75  |
| 11/03/2017 | HAR | review TRO hearing transcript; prepare for deposition of Brian Stritt; email to Dean Haskell;          | 1.70 hrs. | 275.00 /hr | \$467.50 |
| 11/06/2017 | HAR | pc with Dean Haskell                                                                                   | 0.25 hrs. | 275.00 /hr | \$68.75  |
| 11/06/2017 | HAR | email to Jim Brady                                                                                     | 0.25 hrs. | 275.00 /hr | \$68.75  |
| 11/07/2017 | HAR | email exchange with Jim Brady                                                                          | 0.25 hrs. | 275.00 /hr | \$68.75  |
| 11/08/2017 | HAR | review discovery responses; review proposed confidentiality agreement and order; email to Dean Haskell | 1.20 hrs. | 275.00 /hr | \$330.00 |



026374 Brian Bannon &amp; Assured Partner

Invoice# 25470

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|            |     |                                                                              |           |            |          |
|------------|-----|------------------------------------------------------------------------------|-----------|------------|----------|
| 11/10/2017 | HAR | pc Dean Haskell; review and approve confidentiality agreement; email to Dean | 0.60 hrs. | 275.00 /hr | \$165.00 |
|------------|-----|------------------------------------------------------------------------------|-----------|------------|----------|

|                            |  |  |  |  |                   |
|----------------------------|--|--|--|--|-------------------|
| Total fees for this matter |  |  |  |  | <u>\$2,131.25</u> |
|----------------------------|--|--|--|--|-------------------|

## FUNDS ADVANCED

|                                      |                                                  |                 |
|--------------------------------------|--------------------------------------------------|-----------------|
| 10/04/2017                           | On-Line Legal Research                           | \$236.00        |
| 11/10/2017                           | Photocopies                                      | \$2.45          |
| 11/10/2017                           | Coastal Court Reporting; Transcript              | \$252.25        |
| 11/10/2017                           | A. William Roberts, Jr. & Associates; Transcript | \$255.37        |
| Total funds advanced for this matter |                                                  | <u>\$746.07</u> |

## BILLING SUMMARY

|                                          |                    |
|------------------------------------------|--------------------|
| NET BALANCE FORWARD                      | \$11,164.00        |
| TOTAL FEES THIS BILL                     | \$2,131.25         |
| TOTAL FUNDS ADVANCED THIS BILL           | \$746.07           |
| TOTAL BALANCE NOW DUE TO HARVEY & BATTEY | <u>\$14,041.32</u> |

|                                   |        |
|-----------------------------------|--------|
| BEGINNING TRUST ACCOUNT BALANCE   | \$0.00 |
| TRUST AMOUNT APPLIED TO THIS BILL | \$0.00 |
| ENDING TRUST ACCOUNT BALANCE      | \$0.00 |



February 15, 2018

Billed through 02/28/2018

Bill number 25718 - 026374 - HAR

Assured Partners, Inc. attn: Walter Smith  
4905 Dickens Road, Suite 200  
Richmond, VA 23230

Brian Bannon &amp; Assured Partners NL v. Form Benefit, Inc.

Payment Received Jan/18/2018 \$746.40

## FOR PROFESSIONAL SERVICES RENDERED

|            |     |                                                                                                                                                                                                                                                       |           |            |          |
|------------|-----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|------------|----------|
| 12/20/2017 | HAR | download and review [REDACTED] email to Walter, Brian, Mack and Brady; pc with Steve LeBlanc; pc with Mack Ward                                                                                                                                       | 1.70 hrs. | 275.00 /hr | \$467.50 |
| 01/16/2018 | HAR | review [REDACTED] email to Assured clients; email exchange re [REDACTED] pc Walter Smith; oc with Bradi Whitmire                                                                                                                                      | 2.50 hrs. | 275.00 /hr | \$687.50 |
| 01/19/2018 | HAR | prepare for conference call; conference call with Walter, Brian, Mack and Jim Brady; email to Mark; email to Brian; pc with Mack; pc with Brian;                                                                                                      | 2.30 hrs. | 275.00 /hr | \$632.50 |
| 01/19/2018 | HAR | email to Dean Haskell and Steve LeBlanc                                                                                                                                                                                                               | 0.25 hrs. | 275.00 /hr | \$68.75  |
| 01/22/2018 | HAR | pc Dean Haskell; email to Steve LeBlanc; review emails from Mack Ward                                                                                                                                                                                 | 0.65 hrs. | 275.00 /hr | \$178.75 |
| 01/22/2018 | HAR | review [REDACTED]; pc with Scott Naumoff; email to clients                                                                                                                                                                                            | 0.70 hrs. | 275.00 /hr | \$192.50 |
| 01/23/2018 | HAR | review [REDACTED]; email to Scott Naumoff; pc with Scott Naumoff; email to clients; review [REDACTED]; email to Paula Gant; review [REDACTED]; email to Christie Holderness; email exchange with Brian Bannon; pc with Brian Bannon; pc with Christie |           |            |          |

Harvey & Battey, P.A. P.O. Drawer 1107 1001 Craven Street Beaufort, SC 29901-1107  
(843) 524-3109 (843) 524-6973 Fax www.harveyandbattey.com

026374 Brian Bannon & Assured Partner

Invoice# 25718

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|                            |     |                                                                                                                               |           |            |            |
|----------------------------|-----|-------------------------------------------------------------------------------------------------------------------------------|-----------|------------|------------|
|                            |     | Holderness; pc with Mack Ward                                                                                                 |           |            |            |
|                            |     |                                                                                                                               | 3.80 hrs. | 275.00 /hr | \$1,045.00 |
| 01/29/2018                 | HAR | review [REDACTED]; review [REDACTED]; pc with Mack Ward; email to Trish and Tony at AP re [REDACTED]                          |           |            |            |
|                            |     |                                                                                                                               | 1.10 hrs. | 275.00 /hr | \$302.50   |
| 01/29/2018                 | HAR | pc with Kelly Hagan; email to Kelly Hagan; ; pc with Mack Ward; email to Mack Ward                                            |           |            |            |
|                            |     |                                                                                                                               | 1.00 hrs. | 275.00 /hr | \$275.00   |
| 01/30/2018                 | HAR | pc Mack Ward                                                                                                                  |           |            |            |
|                            |     |                                                                                                                               | 0.25 hrs. | 275.00 /hr | \$68.75    |
| 01/31/2018                 | HAR | pc with Steve LeBlanc; email to Mack Ward                                                                                     |           |            |            |
|                            |     |                                                                                                                               | 0.60 hrs. | 275.00 /hr | \$165.00   |
| 02/01/2018                 | HAR | pc Theresa Andress at WJC&B; email to Mack Ward                                                                               |           |            |            |
|                            |     |                                                                                                                               | 0.50 hrs. | 275.00 /hr | \$137.50   |
| 02/02/2018                 | HAR | review [REDACTED]; pc with Teresa Andress with Willson Jones; email to Mack Ward; email to Kelly Hagan; pc with Steve LeBlanc |           |            |            |
|                            |     |                                                                                                                               | 2.20 hrs. | 275.00 /hr | \$605.00   |
| 02/02/2018                 | HAR | pc Kelly Hagan                                                                                                                |           |            |            |
|                            |     |                                                                                                                               | 0.30 hrs. | 275.00 /hr | \$82.50    |
| 02/05/2018                 | HAR | review [REDACTED]                                                                                                             |           |            |            |
|                            |     |                                                                                                                               | 1.00 hrs. | 275.00 /hr | \$275.00   |
| 02/08/2018                 | HAR | email to Mack Ward; pc with Steve LeBlanc                                                                                     |           |            |            |
|                            |     |                                                                                                                               | 0.50 hrs. | 275.00 /hr | \$137.50   |
| 02/12/2018                 | HAR | prepare deposition notices; email to Mack Ward                                                                                |           |            |            |
|                            |     |                                                                                                                               | 0.40 hrs. | 275.00 /hr | \$110.00   |
| 02/12/2018                 | HAR | pc (x2) with Mack Ward                                                                                                        |           |            |            |
|                            |     |                                                                                                                               | 0.75 hrs. | 275.00 /hr | \$206.25   |
| 02/12/2018                 | HAR | pc Steve LeBlanc re deposition scheduling.                                                                                    |           |            |            |
|                            |     |                                                                                                                               | 0.25 hrs. | 275.00 /hr | \$68.75    |
| 02/13/2018                 | HAR | revise deposition notice; pc Steve LeBlanc                                                                                    |           |            |            |
|                            |     |                                                                                                                               | 0.40 hrs. | 275.00 /hr | \$110.00   |
| Total fees for this matter |     |                                                                                                                               |           |            | \$5,816.25 |

FUNDS ADVANCED



026374 Brian Bannon & Assured Partner

Invoice# 25718

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|            |                                      |               |
|------------|--------------------------------------|---------------|
| 01/12/2018 | Postage Expense                      | \$0.46        |
|            | Total funds advanced for this matter | <u>\$0.46</u> |

BILLING SUMMARY

|                                          |                   |
|------------------------------------------|-------------------|
| TOTAL FEES THIS BILL                     | \$5,816.25        |
| TOTAL FUNDS ADVANCED THIS BILL           | \$0.46            |
| TOTAL BALANCE NOW DUE TO HARVEY & BATTEY | <u>\$5,816.71</u> |

|                                   |        |
|-----------------------------------|--------|
| BEGINNING TRUST ACCOUNT BALANCE   | \$0.00 |
| TRUST AMOUNT APPLIED TO THIS BILL | \$0.00 |
| ENDING TRUST ACCOUNT BALANCE      | \$0.00 |



March 19, 2018

Billed through 03/31/2018

Bill number 25835 - 026374 - HAR

Assured Partners, Inc. attn: Walter Smith  
4905 Dickens Road, Suite 200  
Richmond, VA 23230

Brian Bannon & Assured Partners NL v. Form Benefit, Inc.

Payment Received Mar/19/2018 \$5,816.71

FOR PROFESSIONAL SERVICES RENDERED

|            |     |                                                                                                                                          |            |            |            |
|------------|-----|------------------------------------------------------------------------------------------------------------------------------------------|------------|------------|------------|
| 02/19/2018 | HAR | review [REDACTED]                                                                                                                        | 1.00 hrs.  | 275.00 /hr | \$275.00   |
| 02/20/2018 | HAR | review [REDACTED] pc with Ben Taylor; pc with Mack Ward; prepare for deposition                                                          | 3.80 hrs.  | 275.00 /hr | \$1,045.00 |
| 02/20/2018 | HAR | prepare for Stritt deposition                                                                                                            | 2.00 hrs.  | 275.00 /hr | \$550.00   |
| 02/21/2018 | HAR | prepare for deposition; travel to Greenville; pc Mack Ward; pc Brian Bannon; pc Ben Taylor; pc Walter Smith                              | 9.00 hrs.  | 275.00 /hr | \$2,475.00 |
| 02/22/2018 | HAR | deposition of Brian Stritt all day; meeting with Mack Ward; conference call with Mack and Walter Smith; pc Mack Ward; travel to Beaufort | 14.00 hrs. | 275.00 /hr | \$3,850.00 |
| 02/23/2018 | HAR | Legal research on [REDACTED]                                                                                                             | 3.40 hrs.  | 275.00 /hr | \$935.00   |
| 02/26/2018 | HAR | review deposition materials and prepare 2nd set of discovery requests                                                                    | 1.30 hrs.  | 275.00 /hr | \$357.50   |
| 02/27/2018 | HAR | email exchange with Mack Ward; finalize discovery requests                                                                               | 0.50 hrs.  | 275.00 /hr | \$137.50   |
| 02/28/2018 | HAR | legal research on [REDACTED] begin preparation of supporting memo for summary judgment                                                   | 3.00 hrs.  | 275.00 /hr | \$825.00   |
| 03/01/2018 | HAR | finish and finalize draft of SJ brief; legal research                                                                                    |            |            |            |

Harvey & Battey, P.A. P.O. Drawer 1107 1001 Craven Street Beaufort, SC 29901-1107  
(843) 524-3109 (843) 524-6973 Fax www.harveyandbattey.com

026374 Brian Bannon & Assured Partner

Invoice# 25835

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|                            |     |                                                                                                                                      |           |            |             |
|----------------------------|-----|--------------------------------------------------------------------------------------------------------------------------------------|-----------|------------|-------------|
| 03/01/2018                 | HAR | review [REDACTED] pc Steve LeBlanc; finalize<br>brief; legal research [REDACTED] lengthy<br>email/case status letter to Walter Smith | 4.50 hrs. | 275.00 /hr | \$1,237.50  |
| 03/01/2018                 | HAR | pc with Mack Ward                                                                                                                    | 2.30 hrs. | 275.00 /hr | \$632.50    |
| 03/06/2018                 | HAR | finalize SJ Supporting Memorandum; email to Walter Smith                                                                             | 0.50 hrs. | 275.00 /hr | \$137.50    |
| 03/07/2018                 | HAR | research [REDACTED] lengthy email to Walter Smith; pc with Steve<br>LeBlanc                                                          | 3.00 hrs. | 275.00 /hr | \$825.00    |
| 03/07/2018                 | HAR | email with Steve LeBlanc re confidentiality order; email to<br>Walter Smith                                                          | 1.00 hrs. | 275.00 /hr | \$275.00    |
| 03/07/2018                 | HAR | pc with jim Brady; email with Steve LeBlanc re Brady<br>deposition; email with Brady                                                 | 0.40 hrs. | 275.00 /hr | \$110.00    |
| 03/08/2018                 | HAR | prepare motion, finalize and file motion and brief                                                                                   | 0.80 hrs. | 275.00 /hr | \$220.00    |
| 03/08/2018                 | HAR | pc Walter Smith; email exchange with Jim Brady and Steve<br>LeBlanc                                                                  | 1.00 hrs. | 275.00 /hr | \$275.00    |
| 03/12/2018                 | HAR | prepare Offer of Judgment; email to Plaintiff's counsel; email<br>exchange with Steve LeBlanc                                        | 0.50 hrs. | 275.00 /hr | \$137.50    |
| 03/13/2018                 | HAR | email to Steve LeBlanc; multiple email exchanges with Walter<br>and Jim Brady re [REDACTED]; review<br>Stritt deposition transcript  | 0.80 hrs. | 275.00 /hr | \$220.00    |
| 03/14/2018                 | HAR | pc Jim Brady; email to Walter Smith                                                                                                  | 2.00 hrs. | 275.00 /hr | \$550.00    |
|                            |     |                                                                                                                                      | 0.35 hrs. | 275.00 /hr | \$96.25     |
| Total fees for this matter |     |                                                                                                                                      |           |            | \$15,166.25 |

FUNDS ADVANCED

|            |                                       |          |
|------------|---------------------------------------|----------|
| 02/05/2018 | Postage Expense                       | \$1.88   |
| 03/01/2018 | William B Harvey, III; Travel Expense | \$606.06 |





026374 Brian Bannon & Assured Partner

Invoice# 25835

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|            |                                          |                |
|------------|------------------------------------------|----------------|
| 03/08/2018 | Filing Fee: Motion for Summary Judgement | \$31.74        |
| 03/14/2018 | Postage Expense                          | \$1.36         |
|            | Total funds advanced for this matter     | <hr/> \$641.04 |

BILLING SUMMARY

|                                          |                   |
|------------------------------------------|-------------------|
| TOTAL FEES THIS BILL                     | \$15,166.25       |
| TOTAL FUNDS ADVANCED THIS BILL           | \$641.04          |
| TOTAL BALANCE NOW DUE TO HARVEY & BATTEY | <hr/> \$15,807.29 |

|                                   |        |
|-----------------------------------|--------|
| BEGINNING TRUST ACCOUNT BALANCE   | \$0.00 |
| TRUST AMOUNT APPLIED TO THIS BILL | \$0.00 |
| ENDING TRUST ACCOUNT BALANCE      | \$0.00 |

April 17, 2018

Billed through 04/17/2018

Bill number 25930 - 026374 - HAR

Assured Partners, Inc. attn: Walter Smith  
 4905 Dickens Road, Suite 200  
 Richmond, VA 23230

Brian Bannon &amp; Assured Partners NL v. Form Benefit, Inc.

|                  |             |             |
|------------------|-------------|-------------|
| Payment Received | Apr/16/2018 | \$15,807.29 |
|------------------|-------------|-------------|

## FOR PROFESSIONAL SERVICES RENDERED

|            |     |                                                                                                                                                                                 |           |            |            |
|------------|-----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|------------|------------|
| 03/15/2018 | HAR | prepare supplemental answers to interrogatories; prepare confidentiality form for witnesses; pc with Walter Smith; finalize answers; email to Plaintiff's counsel               | 1.80 hrs. | 275.00 /hr | \$495.00   |
| 03/23/2018 | HAR | receive motion schedule; email to clients; review [REDACTED] pc with Brian Bannon; pc with Mack Ward                                                                            | 2.90 hrs. | 275.00 /hr | \$797.50   |
| 03/26/2018 | HAR | email exchange with Steve LeBlanc; review [REDACTED]                                                                                                                            | 1.20 hrs. | 275.00 /hr | \$330.00   |
| 03/27/2018 | HAR | email exchange with Steve LeBlanc; email to Brian Bannon                                                                                                                        | 0.35 hrs. | 275.00 /hr | \$96.25    |
| 03/27/2018 | HAR | prepare for hearing; email to Brian Bannon; email exchange with Steve LeBlanc; email exchange with Clerk of Court; pc with Steve LeBlanc re stipulation; email to Steve LeBlanc | 1.90 hrs. | 275.00 /hr | \$522.50   |
| 03/28/2018 | HAR | prepare Stipulation of Fact; email to Steve LeBlanc                                                                                                                             | 0.50 hrs. | 275.00 /hr | \$137.50   |
| 03/28/2018 | HAR | review [REDACTED] pc Marlene Gray at Magnolia Plantation                                                                                                                        | 0.50 hrs. | 275.00 /hr | \$137.50   |
| 03/31/2018 | HAR | review [REDACTED] email to Brian Bannon; email to Walter Smith; legal research on [REDACTED] email to Walter Smith;                                                             | 4.30 hrs. | 275.00 /hr | \$1,182.50 |

|            |                                |                                                                                                                                                                                                                                                                   |            |
|------------|--------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|
| 026374     | Brian Bannon & Assured Partner | Invoice# 25930                                                                                                                                                                                                                                                    | Page 2     |
| 04/01/2018 | HAR                            | legal research on [REDACTED]                                                                                                                                                                                                                                      |            |
|            |                                | 0.90 hrs.                                                                                                                                                                                                                                                         | 275.00 /hr |
|            |                                |                                                                                                                                                                                                                                                                   | \$247.50   |
| 04/02/2018 | HAR                            | legal research; prepare and finalize Reply Brief; prepare excerpts from Stritt deposition; email exchange with Court; email to Steve LeBlanc; pc with Weston Newton; emails to Walter Smith; revise Stipulation of Fact; email to Steve LeBlanc; email to clients |            |
|            |                                | 3.90 hrs.                                                                                                                                                                                                                                                         | 275.00 /hr |
|            |                                |                                                                                                                                                                                                                                                                   | \$1,072.50 |
| 04/02/2018 | HAR                            | receive email from Clerk; review Supreme Court Order; email to clients; email to Judge Mullen; pc with Jerri Roseneau Clerk of Court                                                                                                                              |            |
|            |                                | 1.00 hrs.                                                                                                                                                                                                                                                         | 275.00 /hr |
|            |                                |                                                                                                                                                                                                                                                                   | \$275.00   |
| 04/02/2018 | HAR                            | review [REDACTED] email to clients                                                                                                                                                                                                                                |            |
|            |                                | 0.70 hrs.                                                                                                                                                                                                                                                         | 275.00 /hr |
|            |                                |                                                                                                                                                                                                                                                                   | \$192.50   |
| 04/03/2018 | HAR                            | review [REDACTED] email to Marlene Gray                                                                                                                                                                                                                           |            |
|            |                                | 0.50 hrs.                                                                                                                                                                                                                                                         | 275.00 /hr |
|            |                                |                                                                                                                                                                                                                                                                   | \$137.50   |
| 04/03/2018 | HAR                            | review [REDACTED] review [REDACTED]                                                                                                                                                                                                                               |            |
|            |                                | 0.75 hrs.                                                                                                                                                                                                                                                         | 275.00 /hr |
|            |                                |                                                                                                                                                                                                                                                                   | \$206.25   |
| 04/03/2018 | HAR                            | make travel arrangements to Cincinnati                                                                                                                                                                                                                            |            |
|            |                                | 0.40 hrs.                                                                                                                                                                                                                                                         | 275.00 /hr |
|            |                                |                                                                                                                                                                                                                                                                   | \$110.00   |
| 04/03/2018 | HAR                            | pc Marlene Gray; review [REDACTED] [REDACTED] email to Marlene Gray                                                                                                                                                                                               |            |
|            |                                | 0.90 hrs.                                                                                                                                                                                                                                                         | 275.00 /hr |
|            |                                |                                                                                                                                                                                                                                                                   | \$247.50   |
| 04/04/2018 | HAR                            | pc Marlene Gray                                                                                                                                                                                                                                                   |            |
|            |                                | 0.40 hrs.                                                                                                                                                                                                                                                         | 275.00 /hr |
|            |                                |                                                                                                                                                                                                                                                                   | \$110.00   |
| 04/05/2018 | HAR                            | prepare supplemental discovery response                                                                                                                                                                                                                           |            |
|            |                                | 0.35 hrs.                                                                                                                                                                                                                                                         | 275.00 /hr |
|            |                                |                                                                                                                                                                                                                                                                   | \$96.25    |
| 04/11/2018 | HAR                            | pc Brian Bannon; pc Walter Smith; review NOD's and subpoenas; email to Marlene Gray                                                                                                                                                                               |            |
|            |                                | 1.10 hrs.                                                                                                                                                                                                                                                         | 275.00 /hr |
|            |                                |                                                                                                                                                                                                                                                                   | \$302.50   |
| 04/13/2018 | HAR                            | email to Scott Naumoff; email to Christie Holderness; email to Marlene Gray; email to Paula Gant                                                                                                                                                                  |            |
|            |                                | 1.20 hrs.                                                                                                                                                                                                                                                         | 275.00 /hr |
|            |                                |                                                                                                                                                                                                                                                                   | \$330.00   |
| 04/13/2018 | HAR                            | pc Brian Bannon                                                                                                                                                                                                                                                   |            |
|            |                                | 0.25 hrs.                                                                                                                                                                                                                                                         | 275.00 /hr |
|            |                                |                                                                                                                                                                                                                                                                   | \$68.75    |
| 04/13/2018 | HAR                            | pc Mack Ward                                                                                                                                                                                                                                                      |            |

026374 Brian Bannon &amp; Assured Partner

Invoice# 25930

Page 3

|           |            |         |
|-----------|------------|---------|
| 0.25 hrs. | 275.00 /hr | \$68.75 |
|-----------|------------|---------|

|                            |                   |
|----------------------------|-------------------|
| Total fees for this matter | <u>\$7,163.75</u> |
|----------------------------|-------------------|

## FUNDS ADVANCED

|            |                                 |            |
|------------|---------------------------------|------------|
| 03/14/2018 | Postage Expense                 | \$0.94     |
| 03/30/2018 | Filing Fee: SCSOS Research Docs | \$28.25    |
| 04/04/2018 | Legal Eagle; Transcript         | \$1,241.40 |
| 04/16/2018 | Postage Expense                 | \$0.94     |

|                                      |                   |
|--------------------------------------|-------------------|
| Total funds advanced for this matter | <u>\$1,271.53</u> |
|--------------------------------------|-------------------|

## BILLING SUMMARY

|                                          |                   |
|------------------------------------------|-------------------|
| TOTAL FEES THIS BILL                     | \$7,163.75        |
| TOTAL FUNDS ADVANCED THIS BILL           | \$1,271.53        |
| TOTAL BALANCE NOW DUE TO HARVEY & BATTEY | <u>\$8,435.28</u> |

|                                   |        |
|-----------------------------------|--------|
| BEGINNING TRUST ACCOUNT BALANCE   | \$0.00 |
| TRUST AMOUNT APPLIED TO THIS BILL | \$0.00 |
| ENDING TRUST ACCOUNT BALANCE      | \$0.00 |

May 15, 2018

Billed through 05/15/2018

Bill number 26046 - 026374 - HAR

Assured Partners, Inc. attn: Walter Smith  
 4905 Dickens Road, Suite 200  
 Richmond, VA 23230

Brian Bannon & Assured Partners NL v. Form Benefit, Inc.

## FOR PROFESSIONAL SERVICES RENDERED

|            |     |                                                                                                                                   |            |            |            |
|------------|-----|-----------------------------------------------------------------------------------------------------------------------------------|------------|------------|------------|
| 04/16/2018 | HAR | pc Mack Ward                                                                                                                      | 0.35 hrs.  | 275.00 /hr | \$96.25    |
| 04/17/2018 | HAR | prepare for deposition trip; email to Brady                                                                                       | 0.40 hrs.  | 275.00 /hr | \$110.00   |
| 04/17/2018 | HAR | pc Jim Brady; review [REDACTED] email to<br>Jim Brady; review [REDACTED]<br>[REDACTED] email to Jim Brady                         | 1.00 hrs.  | 275.00 /hr | \$275.00   |
| 04/17/2018 | HAR | review [REDACTED] email to Jim Brady                                                                                              | 0.30 hrs.  | 275.00 /hr | \$82.50    |
| 04/17/2018 | HAR | pc with Steve Johnson at BCBS; review [REDACTED] email to<br>Steve Johnson; email to clients                                      | 1.00 hrs.  | 275.00 /hr | \$275.00   |
| 04/17/2018 | HAR | pc Mack Ward                                                                                                                      | 0.25 hrs.  | 275.00 /hr | \$68.75    |
| 04/18/2018 | HAR | travel to Savannah; travel to Cincinnati; meeting with Jim Brady                                                                  | 9.50 hrs.  | 275.00 /hr | \$2,612.50 |
| 04/19/2018 | HAR | meetin with Jim Brady; deposition of Jim Brady; travel from<br>Cincinnati to Beaufort; pc with Walter Smith; pc with Mack<br>Ward | 12.00 hrs. | 275.00 /hr | \$3,300.00 |
| 04/23/2018 | HAR | prepare Motion to Amend; email to Walter Smith                                                                                    | 0.80 hrs.  | 275.00 /hr | \$220.00   |
| 04/24/2018 | HAR | file motion to amend answer                                                                                                       | 0.25 hrs.  | 275.00 /hr | \$68.75    |
| 04/27/2018 | HAR | email to Judge Mullen; email to Steve LeBlanc; review                                                                             |            |            |            |

026374 Brian Bannon &amp; Assured Partner

Invoice# 26046

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|            |     |                                                                                                                           |           |            |          |
|------------|-----|---------------------------------------------------------------------------------------------------------------------------|-----------|------------|----------|
|            |     | discovery requests; email to Jim Brady                                                                                    |           |            |          |
|            |     |                                                                                                                           | 0.80 hrs. | 275.00 /hr | \$220.00 |
| 05/01/2018 | HAR | email exchange with Paula Gant re [REDACTED]                                                                              |           |            |          |
|            |     |                                                                                                                           | 0.35 hrs. | 275.00 /hr | \$96.25  |
| 05/03/2018 | HAR | email to Walter Smith                                                                                                     |           |            |          |
|            |     |                                                                                                                           | 0.25 hrs. | 275.00 /hr | \$68.75  |
| 05/04/2018 | HAR | pc Mack Ward                                                                                                              |           |            |          |
|            |     |                                                                                                                           | 0.50 hrs. | 275.00 /hr | \$137.50 |
| 05/07/2018 | HAR | review [REDACTED] email to<br>Marlene                                                                                     |           |            |          |
|            |     |                                                                                                                           | 0.50 hrs. | 275.00 /hr | \$137.50 |
| 05/07/2018 | HAR | email to Walter Smith; email to Steve LeBlanc; pc with Amy<br>Bower; review [REDACTED] email to<br>Amy Bower              |           |            |          |
|            |     |                                                                                                                           | 1.10 hrs. | 275.00 /hr | \$302.50 |
| 05/08/2018 | HAR | pc with Christie Holderness at St. Andrews PSD                                                                            |           |            |          |
|            |     |                                                                                                                           | 0.25 hrs. | 275.00 /hr | \$68.75  |
| 05/08/2018 | HAR | pc judge's lawclerk; email to Amy Bower; email from Christie<br>Holderness                                                |           |            |          |
|            |     |                                                                                                                           | 0.50 hrs. | 275.00 /hr | \$137.50 |
| 05/09/2018 | HAR | review [REDACTED]<br>[REDACTED] email to Paula Gant; pc with Paula Gant                                                   |           |            |          |
|            |     |                                                                                                                           | 1.20 hrs. | 275.00 /hr | \$330.00 |
| 05/09/2018 | HAR | review [REDACTED]                                                                                                         |           |            |          |
|            |     |                                                                                                                           | 0.30 hrs. | 275.00 /hr | \$82.50  |
| 05/10/2018 | HAR | review [REDACTED] email to Christie;<br>email to Walter; pc with Amy Bower at BCBS; email to Walter                       |           |            |          |
|            |     |                                                                                                                           | 1.10 hrs. | 275.00 /hr | \$302.50 |
| 05/10/2018 | HAR | email to judge mullen's lawclerk re hearing date                                                                          |           |            |          |
|            |     |                                                                                                                           | 0.25 hrs. | 275.00 /hr | \$68.75  |
| 05/11/2018 | HAR | pc Weston Newton; pc with Steve LeBlanc                                                                                   |           |            |          |
|            |     |                                                                                                                           | 0.50 hrs. | 275.00 /hr | \$137.50 |
| 05/11/2018 | HAR | pc Steve LeBlanc; email exchange with clerk of court; pc with<br>Crystal; email to clerk of court; email to Steve LeBlanc |           |            |          |
|            |     |                                                                                                                           | 0.80 hrs. | 275.00 /hr | \$220.00 |
| 05/12/2018 | HAR | email to Marlene Kinard; pc with Mack Ward                                                                                |           |            |          |
|            |     |                                                                                                                           | 0.50 hrs. | 275.00 /hr | \$137.50 |

026374 Brian Bannon &amp; Assured Partner

Invoice# 26046

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|            |     |                                                                                                       |           |            |            |
|------------|-----|-------------------------------------------------------------------------------------------------------|-----------|------------|------------|
| 05/14/2018 | HAR | prepare for deposition; pc with Amy Bower                                                             | 1.00 hrs. | 275.00 /hr | \$275.00   |
| 05/14/2018 | HAR | travel to Columbia for 30B6 deposition of BCBS Bobby Labine; pc Walter Smith;                         | 7.50 hrs. | 275.00 /hr | \$2,062.50 |
| 05/14/2018 | HAR | email exchange with Marlene Kinard                                                                    | 0.25 hrs. | 275.00 /hr | \$68.75    |
| 05/15/2018 | HAR | prepare for deposition; travel to Hilton Head Island for deposition of Paula Gant; travel to Beaufort | 4.60 hrs. | 275.00 /hr | \$1,265.00 |

**Total fees for this matter****\$13,227.50****FUNDS ADVANCED**

|            |                                       |            |
|------------|---------------------------------------|------------|
| 04/23/2018 | William B Harvey, III; Travel Expense | \$1,143.40 |
| 05/15/2018 | William B Harvey, III; Travel Expense | \$169.10   |

**Total funds advanced for this matter****\$1,312.50****BILLING SUMMARY**

|                                                     |                    |
|-----------------------------------------------------|--------------------|
| NET BALANCE FORWARD                                 | \$8,435.28         |
| TOTAL FEES THIS BILL                                | \$13,227.50        |
| TOTAL FUNDS ADVANCED THIS BILL                      | \$1,312.50         |
| <b>TOTAL BALANCE NOW DUE TO HARVEY &amp; BATTEY</b> | <b>\$22,975.28</b> |

|                                   |        |
|-----------------------------------|--------|
| BEGINNING TRUST ACCOUNT BALANCE   | \$0.00 |
| TRUST AMOUNT APPLIED TO THIS BILL | \$0.00 |
| ENDING TRUST ACCOUNT BALANCE      | \$0.00 |

July 19, 2018

Billed through 07/31/2018

Bill number 26226 - 026374 - HAR

Assured Partners, Inc. attn: Walter Smith  
 4905 Dickens Road, Suite 200  
 Richmond, VA 23230

Brian Bannon & Assured Partners NL v. Form Benefit, Inc.

## FOR PROFESSIONAL SERVICES RENDERED

|            |     |                                                                                                                         |           |            |            |
|------------|-----|-------------------------------------------------------------------------------------------------------------------------|-----------|------------|------------|
| 05/15/2018 | HAR | pc Marlene Gray; [REDACTED]<br>[REDACTED] pc with Steve LeBlanc; email exchange<br>with steve and Marlene re deposition | 1.30 hrs. | 275.00 /hr | \$357.50   |
| 05/15/2018 | HAR | email to Walter and others re hearing                                                                                   | 0.25 hrs. | 275.00 /hr | \$68.75    |
| 05/16/2018 | HAR | travel to Charleston for depositions of Marlene Gray and<br>Christie Holderness; travel to Beaufort                     | 8.50 hrs. | 275.00 /hr | \$2,337.50 |
| 05/17/2018 | HAR | pc Steve LeBlanc                                                                                                        | 0.25 hrs. | 275.00 /hr | \$68.75    |
| 05/22/2018 | HAR | email to Steve LeBlanc                                                                                                  | 0.25 hrs. | 275.00 /hr | \$68.75    |
| 05/23/2018 | HAR | review [REDACTED] email to Walter; review<br>[REDACTED] email to Walter                                                 | 0.80 hrs. | 275.00 /hr | \$220.00   |
| 05/24/2018 | HAR | review [REDACTED]                                                                                                       | 0.50 hrs. | 275.00 /hr | \$137.50   |
| 05/30/2018 | HAR | pc Judge McCoy re summary judgment motion filings                                                                       | 0.25 hrs. | 275.00 /hr | \$68.75    |
| 05/30/2018 | HAR | email to Walter Smith                                                                                                   | 0.25 hrs. | 275.00 /hr | \$68.75    |
| 05/31/2018 | HAR | pc with Steve LeBlanc; pc with Marlene Kinard                                                                           | 0.50 hrs. | 275.00 /hr | \$137.50   |
| 05/31/2018 | HAR | prepare for summary judgment hearing                                                                                    | 4.00 hrs. | 275.00 /hr | \$1,100.00 |



026374 Brian Bannon &amp; Assured Partner

Invoice# 26226

Page 2

|            |     |                                                                                                                                                                                 |           |            |            |
|------------|-----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|------------|------------|
| 06/01/2018 | HAR | prepare for hearing; hearing with Judge McCoy on Summary Judgment; pc with Steve LeBlanc; email to clients; pc with clerk of court                                              | 3.75 hrs. | 275.00 /hr | \$1,031.25 |
| 06/04/2018 | HAR | pc with Amy Bower counsel for BCBS re case status, further discovery and trial schedule                                                                                         | 0.40 hrs. | 275.00 /hr | \$110.00   |
| 06/11/2018 | HAR | prepare and finalize discovery responses; email to clients                                                                                                                      | 0.60 hrs. | 275.00 /hr | \$165.00   |
| 06/14/2018 | HAR | review [REDACTED] pc with Jennifer Cohen; prepare subpoenas; review [REDACTED]; email to Walter Smith and Bannon; email to Steve LeBlanc; begin preparation of motion to compel | 1.70 hrs. | 275.00 /hr | \$467.50   |
| 06/18/2018 | HAR | review [REDACTED] pc with Steve LeBlanc; review [REDACTED]                                                                                                                      | 0.75 hrs. | 275.00 /hr | \$206.25   |
| 06/18/2018 | HAR | pc Steve LeBlanc; pc Steve LeBlanc; prepare motion to compel                                                                                                                    | 2.00 hrs. | 275.00 /hr | \$550.00   |
| 06/21/2018 | HAR | prepare, finalize and file Motion to Compel                                                                                                                                     | 1.50 hrs. | 275.00 /hr | \$412.50   |
| 06/25/2018 | HAR | email to Walter Smith; pc with Steve LeBlanc                                                                                                                                    | 0.50 hrs. | 275.00 /hr | \$137.50   |
| 06/26/2018 | HAR | pc Jennifer Cohen; email to client                                                                                                                                              | 0.50 hrs. | 275.00 /hr | \$137.50   |
| 06/28/2018 | HAR | pc Walter Smith; email exchange with Walter                                                                                                                                     | 0.50 hrs. | 275.00 /hr | \$137.50   |
| 07/05/2018 | HAR | pc Walter Smith; pc with Weston Newton; email to Heather McLeod                                                                                                                 | 0.75 hrs. | 275.00 /hr | \$206.25   |
| 07/09/2018 | HAR | email exchange with court re scheduling                                                                                                                                         | 0.40 hrs. | 275.00 /hr | \$110.00   |
| 07/09/2018 | HAR | emails to court                                                                                                                                                                 | 0.25 hrs. | 275.00 /hr | \$68.75    |

**Total fees for this matter****\$8,373.75**

FUNDS ADVANCED

026374 Brian Bannon &amp; Assured Partner

Invoice# 26226

Page 3

|                                             |                                                  |                 |
|---------------------------------------------|--------------------------------------------------|-----------------|
| 05/21/2018                                  | William B Harvey, III; Travel Expense            | \$93.18         |
| 05/29/2018                                  | AWR; Transcript                                  | \$211.50        |
| 06/01/2018                                  | Postage Expense                                  | \$5.36          |
| 06/12/2018                                  | A. William Roberts, Jr. & Associates; Deposition | \$173.25        |
| 06/12/2018                                  | A. William Roberts, Jr. & Associates; Deposition | \$334.05        |
| <b>Total funds advanced for this matter</b> |                                                  | <b>\$817.34</b> |

## BILLING SUMMARY

|                                          |             |
|------------------------------------------|-------------|
| NET BALANCE FORWARD                      | \$22,975.28 |
| TOTAL FEES THIS BILL                     | \$8,373.75  |
| TOTAL FUNDS ADVANCED THIS BILL           | \$817.34    |
| TOTAL BALANCE NOW DUE TO HARVEY & BATTEY | \$32,166.37 |
| <br>BEGINNING TRUST ACCOUNT BALANCE      | <br>\$0.00  |
| TRUST AMOUNT APPLIED TO THIS BILL        | \$0.00      |
| ENDING TRUST ACCOUNT BALANCE             | \$0.00      |

August 30, 2018

Billed through 08/29/2018

Bill number 26400 - 026374 - HAR

Assured Partners, Inc. attn: Walter Smith  
 4905 Dickens Road, Suite 200  
 Richmond, VA 23230

Brian Bannon & Assured Partners NL v. Form Benefit, Inc.

## FOR PROFESSIONAL SERVICES RENDERED

|            |     |                                                                                                                      |           |            |          |
|------------|-----|----------------------------------------------------------------------------------------------------------------------|-----------|------------|----------|
| 08/01/2018 | HAR | email exchange with Walter Smith                                                                                     | 0.30 hrs. | 275.00 /hr | \$82.50  |
| 08/02/2018 | HAR | pc Clerk of Court re Motion scheduling                                                                               | 0.25 hrs. | 275.00 /hr | \$68.75  |
| 08/03/2018 | HAR | review [REDACTED]                                                                                                    | 1.90 hrs. | 275.00 /hr | \$522.50 |
| 08/06/2018 | HAR | review [REDACTED] email to Walter and Brian re [REDACTED]                                                            | 0.50 hrs. | 275.00 /hr | \$137.50 |
| 08/07/2018 | HAR | pc Walter Smith                                                                                                      | 0.25 hrs. | 275.00 /hr | \$68.75  |
| 08/07/2018 | HAR | pc Brian Bannon re [REDACTED]                                                                                        | 0.35 hrs. | 275.00 /hr | \$96.25  |
| 08/09/2018 | HAR | prepare and file Amended Answer                                                                                      | 0.90 hrs. | 275.00 /hr | \$247.50 |
| 08/13/2018 | HAR | review [REDACTED] review [REDACTED]                                                                                  | 2.50 hrs. | 275.00 /hr | \$687.50 |
| 08/14/2018 | HAR | pc with Steve LeBlanc; review [REDACTED]                                                                             | 2.50 hrs. | 275.00 /hr | \$687.50 |
| 08/14/2018 | HAR | [REDACTED] email to Walter and Brian Bannon                                                                          | 3.00 hrs. | 275.00 /hr | \$825.00 |
| 08/14/2018 | HAR | prepare for hearing; pc Weston Newton; travel to courthouse<br>for hearing on motion to compel; pc with Walter Smith | 0.20 hrs. | 275.00 /hr | \$55.00  |

026374 Brian Bannon &amp; Assured Partner

Invoice# 26400

Page 2

|                            |     |                                                                                        |           |            |                   |
|----------------------------|-----|----------------------------------------------------------------------------------------|-----------|------------|-------------------|
| 08/15/2018                 | HAR | prepare Order re Motion to Compel; email to Plaintiff's counsel; pc with Steve LeBlanc | 1.00 hrs. | 275.00 /hr | \$275.00          |
| 08/20/2018                 | HAR | pc Steve LeBlanc re Order; receive filed Order                                         | 0.40 hrs. | 275.00 /hr | \$110.00          |
| Total fees for this matter |     |                                                                                        |           |            | <u>\$3,863.75</u> |

## FUNDS ADVANCED

|                                      |                                                  |                 |
|--------------------------------------|--------------------------------------------------|-----------------|
| 08/09/2018                           | A. William Roberts, Jr. & Associates; Deposition | \$237.66        |
| 08/17/2018                           | Beaufort County Clerk of Court; Filing Fee       | \$31.74         |
| Total funds advanced for this matter |                                                  | <u>\$269.40</u> |

## BILLING SUMMARY

|                                          |                    |
|------------------------------------------|--------------------|
| NET BALANCE FORWARD                      | \$32,166.37        |
| TOTAL FEES THIS BILL                     | \$3,863.75         |
| TOTAL FUNDS ADVANCED THIS BILL           | \$269.40           |
| TOTAL BALANCE NOW DUE TO HARVEY & BATTEY | <u>\$36,299.52</u> |

|                                   |        |
|-----------------------------------|--------|
| BEGINNING TRUST ACCOUNT BALANCE   | \$0.00 |
| TRUST AMOUNT APPLIED TO THIS BILL | \$0.00 |
| ENDING TRUST ACCOUNT BALANCE      | \$0.00 |



September 30, 2018

Billed through 09/30/2018

Bill number 26553 - 026374 - HAR

Assured Partners, Inc. attn: Walter Smith  
4905 Dickens Road, Suite 200  
Richmond, VA 23230

Brian Bannon &amp; Assured Partners NL v. Form Benefit, Inc.

## FOR PROFESSIONAL SERVICES RENDERED

|            |     |                                                             |           |            |          |
|------------|-----|-------------------------------------------------------------|-----------|------------|----------|
| 08/31/2018 | HAR | email to Walter Smith                                       | 0.25 hrs. | 275.00 /hr | \$68.75  |
| 09/12/2018 | HAR | review [REDACTED] email to Walter and Brian                 | 2.00 hrs. | 275.00 /hr | \$550.00 |
| 09/17/2018 | HAR | email to Steve LeBlanc                                      | 0.30 hrs. | 275.00 /hr | \$82.50  |
| 09/17/2018 | HAR | conference call with Walter and Brian Bannon                | 0.40 hrs. | 275.00 /hr | \$110.00 |
| 09/17/2018 | HAR | pc Steve LeBlanc's office re deposition of expert           | 0.20 hrs. | 275.00 /hr | \$55.00  |
| 09/17/2018 | HAR | pc Brian Bannon                                             | 0.25 hrs. | 275.00 /hr | \$68.75  |
| 09/17/2018 | HAR | email exchange with Brian Bannon                            | 0.25 hrs. | 275.00 /hr | \$68.75  |
| 09/19/2018 | HAR | review [REDACTED] email to Walter and Brian                 | 0.50 hrs. | 275.00 /hr | \$137.50 |
| 09/20/2018 | HAR | pc Walter Smith                                             | 0.25 hrs. | 275.00 /hr | \$68.75  |
| 09/21/2018 | HAR | prepare attachments; review [REDACTED] email to Judge Dukes | 0.60 hrs. | 275.00 /hr | \$165.00 |
| 09/22/2018 | HAR | email to Walter Smith                                       | 0.25 hrs. | 275.00 /hr | \$68.75  |
| 09/25/2018 | HAR | pc Walter Smith; email to Judge Dukes                       | 1.00 hrs. | 275.00 /hr | \$275.00 |

Total fees for this matter

APPROVED BY

\$1,718.75 ✓

\$1,940.49

W.S.

026374 Brian Bannon & Assured Partner

Invoice# 26553

Page 2

**FUNDS ADVANCED**

|                                      |                                            |                 |
|--------------------------------------|--------------------------------------------|-----------------|
| 04/25/2018                           | Beaufort County Common Pleas Motion Filing | \$31.74         |
| 09/25/2018                           | Deborah S. Thomas, CVRM; Transcript        | \$190.00        |
| Total funds advanced for this matter |                                            | <u>\$221.74</u> |

**BILLING SUMMARY**

|                                                     |                           |
|-----------------------------------------------------|---------------------------|
| NET BALANCE FORWARD                                 | \$36,299.52               |
| TOTAL FEES THIS BILL                                | \$1,718.75                |
| TOTAL FUNDS ADVANCED THIS BILL                      | \$221.74                  |
| <b>TOTAL BALANCE NOW DUE TO HARVEY &amp; BATTEY</b> | <b><u>\$38,240.01</u></b> |

|                                   |        |
|-----------------------------------|--------|
| BEGINNING TRUST ACCOUNT BALANCE   | \$0.00 |
| TRUST AMOUNT APPLIED TO THIS BILL | \$0.00 |
| ENDING TRUST ACCOUNT BALANCE      | \$0.00 |

✓ Pay: \$1,940.49  
6.25 hrs



W. BRANTLEY HARVEY, SR.  
(1893-1981)  
W. BRANTLEY HARVEY JR.  
(Retired)  
COLDEN R. BATTEY, JR.  
(Of Counsel)  
WILLIAM B. HARVEY, III  
(SC Circuit Court Mediator)

JOHN M. TATUM, III  
THOMAS C. DAVIS  
(SC Circuit Court Mediator)  
THOMAS A. HOLLOWAY  
(also admitted in PA and NJ)  
EUGENE PARRS  
(also admitted in NY, NC, FL  
and GA)  
J. SAMUEL SCOVILLE  
KEVIN E. DUKES

## INVOICE

Date: 11/01/2018

Invoice #: 82

Matter: Brian Bannon & Assured Partners NL v. Form Benefit, Inc

File #: 026374-00

### Bill To:

Assured Partners, Inc. attn: Walter Smith  
4905 Dickens Road, Suite 200  
Richmond, VA 23230

Due Date: 12/01/2018

Payments received after 11/02/2018 are not reflected in this statement.

### Professional Services

| Date                                                                                                                                      | Details                                                                | Hours | Rate     | Amount     |
|-------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------|-------|----------|------------|
| 10/02/2018                                                                                                                                | WBH Court Appearance<br>telephone hearing with Judge Dukes             | 1.00  | \$275.00 | \$275.00   |
| 10/02/2018                                                                                                                                | WBH Court Appearance<br>Prepare for conference call hearing            | 0.80  | \$275.00 | \$220.00   |
| 10/02/2018                                                                                                                                | WBH Correspondence<br>Email to Walter Smith                            | 0.30  | \$275.00 | \$82.50    |
| 10/04/2018                                                                                                                                | WBH pc Steve LeBlanc                                                   | 0.30  | \$275.00 | \$82.50    |
| 10/08/2018                                                                                                                                | WBH email to Steve LeBlanc                                             | 0.30  | \$275.00 | \$82.50    |
| 10/09/2018                                                                                                                                | WBH review [REDACTED] email<br>to Walter Smith; email to Steve LeBlanc | 1.00  | \$275.00 | \$275.00   |
| 10/12/2018                                                                                                                                | WBH pc Walter Smith                                                    | 0.30  | \$275.00 | \$82.50    |
| 10/15/2018                                                                                                                                | WBH email exchange with Steve LeBlanc                                  | 0.30  | \$275.00 | \$82.50    |
| 10/16/2018                                                                                                                                | WBH email to Steve LeBlanc                                             | 0.30  | \$275.00 | \$82.50    |
| 10/18/2018                                                                                                                                | WBH email to Walter Smith                                              | 0.30  | \$275.00 | \$82.50    |
| APPROVED BY<br><br>For professional services rendered |                                                                        | 4.90  |          | \$1,347.50 |



W. BRANTLEY HARVEY, SR.  
(1893-1981)  
W. BRANTLEY HARVEY, JR.  
(Retired)  
COLDEN R. BATTEY, JR.  
(Of Counsel)  
WILLIAM E. HARVEY, III  
(SC Circuit Court Mediator)

JOHN M. TATUM, III  
THOMAS C. DAVIS  
(SC Circuit Court Mediator)  
THOMAS A. HOLLOWAY  
(also admitted in PA and NJ)  
EUGENE PARRIS  
(also admitted in NY, NC, FL  
and GA)  
J. SAMUEL SCOVILLE  
KEVIN E. DUKES

|                |            |
|----------------|------------|
| Invoice Amount | \$1,347.50 |
|----------------|------------|

|                           |            |
|---------------------------|------------|
| Previous Invoices Balance | \$1,940.49 |
|---------------------------|------------|

|             |                               |
|-------------|-------------------------------|
| Balance Due | <hr/> <b>\$3,287.99</b> <hr/> |
|-------------|-------------------------------|

|                                     |        |
|-------------------------------------|--------|
| Retainer Balance (as of 11/02/2018) | \$0.00 |
|-------------------------------------|--------|

ELECTRONICALLY FILED - 2021 Nov 04 4:01 PM - BEAUFORT - COMMON PLEAS - CASE#2016CP0702541





W. BRANTLEY HARVEY, SR.  
(1893-1981)  
W. BRANTLEY HARVEY, JR.  
(Retired)  
COLDEN R. BATTEY, JR.  
(Of Counsel)  
WILLIAM B. HARVEY, III  
(SC Circuit Court Mediator)

JOHN M. TATUM, III  
THOMAS C. DAVIS  
(SC Circuit Court Mediator)  
THOMAS A. HOLLOWAY  
(also admitted in PA and NJ)  
EUGENE PARRS  
(also admitted in NY, NC, FL  
and GA)  
J. SAMUEL SCOVILLE  
KEVIN E. DUKES

## INVOICE

Date: 11/30/2018

Invoice #: 173

Matter: Brian Bannon & Assured Partners NL v. Form Benefit, Inc

File #: 026374-00

### Bill To:

Assured Partners, Inc. attn: Walter Smith  
4905 Dickens Road, Suite 200  
Richmond, VA 23230

Due Date: 12/30/2018

APPROVED BY

Payments received after 12/03/2018 are not reflected in this statement.

### Professional Services

| Date       | Details                                                                                                                                                          | Hours | Rate     | Amount   |
|------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|----------|----------|
| 11/02/2018 | WBH pc Steve LeBlanc; pc with Heather McLeod; email to Court                                                                                                     | 0.80  | \$275.00 | \$220.00 |
| 11/02/2018 | WBH pc Heather McLeod                                                                                                                                            | 0.30  | \$275.00 | \$82.50  |
| 11/08/2018 | WBH pc Steve LeBlanc re document production; email to Walter Smith                                                                                               | 0.40  | \$275.00 | \$110.00 |
| 11/09/2018 | WBH Review [REDACTED] email to Steve LeBlanc; email to Walter Smith                                                                                              | 2.30  | \$275.00 | \$632.50 |
| 11/12/2018 | WBH 2 voicemails with Steve LeBlanc; email to LeBlanc                                                                                                            | 0.50  | \$275.00 | \$137.50 |
| 11/13/2018 | WBH review [REDACTED] pc with Steve LeBlanc; email to LeBlanc; review [REDACTED]; email to Walter Smith                                                          | 2.70  | \$275.00 | \$742.50 |
| 11/16/2018 | WBH pc Walter Smith                                                                                                                                              | 0.30  | \$275.00 | \$82.50  |
| 11/19/2018 | WBH email exchange with Steve LeBlanc; email to Walter Smith                                                                                                     | 0.40  | \$275.00 | \$110.00 |
| 11/19/2018 | WBH email to Judge Dukes;                                                                                                                                        | 0.40  | \$275.00 | \$110.00 |
| 11/20/2018 | WBH email to Steve LeBlanc; email to Judge Dukes; email exchange with Walter Smith; review materials from Plaintiff's experts Michael Scholz and Nolan Zielinski | 1.60  | \$275.00 | \$440.00 |
| 11/21/2018 | WBH review [REDACTED] email to Steve LeBlanc                                                                                                                     | 0.70  | \$275.00 | \$192.50 |

2025



# HARVEY & BATTEY

ATTORNEYS AT LAW

W. BRANTLEY HARVEY, SR.  
(1893-1981)  
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(Retired)  
COLDEN R. BATTEY, JR.  
(Of Counsel)  
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and GA)  
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KEVIN E. DUKES

|            |     |                                                                                                                                                                 |      |          |          |
|------------|-----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|------|----------|----------|
| 11/26/2018 | WBH | email exchange with Steve LeBlanc and Walter Smith                                                                                                              | 0.30 | \$275.00 | \$82.50  |
| 11/26/2018 | WBH | review [REDACTED]<br>[REDACTED] email exchange with Walter Smith                                                                                                | 0.90 | \$275.00 | \$247.50 |
| 11/26/2018 | WBH | review [REDACTED]<br>[REDACTED] telephone hearing with Judge Dukes; email to Walter Smith; prepare notice of deposition of Michael Scholz; pc with Walter Smith | 2.50 | \$275.00 | \$687.50 |

|                                    |              |                   |
|------------------------------------|--------------|-------------------|
| For professional services rendered | <u>14.10</u> | <u>\$3,877.50</u> |
|------------------------------------|--------------|-------------------|

|                |                   |
|----------------|-------------------|
| Invoice Amount | <u>\$3,877.50</u> |
|----------------|-------------------|

|                           |            |
|---------------------------|------------|
| Previous Invoices Balance | \$3,287.99 |
|---------------------------|------------|

|             |                   |
|-------------|-------------------|
| Balance Due | <u>\$7,165.49</u> |
|-------------|-------------------|

|                                     |        |
|-------------------------------------|--------|
| Retainer Balance (as of 12/03/2018) | \$0.00 |
|-------------------------------------|--------|

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W. BRANTLEY HARVEY, SR.  
(1983-1981)  
W. BRANTLEY HARVEY, JR.  
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KEVIN E. DUKES

## INVOICE

Date: 01/02/2019

Invoice #: 280

Matter: Brian Bannon & Assured Partners NL v. Form Benefit, Inc

File #: 026374-00

### Bill To:

Assured Partners, Inc. attn: Walter Smith  
4905 Dickens Road, Suite 200  
Richmond, VA 23230

Due Date: 02/01/2019

Payments received after 01/02/2019 are not reflected in this statement.

### Professional Services

| Date                               | Details                                                                                    | Hours | Rate     | Amount   |
|------------------------------------|--------------------------------------------------------------------------------------------|-------|----------|----------|
| 11/02/2018                         | WBH pc Steve LeBlanc; pc with Heather McLeod                                               | 0.50  | \$275.00 | \$137.50 |
| 12/05/2018                         | WBH pc Steve LeBlanc re deposition of Nolan Zielinski                                      | 0.30  | \$275.00 | \$82.50  |
| 12/07/2018                         | WBH email exchange with Steve LeBlanc; pc with Steve LeBlanc; review ADR notice from court | 0.70  | \$275.00 | \$192.50 |
| 12/12/2018                         | WBH pc Walter Smith; emails to Steve LeBlanc                                               | 0.60  | \$275.00 | \$165.00 |
| For professional services rendered |                                                                                            | 2.10  |          | \$577.50 |

### Additional Charges

| Date                     | Details     | Quantity | Rate   | Amount |
|--------------------------|-------------|----------|--------|--------|
| 11/27/2018               | WBH Postage | 1        | \$6.88 | \$6.88 |
| Total additional charges |             |          |        | \$6.88 |

Invoice Amount **\$584.38**



W. BRANTLEY HARVEY, SR.  
(1893-1981)

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and GA)

J. SAMUEL SCOVILLE

KEVIN E. DUKES

Balance Due

**\$584.38**

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W. BRANTLEY HARVEY, SR.  
(1893-1981)  
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and GA)  
J. SAMUEL SCOVILLE  
KEVIN E. DUKES

## INVOICE

Date: 02/04/2019

Invoice #: 415

Matter: Brian Bannon & Assured Partners NL v. Form Benefit, Inc

File #: 026374-00

### Bill To:

Assured Partners, Inc. attn: Walter Smith  
4905 Dickens Road, Suite 200  
Richmond, VA 23230

Due Date: 03/06/2019

Payments received after 02/04/2019 are not reflected in this statement.

### Professional Services

| Date       | Details                                                                                                                                                                                                                               | Hours | Rate     | Amount     |
|------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|----------|------------|
| 01/10/2019 | WBH pc Walter Smith; pc Heather in Judge Dukes' office                                                                                                                                                                                | 0.50  | \$275.00 | \$137.50   |
| 01/11/2019 | WBH prepare for Sholtz deposition; pc Steve LeBlanc                                                                                                                                                                                   | 2.20  | \$275.00 | \$605.00   |
| 01/13/2019 | WBH review [REDACTED] prepare for hearing                                                                                                                                                                                             | 3.00  | \$275.00 | \$825.00   |
| 01/14/2019 | WBH prepare for hearing; hearing before Judge Dukes on Motion to Compel; prepare Order on Motion and email to Judge Dukes; prepare documents for deposition; travel to Ladson SC for deposition of Michael Scholz; travel to Beaufort | 9.50  | \$275.00 | \$2,612.50 |
| 01/18/2019 | WBH review [REDACTED] email to Walter and Brian                                                                                                                                                                                       | 0.50  | \$275.00 | \$137.50   |
| 01/21/2019 | WBH review [REDACTED]                                                                                                                                                                                                                 | 1.50  | \$275.00 | \$412.50   |
| 01/21/2019 | WBH prepare for deposition; travel to Greenville                                                                                                                                                                                      | 4.30  | \$275.00 | \$1,182.50 |
| 01/22/2019 | WBH deposition of Nathan Zielinski; meeting with Steve LeBlanc; travel to Beaufort; pc with Walter Smith                                                                                                                              | 7.00  | \$275.00 | \$1,925.00 |
| 01/24/2019 | WBH review [REDACTED] email to Walter Smith                                                                                                                                                                                           | 0.30  | \$275.00 | \$82.50    |
| 01/31/2019 | WBH review [REDACTED] pc Steve Leblanc                                                                                                                                                                                                | 0.40  | \$275.00 | \$110.00   |

APPROVED BY

2025



W. BRANTLEY HARVEY, SR.  
(1993-1991)  
W. BRANTLEY HARVEY, JR.  
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COLDEN R. BATTEY, JR.  
(Of Counsel)  
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EUGENE PARRS  
(also admitted in NY, NC, FL  
and GA)  
J. SAMUEL SCOVILLE  
KEVIN E. DUKES

## INVOICE

Date: 03/01/2019

Invoice #: 524

Matter: Brian Bannon & Assured Partners NL v. Form Benefit, Inc

File #: 026374-00

### Bill To:

Assured Partners, Inc. attn: Walter Smith  
4905 Dickens Road, Suite 200  
Richmond, VA 23230

Due Date: 03/31/2019

Payments received after 03/01/2019 are not reflected in this statement.

### Professional Services

| APPROVED BY<br> |                                                                                                                                           |       |          |          |  |
|-----------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------|-------|----------|----------|--|
| Date                                                                                                | Details                                                                                                                                   | Hours | Rate     | Amount   |  |
| 02/04/2019                                                                                          | WBH review [REDACTED] review [REDACTED] pc with Steve LeBlanc                                                                             | 2.00  | \$275.00 | \$550.00 |  |
| 02/05/2019                                                                                          | WBH review [REDACTED] pc with Walter Smith; review [REDACTED] email to LeBlanc and Judge Dukes; review email from Brian Bannon            | 1.50  | \$275.00 | \$412.50 |  |
| 02/13/2019                                                                                          | WBH email exchange with Steve LeBlanc; pc with Judge Dukes' office; pc with Walter Smith                                                  | 0.80  | \$275.00 | \$220.00 |  |
| 02/13/2019                                                                                          | WBH review [REDACTED] review [REDACTED] email to LeBlanc                                                                                  | 0.50  | \$275.00 | \$137.50 |  |
| 02/13/2019                                                                                          | WBH email to Walter Smith [REDACTED]                                                                                                      | 0.30  | \$275.00 | \$82.50  |  |
| 02/13/2019                                                                                          | WBH email to Steve LeBlanc re expert fees                                                                                                 | 0.30  | \$275.00 | \$82.50  |  |
| 02/15/2019                                                                                          | WBH pc Walter Smith; email hearing transcript                                                                                             | 0.40  | \$275.00 | \$110.00 |  |
| 02/19/2019                                                                                          | WBH email to Walter Smith; email exchange with Steve LeBlanc re expert fees; email to Walter Smith; review [REDACTED] pc to Steve LeBlanc | 0.90  | \$275.00 | \$247.50 |  |
| 02/19/2019                                                                                          | WBH review [REDACTED] pc with Walter Smith                                                                                                | 0.40  | \$275.00 | \$110.00 |  |
| 02/22/2019                                                                                          | WBH email to Walter Smith; pc Walter Smith; pc Brian Bannon                                                                               | 0.60  | \$275.00 | \$165.00 |  |
| 02/26/2019                                                                                          | WBH review [REDACTED] email to Walter Smith                                                                                               | 0.60  | \$275.00 | \$165.00 |  |
| 02/27/2019                                                                                          | WBH pc Hanna Turk; email to Walter Smith                                                                                                  | 0.30  | \$275.00 | \$82.50  |  |

WJS  
2030



W. BRANTLEY HARVEY, SR.  
(1893-1961)  
W. BRANTLEY HARVEY, JR.  
(Retired)  
COLDEN R. BATTEY, JR.  
(Of Counsel)  
WILLIAM B. HARVEY, III  
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JOHN M. TATUM, II  
THOMAS C. DAVIS  
(SC Circuit Court Mediator)  
THOMAS A. HOLLOWAY  
(also admitted in PA and NJ)  
EUGENE PARRS  
(also admitted in NY, NC, FL  
and GA)  
J. SAMUEL ACOVILLE  
KEVIN E. DUKES

## INVOICE

Date: 04/01/2019

Invoice #: 653

Matter: Brian Bannon & Assured Partners NL v. Form Benefit, Inc

File #: 026374-00

### Bill To:

Assured Partners, Inc. attn: Walter Smith  
4905 Dickens Road, Suite 200  
Richmond, VA 23230

Due Date: 05/01/2019

Payments received after 04/01/2019 are not reflected in this statement.

### Professional Services

| Date       | Details                                                             | Hours | Rate     | Amount     |
|------------|---------------------------------------------------------------------|-------|----------|------------|
| 02/26/2019 | WBH email to Walter with transcript of Mack Ward; review [REDACTED] | 0.50  | \$275.00 | \$137.50   |
| 03/01/2019 | WBH pc Walter Smith re [REDACTED]                                   | 0.30  | \$275.00 | \$82.50    |
| 03/20/2019 | WBH pc Hanna Turk; email to Walter Smith                            | 0.30  | \$275.00 | \$82.50    |
| 03/20/2019 | WBH pc Sam Clausen, mediator; email to Walter Smith                 | 0.40  | \$275.00 | \$110.00   |
| 03/21/2019 | WBH pc Walter Smith; email to Sam Clawson                           | 0.40  | \$275.00 | \$110.00   |
| 03/22/2019 | WBH prepare for motion hearing; email exchange with mediator        | 1.10  | \$275.00 | \$302.50   |
| 03/23/2019 | WBH review [REDACTED] addendums and schedules; review of [REDACTED] | 2.80  | \$275.00 | \$770.00   |
| 03/26/2019 | WBH prepare for hearing; attend hearing with Judge Dukes            | 4.70  | \$275.00 | \$1,292.50 |
| 03/26/2019 | WBH pc Walter Smith                                                 | 0.30  | \$275.00 | \$82.50    |
| 03/27/2019 | WBH review [REDACTED]; email to Walter Smith; pc with Walter Smith  | 0.60  | \$275.00 | \$165.00   |
| 03/28/2019 | WBH review [REDACTED]                                               | 0.30  | \$275.00 | \$82.50    |
| 03/29/2019 | WBH review [REDACTED] pc with Mr. Reese; email to clients           | 0.50  | \$275.00 | \$137.50   |



W. BRANTLEY HARVEY, CP  
(1893-1926)  
W. BRANTLEY HARVEY, JR.  
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JOHN M. TATUM, II  
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and GA)  
J. SAMUEL SCOVILLE  
KEVIN E. DUKES

|                                    |       |            |
|------------------------------------|-------|------------|
| For professional services rendered | 12.20 | \$3,355.00 |
|------------------------------------|-------|------------|

|                |            |
|----------------|------------|
| Invoice Amount | \$3,355.00 |
|----------------|------------|

|                           |            |
|---------------------------|------------|
| Previous Invoices Balance | \$2,782.35 |
|---------------------------|------------|

|             |            |
|-------------|------------|
| Balance Due | \$6,137.35 |
|-------------|------------|





W. BRANTLEY HARVEY, SR.  
(1893-1981)  
W. BRANTLEY HARVEY, JR.  
(Retired)  
COLDEN R. BATTEY, JR.  
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and GA)  
J. SAMUEL SCOVILLE  
KEVIN E. DUJES

## INVOICE

Date: 05/01/2019

Invoice #: 737

Matter: Brian Bannon & Assured Partners NL v. Form Benefit, Inc

File #: 026374-00

### Bill To:

Assured Partners, Inc. attn: Walter Smith  
4905 Dickens Road, Suite 200  
Richmond, VA 23230

Due Date: 05/31/2019

Payments received after 07/01/2019 are not reflected in this statement.

### Professional Services

| Date       | Details                                                                                                                                                      | Hours | Rate     | Amount   |
|------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|----------|----------|
| 04/05/2019 | WBH legal research; begin preparation of SJ Motion and Memo; email to Walter Smith; pc with Steve LeBlanc                                                    | 2.80  | \$275.00 | \$770.00 |
| 04/05/2019 | WBH email exchange with Jim Brady                                                                                                                            | 0.30  | \$275.00 | \$82.50  |
| 04/05/2019 | WBH lengthy conversation with Chris Capuano with Employee Navigator                                                                                          | 1.00  | \$275.00 | \$275.00 |
| 04/08/2019 | WBH legal research; prepare and finalize Motion for Summary Judgment; prepare for filing; research into Rule 41.1; multiple emails to and from Steve LeBlanc | 2.90  | \$275.00 | \$797.50 |
| 04/09/2019 | WBH pc with Steve LeBlanc; email from Steve LeBlanc; email to Judge Dukes; pc with Heather McLeod                                                            | 0.70  | \$275.00 | \$192.50 |
| 04/09/2019 | WBH email to Jim Brady; pc Heather McLeod                                                                                                                    | 0.30  | \$275.00 | \$82.50  |
| 04/12/2019 | WBH email to Steve LeBlanc; email to Jim Brady                                                                                                               | 0.50  | \$275.00 | \$137.50 |
| 04/16/2019 | WBH pc Steve LeBlanc; email to Walter Smith                                                                                                                  | 0.30  | \$275.00 | \$82.50  |
| 04/17/2019 | WBH prepare for hearing; telephone hearing with Judge Dukes re Motion to file SJ motion under seal; email to Steven Muscatello; pc with Steve LeBlanc        | 1.10  | \$275.00 | \$302.50 |
| 04/17/2019 | WBH draft motion to file under seal and proposed Order                                                                                                       | 0.90  | \$275.00 | \$247.50 |
| 04/17/2019 | WBH email to Steve LeBlanc                                                                                                                                   | 0.30  | \$275.00 | \$82.50  |
| 04/18/2019 | WBH email from LeBlanc; pc with Steve LeBlanc; email to Steven Muscatello                                                                                    | 0.50  | \$275.00 | \$137.50 |



W. BRANTLEY HARVEY, SR.  
(1893-1981)  
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KEVIN E. DUKES

|                                    |     |                                                                                                                                                                                                           |       |          |            |
|------------------------------------|-----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|----------|------------|
| 04/18/2019                         | WBH | revise Motion and Order; file with court                                                                                                                                                                  | 0.30  | \$275.00 | \$82.50    |
| 04/18/2019                         | WBH | prepare case summary for Steven Muscatello                                                                                                                                                                | 0.90  | \$275.00 | \$247.50   |
| 04/19/2019                         | WBH | finalize litigation report                                                                                                                                                                                | 1.00  | \$275.00 | \$275.00   |
| 04/22/2019                         | WBH | email exchange with Steven Muscatello                                                                                                                                                                     | 0.20  | \$275.00 | \$55.00    |
| 04/23/2019                         | WBH | lengthy conference call with Steve Muscatello                                                                                                                                                             | 1.50  | \$275.00 | \$412.50   |
| 04/23/2019                         | WBH | research file; email to Steve Muscatello                                                                                                                                                                  | 0.50  | \$275.00 | \$137.50   |
| 04/24/2019                         | WBH | email to Jeff Leher; review [REDACTED]                                                                                                                                                                    | 0.40  | \$275.00 | \$110.00   |
| 04/24/2019                         | WBH | review [REDACTED] email to Jeff Lehrer; pc<br>with Mack Ward; review and research [REDACTED]<br>[REDACTED]; review [REDACTED]<br>email to Mack Ward; review [REDACTED]<br>[REDACTED] email to Jeff Lehrer | 1.10  | \$275.00 | \$302.50   |
| 04/29/2019                         | WBH | email exchange with Steve Muscatello; pc Jeff Lehrer                                                                                                                                                      | 0.50  | \$275.00 | \$137.50   |
| 04/29/2019                         | WBH | revise draft SJ Memo; review [REDACTED] email<br>to Jeff Lehrer                                                                                                                                           | 0.60  | \$275.00 | \$165.00   |
| 04/30/2019                         | WBH | email to Jeff Lehrer re [REDACTED]                                                                                                                                                                        | 0.30  | \$275.00 | \$82.50    |
| 04/30/2019                         | WBH | pc Steve LeBlanc; email to Jeff Lehrer                                                                                                                                                                    | 0.30  | \$275.00 | \$82.50    |
| For professional services rendered |     |                                                                                                                                                                                                           | 19.20 |          | \$5,280.00 |

#### Additional Charges

| Date                     | Details                                                                                                 | Quantity | Rate    | Amount   |
|--------------------------|---------------------------------------------------------------------------------------------------------|----------|---------|----------|
| 04/08/2019               | WBH Print/Reproduction<br>Printing/Photocopies                                                          | 75       | \$0.25  | \$18.75  |
| 04/22/2019               | WBH Filing Fees<br>Filing Fees for Motion to Seal and for Proposed Order                                | 1        | \$57.36 | \$57.36  |
| 04/24/2019               | WBH Print/Reproduction<br>Printing/Photocopies                                                          | 190      | \$0.25  | \$47.50  |
| 04/25/2019               | WBH Print/Reproduction<br>Printing/Photocopies                                                          | 95       | \$0.25  | \$23.75  |
| 04/25/2019               | WBH Print/Reproduction<br>Printing/Photocopies, Motion for Summary Judgment<br>with exhibits for filing | 237      | \$0.25  | \$59.25  |
| Total additional charges |                                                                                                         |          |         | \$206.61 |



W. BRANTLEY HARVEY, SR.  
(1893-1981)

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(also admitted in NY, NC, FL  
and GA)

J. SAMUEL SCOVILLE

KEVIN E. DUKES

|                |       |            |
|----------------|-------|------------|
| Invoice Amount | <hr/> | \$5,486.61 |
|----------------|-------|------------|

|             |       |            |
|-------------|-------|------------|
| Balance Due | <hr/> | \$5,486.61 |
|             | <hr/> |            |

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W. BRANTLEY HARVEY, SR.  
(1993-1998)  
W. BRANTLEY HARVEY, JR.  
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and GA)  
J. SAMUEL SCOVILLE  
KEVIN E. DUKES

## INVOICE

Date: 06/05/2019

Invoice #: 848

Matter: Brian Bannon & Assured Partners NL v. Form Benefit, Inc

File #: 026374-00

### Bill To:

Assured Partners, Inc. attn: Walter Smith  
4905 Dickens Road, Suite 200  
Richmond, VA 23230

Due Date: 07/05/2019

Payments received after 07/01/2019 are not reflected in this statement.

### Professional Services

| Date                               | Details                                                                                                   | Hours | Rate     | Amount   |
|------------------------------------|-----------------------------------------------------------------------------------------------------------|-------|----------|----------|
| 05/01/2019                         | WBH pc Jeff Lehrer                                                                                        | 0.30  | \$275.00 | \$82.50  |
| 05/02/2019                         | WBH review and revise summary judgment memo; review<br>[REDACTED] email to Jeff Lehrer; pc to Jeff Lehrer | 0.90  | \$275.00 | \$247.50 |
| 05/03/2019                         | WBH pc with Jeff Lehrer;                                                                                  | 0.40  | \$275.00 | \$110.00 |
| 05/06/2019                         | WBH review [REDACTED] email to Jeff Lehrer; review [REDACTED]                                             | 0.50  | \$275.00 | \$137.50 |
| 05/20/2019                         | WBH pc Steve LeBlanc; email to Jeff Lehrer                                                                | 0.40  | \$275.00 | \$110.00 |
| 05/28/2019                         | WBH pc Steve LeBlanc                                                                                      | 0.30  | \$275.00 | \$82.50  |
| For professional services rendered |                                                                                                           | 2.80  |          | \$770.00 |

### Additional Charges

| Date       | Details                              | Quantity | Rate    | Amount  |
|------------|--------------------------------------|----------|---------|---------|
| 05/02/2019 | WBH Filing Fees<br>Motion filing fee | 1        | \$25.00 | \$25.00 |
| 05/14/2019 | KED Postage                          | 2        | \$7.35  | \$14.70 |



W. BRANTLEY HARVEY, SR.  
(1893-1981)  
W. BRANTLEY HARVEY, JR.  
(Retired)  
COLDEN R. BATTEY, JR.  
(Of Counsel)  
WILLIAM B. HARVEY, III  
(SC Circuit Court Mediator)

JOHN M. TATUM, III  
THOMAS C. DAVIS  
(SC Circuit Court Mediator)  
THOMAS A. HOLLOWAY  
(also admitted in PA and NJ)  
EUGENE PARRS  
(also admitted in NY, NC, FL  
and GA)  
J. SAMUEL SCOVILLE  
KEVIN E. DUKES

**Total additional charges** **\$39.70**

**Invoice Amount** **\$809.70**

**Previous Invoices Balance** **\$5,486.61**

**Balance Due** **\$6,296.31**

ELECTRONICALLY FILED - 2021 Nov 04 4:01 PM - BEAUFORT - COMMON PLEAS - CASE#2016CP0702541



W. BRANTLEY HARVEY, SR.  
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and GA)  
J. SAMUEL SCOVILLE  
KEVIN E. DUKES

## INVOICE

Date: 07/01/2019

Invoice #: 963

Matter: Brian Bannon & Assured Partners NL v. Form Benefit, Inc

File #: 026374-00

### Bill To:

Assured Partners, Inc. attn: Walter Smith  
4905 Dickens Road, Suite 200  
Richmond, VA 23230

Due Date: 07/31/2019

Payments received after 07/01/2019 are not reflected in this statement.

### Professional Services

| Date       | Details                                                                                       | Hours | Rate     | Amount   |
|------------|-----------------------------------------------------------------------------------------------|-------|----------|----------|
| 06/03/2019 | WBH pc Heather McLeod; email to Heather McLeod                                                | 0.40  | \$275.00 | \$110.00 |
| 06/04/2019 | WBH pc Steve LeBlanc; email to Heather McLeod re SJ motion; email to Jeff Lehrer              | 0.60  | \$275.00 | \$165.00 |
| 06/04/2019 | WBH email exchange with all attorneys re SJ scheduling                                        | 0.30  | \$275.00 | \$82.50  |
| 06/04/2019 | WBH email exchange with court and counsel re scheduling                                       | 0.40  | \$275.00 | \$110.00 |
| 06/05/2019 | WBH pc Heather McLeod                                                                         | 0.30  | \$275.00 | \$82.50  |
| 06/11/2019 | WBH review [REDACTED]                                                                         | 0.80  | \$275.00 | \$220.00 |
| 06/12/2019 | WBH review [REDACTED]; email to Jeff Lehrer                                                   | 0.50  | \$275.00 | \$137.50 |
| 06/19/2019 | WBH pc with Heather McLeod at court; email to Jeff Lehrer                                     | 0.40  | \$275.00 | \$110.00 |
| 06/20/2019 | WBH email exchange with Jeff Lehrer                                                           | 0.30  | \$275.00 | \$82.50  |
| 06/28/2019 | WBH review [REDACTED]<br>legal research; emails to Jeffrey Lehrer                             | 0.80  | \$275.00 | \$220.00 |
| 06/28/2019 | WBH email exchange with Jeff Lehrer                                                           | 0.30  | \$275.00 | \$82.50  |
| 07/01/2019 | WBH review [REDACTED]; prepare Motion to Withdraw; email to Muskattelto; email to Jeff Lehrer | 0.90  | \$275.00 | \$247.50 |

For professional services rendered

6.00

\$1,650.00



W. BRANTLEY HARVEY, SR.  
(1893-1981)  
W. BRANTLEY HARVEY, JR.  
(Retired)  
COLDEN R. BATTEY, JR.  
(Of Counsel)  
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(also admitted in PA and NJ)  
EUGENE PARRS  
(also admitted in NY, NC, FL  
and GA)  
J. SAMUEL SCOVILLE  
KEVIN E. DUKES

|                |       |                   |
|----------------|-------|-------------------|
| Invoice Amount | <hr/> | <b>\$1,650.00</b> |
|----------------|-------|-------------------|

|                           |  |                   |
|---------------------------|--|-------------------|
| Previous Invoices Balance |  | <b>\$6,296.31</b> |
|---------------------------|--|-------------------|

|             |       |                   |
|-------------|-------|-------------------|
| Balance Due | <hr/> | <b>\$7,946.31</b> |
|-------------|-------|-------------------|

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**EXHIBIT D**  
**TO AFFIDAVIT OF JEFFREY LEHRER**



| <u>Date:</u>                       | <u>Invoice #:</u> | <u>Fees:</u>        | <u>Costs:</u>     | <u>Total Billed:</u> |
|------------------------------------|-------------------|---------------------|-------------------|----------------------|
| 5/23/2019                          | 754551            | \$4,788.00          |                   | \$4,788.00           |
| 6/25/2019                          | 757215            | \$24,604.00         |                   | \$24,604.00          |
| 7/22/2019                          | 759161            | \$10,754.00         | \$31.74           | \$10,785.74          |
| 8/19/2019                          | 761213            | \$7,904.00          | \$317.45          | \$8,221.45           |
| 9/20/2019                          | 765789            | \$6,840.00          | \$68.29           | \$6,908.29           |
| 10/8/2019                          | 767473            | \$3,002.00          |                   | \$3,002.00           |
| 11/11/2019                         | 772663            | \$2,166.00          |                   | \$2,166.00           |
| 1/15/2020                          | 777382            | \$228.00            |                   | \$228.00             |
| 2/24/2020                          | 780936            | \$4,750.00          |                   | \$4,750.00           |
| 3/13/2020                          | 782837            | \$10,108.00         |                   | \$10,108.00          |
| 4/14/2020                          | 786110            | \$21,470.00         | \$955.95          | \$22,425.95          |
| 5/15/2020                          | 789104            | \$5,966.00          | \$31.74           | \$5,997.74           |
| 6/15/2020                          | 791714            | \$2,508.00          |                   | \$2,508.00           |
| 7/9/2020                           | 793249            | \$12,882.00         |                   | \$12,882.00          |
| 9/17/2020                          | 799758            | \$152.00            |                   | \$152.00             |
| 10/15/2020                         | 802622            | \$608.00            |                   | \$608.00             |
| 11/19/2020                         | 806240            | \$2,204.00          |                   | \$2,204.00           |
| 12/11/2020                         | 808230            | \$988.00            |                   | \$988.00             |
| 1/19/2021                          | 810306            | \$228.00            |                   | \$228.00             |
| 2/15/2021                          | 813286            | \$152.00            |                   | \$152.00             |
| 3/15/2021                          | 815342            | \$836.00            |                   | \$836.00             |
| 4/16/2021                          | 818041            | \$608.00            |                   | \$608.00             |
| 5/17/2021                          | 820691            | \$760.00            | \$31.74           | \$791.74             |
| 6/15/2021                          | 823543            | \$2,052.00          |                   | \$2,052.00           |
| 7/19/2021                          | 826246            | \$4,978.00          |                   | \$4,978.00           |
| 8/16/2021                          | 828566            | \$37,722.00         | \$449.58          | \$38,171.58          |
| 9/20/2021                          | 831729            | \$62,152.00         |                   | \$62,152.00          |
| 10/26/2021                         | 836190            | \$24,446.00         | \$58.07           | \$24,504.07          |
| 11/1/2021                          | 0                 | \$101,532.00        | \$1,593.58        | \$103,125.58         |
| <b>Reduction for other matters</b> |                   | <b>(\$2,242.00)</b> |                   |                      |
| <b>JAL Trial Expenses in WIP:</b>  |                   |                     | <b>\$3,873.70</b> |                      |
| <b>Grand Total</b>                 |                   | <b>\$355,146.00</b> | <b>\$7,411.84</b> | <b>\$362,557.84</b>  |

# FORDHARRISON<sup>LLP</sup>

May 23, 2019

**PRIVILEGED & CONFIDENTIAL**

AssuredPartners Capital, Inc. and Neace Lukens Holding Company  
200 Colonial Center Parkway, Suite 140  
Lake Mary, FL 32746

Attention: Stan K. Kinnett, II, Esq.  
General Counsel & Executive Vice President

TAX I.D. 58-1314995

Invoice #: 754551

For services rendered in connection with our file number 025558-0009:

**ASSUREDPARTNERS CAPITAL, INC. AND NEACE LUKENS HOLDING COMPANY - FORUM  
BENEFITS, INC. V. ASSUREDPARTNERS, NL AND BRIAN BANNON; CASE NO.:  
2016-CP-07-02541; BREACH OF CONTRACT**

**FEES**

| <u>Date</u> | <u>Tkpr</u> | <u>Hours</u> | <u>Description</u>                                                                                                                                                                                      |
|-------------|-------------|--------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 04/26/19    | JAL         | 4.70         | Analysis of [REDACTED] emails to and from S. Muscatello, and analysis of [REDACTED]<br>[REDACTED]                                                                                                       |
| 04/29/19    | JAL         | 4.20         | Analysis of [REDACTED] telephone conference and emails to and from S. Muscatello regarding [REDACTED] telephone conference and emails to and from B. Harvey regarding [REDACTED] analysis of [REDACTED] |
| 04/30/19    | JAL         | 3.70         | Analysis of [REDACTED] and attachments and emails to and from B. Harvey.                                                                                                                                |

**TOTAL CURRENT FEES:**

\$ 4,788.00

TIMEKEEPER SUMMARY

| <u>Name</u>        | <u>Hours</u> | <u>Hourly Rate</u> | <u>Value</u> |
|--------------------|--------------|--------------------|--------------|
| Lehrer, Jeffrey A. | 12.60        | 380.00             | \$4,788.00   |

INVOICE SUMMARY

*In connection with our file number 025558.0009*

|                     |    |          |
|---------------------|----|----------|
| CURRENT FEES        | \$ | 4,788.00 |
| CURRENT AMOUNT DUE: | \$ | 4,788.00 |

# FORDHARRISON<sup>LLP</sup>

## Remittance Statement

May 23, 2019

Remittance Statement for services in connection with our file number 025558.0009:

AssuredPartners Capital, Inc. and Neace Lukens Holding Company

---

Summary of charges for invoice #754551:

|                                |           |                 |
|--------------------------------|-----------|-----------------|
| CURRENT FEES.....              | \$        | <u>4,788.00</u> |
| <b>CURRENT AMOUNT DUE.....</b> | <b>\$</b> | <b>4,788.00</b> |

Please remit this copy with your payment to:

FORD & HARRISON LLP  
Post Office Box 890836  
Charlotte, NC 28289-0836

**FORDHARRISON<sup>LLP</sup>**

June 25, 2019

**PRIVILEGED & CONFIDENTIAL**

AssuredPartners Capital, Inc. and Neace Lukens Holding Company  
 200 Colonial Center Parkway, Suite 140  
 Lake Mary, FL 32746

Attention: Stan K. Kinnett, II, Esq.  
 General Counsel & Executive Vice President

TAX I.D. 58-1314995

Invoice #: 757215

For services rendered in connection with our file number 025558-0009:

**ASSUREDPARTNERS CAPITAL, INC. AND NEACE LUKENS HOLDING COMPANY - FORUM  
 BENEFITS, INC. V. ASSUREDPARTNERS, NL AND BRIAN BANNON; CASE NO.:  
 2016-CP-07-02541; BREACH OF CONTRACT**

**FEES**

| <u>Date</u> | <u>Tkpr</u> | <u>Hours</u> | <u>Description</u>                                                                                                                                  |
|-------------|-------------|--------------|-----------------------------------------------------------------------------------------------------------------------------------------------------|
| 05/01/19    | JAL         | 4.60         | Correspondence to B. Harvey and S. Muscatello regarding [REDACTED]<br>analysis of [REDACTED]                                                        |
| 05/02/19    | JAL         | 6.30         | Analysis of [REDACTED]<br>correspondence to B. Harvey regarding [REDACTED]                                                                          |
| 05/03/19    | JAL         | 4.10         | Telephone conference with B. Harvey regarding [REDACTED]<br>Analysis of [REDACTED] correspondence<br>to and from S. Muscatello regarding [REDACTED] |
| 05/06/19    | JAL         | 3.20         | Analysis of [REDACTED] and correspondence to<br>and from B. Harvey and S. Muscatello.                                                               |
| 05/07/19    | JAL         | 6.50         | Analysis of [REDACTED] correspondence with<br>S. Muscatello regarding [REDACTED] analysis of<br>[REDACTED]                                          |

| <u>Date</u> | <u>Tkpr</u> | <u>Hours</u> | <u>Description</u>                                                                                                    |
|-------------|-------------|--------------|-----------------------------------------------------------------------------------------------------------------------|
| 05/07/19    | LGC         | 0.50         | Analysis of legal authority supporting submission of second motion for summary judgment and [REDACTED]                |
| 05/08/19    | JAL         | 5.60         | Analysis of [REDACTED] correspondence with B. Harvey and S. LeBlanc regarding motion for summary judgment issues.     |
| 05/09/19    | JAL         | 2.10         | Analysis of [REDACTED] correspondence with B. Harvey regarding [REDACTED]                                             |
| 05/10/19    | JAL         | 4.70         | Analysis of [REDACTED]                                                                                                |
| 05/13/19    | JAL         | 2.70         | Analysis of [REDACTED]                                                                                                |
| 05/14/19    | JAL         | 2.10         | Analysis of [REDACTED]                                                                                                |
| 05/15/19    | JAL         | 5.30         | Analysis of [REDACTED]                                                                                                |
| 05/16/19    | JAL         | 4.10         | Analysis of [REDACTED] telephone conference with S. LeBlanc regarding case and damages issues; analysis of [REDACTED] |
| 05/20/19    | JAL         | 2.70         | Analysis of [REDACTED] preparation of correspondence to S. Muscatello regarding [REDACTED]                            |
| 05/20/19    | JAL         | 0.30         | Correspondence to court and B. Harvey regarding scheduling motion for summary judgment issues.                        |
| 05/21/19    | JAL         | 0.30         | Correspondence to S. Leblanc, B. Harvey and court regarding motion hearing issues.                                    |
| 05/23/19    | JAL         | 0.50         | [REDACTED]                                                                                                            |
| 05/24/19    | JAL         | 3.50         | Preparation of motion for summary judgment on contract and damages issues.                                            |
| 05/27/19    | JAL         | 2.40         | Preparation of second motion for summary judgment regarding contract and damages issues.                              |

| <u>Date</u>                | <u>Tkpr</u> | <u>Hours</u> | <u>Description</u>                                                                                                                                                |
|----------------------------|-------------|--------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 05/28/19                   | JAL         | 3.30         | Preparation of second motion for summary judgment regarding contract and damages issues; correspondence with S. LeBlanc regarding mediation and discovery issues. |
| <b>TOTAL CURRENT FEES:</b> |             |              | <b>\$ 24,604.00</b>                                                                                                                                               |

TIMEKEEPER SUMMARY

| <u>Name</u>         | <u>Hours</u> | <u>Hourly Rate</u> | <u>Value</u> |
|---------------------|--------------|--------------------|--------------|
| Lehrer, Jeffrey A.  | 64.30        | 380.00             | \$24,434.00  |
| Close III, L. Grant | 0.50         | 340.00             | \$170.00     |

INVOICE SUMMARY

*In connection with our file number 025558.0009*

|                            |                     |
|----------------------------|---------------------|
| <b>CURRENT FEES</b>        | <b>\$ 24,604.00</b> |
| <b>CURRENT AMOUNT DUE:</b> | <b>\$ 24,604.00</b> |

# FORDHARRISON<sup>LLP</sup>

## Remittance Statement

June 25, 2019

Remittance Statement for services in connection with our file number 025558.0009:

AssuredPartners Capital, Inc. and Neace Lukens Holding Company

---

Summary of charges for invoice #757215:

|                                |           |                  |
|--------------------------------|-----------|------------------|
| CURRENT FEES.....              | \$        | <u>24,604.00</u> |
| <b>CURRENT AMOUNT DUE.....</b> | <b>\$</b> | <b>24,604.00</b> |

Please remit this copy with your payment to:

FORD & HARRISON LLP  
Post Office Box 890836  
Charlotte, NC 28289-0836



**FORDHARRISON<sup>LLP</sup>**

July 22, 2019

**PRIVILEGED & CONFIDENTIAL**

AssuredPartners Capital, Inc. and Neace Lukens Holding Company  
 200 Colonial Center Parkway, Suite 140  
 Lake Mary, FL 32746

Attention: Stan K. Kinnett, II, Esq.  
 General Counsel & Executive Vice President

TAX I.D. 58-1314995

Invoice #: 759161

For services rendered in connection with our file number 025558-0009:

**ASSUREDPARTNERS CAPITAL, INC. AND NEACE LUKENS HOLDING COMPANY - FORUM  
 BENEFITS, INC. V. ASSUREDPARTNERS, NL AND BRIAN BANNON; CASE NO.:  
 2016-CP-07-02541; BREACH OF CONTRACT**

**FEES**

| <u>Date</u> | <u>Tkpr</u> | <u>Hours</u> | <u>Description</u>                                                                                                                                                                                                             |
|-------------|-------------|--------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 06/04/19    | JAL         | 4.10         | Emails to and from opposing counsel and court regarding pending motions; correspondence with opposing counsel regarding mediation issues; preparation of motion for summary judgment on damages and breach of contract issues. |
| 06/05/19    | JAL         | 3.80         | Emails to and from opposing counsel regarding mediation issues; preparation of motion for summary judgment on damages, breach of contract issues and motion for prevailing party attorneys' fees.                              |
| 06/06/19    | JAL         | 2.90         | Emails to and from opposing counsel regarding mediation issues; preparation of motion for summary judgment on damages, breach of contract issues and motion for prevailing party attorneys' fees.                              |
| 06/07/19    | JAL         | 4.30         | Preparation of motion for summary judgment on damages, breach of contract issues and motion for prevailing party attorneys' fees; emails to and from M. Ward and S. Muscatello regarding [REDACTED]                            |

| <u>Date</u>                | <u>Tkpr</u> | <u>Hours</u> | <u>Description</u>                                                                                                                                                                                                                                                          |
|----------------------------|-------------|--------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 06/11/19                   | JAL         | 2.70         | Finalize and file motion for summary judgment on damages, breach of contract issues and motion for prevailing party attorneys' fees; correspondence with B. Harvey and S. Muscatello regarding [REDACTED] preparation of response to plaintiff's motion to amend complaint. |
| 06/12/19                   | JAL         | 0.40         | Emails to and from B. Harvey and S. Muscatello regarding [REDACTED] telephone conference with S. Muscatello regarding [REDACTED]                                                                                                                                            |
| 06/13/19                   | JAL         | 0.80         | [REDACTED]                                                                                                                                                                                                                                                                  |
| 06/14/19                   | JAL         | 2.30         | Preparation of response to plaintiff's motion to amend.                                                                                                                                                                                                                     |
| 06/17/19                   | JAL         | 0.70         | Telephone conference with S. Muscatello regarding [REDACTED] analysis of [REDACTED]                                                                                                                                                                                         |
| 06/19/19                   | JAL         | 0.60         | Emails to and from court and opposing counsel regarding pending motions and hearing schedule; Emails to and from opposing counsel regarding mediation issues.                                                                                                               |
| 06/20/19                   | JAL         | 0.20         | Email to B. Harvey regarding [REDACTED]                                                                                                                                                                                                                                     |
| 06/27/19                   | MJG         | 0.40         | Emails to and from B. Taylor regarding [REDACTED]                                                                                                                                                                                                                           |
| 06/28/19                   | JAL         | 5.10         | Analysis of [REDACTED] preparation for argument; preparation of response to motion to amend; email to B. Harvey regarding [REDACTED]                                                                                                                                        |
| <b>TOTAL CURRENT FEES:</b> |             |              | <b>\$ 10,754.00</b>                                                                                                                                                                                                                                                         |

TIMEKEEPER SUMMARY

| <u>Name</u>        | <u>Hours</u> | <u>Hourly Rate</u> | <u>Value</u> |
|--------------------|--------------|--------------------|--------------|
| Lehrer, Jeffrey A. | 27.90        | 380.00             | \$10,602.00  |
| Gilley, J. Matthew | 0.40         | 380.00             | \$152.00     |

**EXPENSES:**

|                                                                                  |           |              |
|----------------------------------------------------------------------------------|-----------|--------------|
| JAL1 - Filing Fee - Motion for Summary Judgement & Memo in Support -<br>06/11/19 | \$        | 31.74        |
|                                                                                  |           | <hr/>        |
| <b>TOTAL CURRENT EXPENSES:</b>                                                   | <b>\$</b> | <b>31.74</b> |

**INVOICE SUMMARY**

*In connection with our file number 025558.0009*

|                             |           |                  |
|-----------------------------|-----------|------------------|
| PAST DUE BALANCE ON ACCOUNT | \$        | 24,604.00        |
| CURRENT FEES                | \$        | 10,754.00        |
| CURRENT EXPENSES            | \$        | 31.74            |
|                             |           | <hr/>            |
| <b>CURRENT AMOUNT DUE:</b>  | <b>\$</b> | <b>10,785.74</b> |
| <b>TOTAL AMOUNT DUE</b>     | <b>\$</b> | <b>35,389.74</b> |

*(Past Due Balance plus the Current Charges)*

**Payments received after date of statement may not be reflected.  
If Past Due Balance has been paid, please disregard and only pay the Current Invoice Total.**

# FORDHARRISON<sup>LLP</sup>

## Remittance Statement

July 22, 2019

Remittance Statement for services in connection with our file number 025558.0009:

AssuredPartners Capital, Inc. and Neace Lukens Holding Company

---

Summary of charges for invoice #759161:

|                                                    |        |                  |
|----------------------------------------------------|--------|------------------|
| PAST DUE BALANCE ON ACCOUNT .....                  | \$     | 24,604.00        |
| CURRENT FEES.....                                  | \$     | 10,754.00        |
| CURRENT EXPENSES.....                              | \$     | <u>31.74</u>     |
| CURRENT AMOUNT DUE.....                            | \$     | <b>10,785.74</b> |
| <br>TOTAL AMOUNT DUE.....                          | <br>\$ | <br>35,389.74    |
| <i>(Past Due Balance plus the Current Charges)</i> |        |                  |

Please remit this copy with your payment to:

FORD & HARRISON LLP  
Post Office Box 890836  
Charlotte, NC 28289-0836

**Payments received after date of statement may not be reflected.  
If Past Due Balance has been paid, please disregard and only pay the Total Current  
Invoice.**

# FORDHARRISON<sup>LLP</sup>

## Past Due Balance Summary

July 22, 2019

This Summary reflects the Past Due Balance, in connection with our file number 025558.0009:

**AssuredPartners Capital, Inc. and Neace Lukens Holding Company**

---

Outstanding Bill Balances are reflected through July 22, 2019:

| <b><u>Invoice Date</u></b> | <b><u>Invoice #</u></b> | <b><u>Amount Due</u></b> |
|----------------------------|-------------------------|--------------------------|
| 06/25/2019                 | #757215                 | \$24,604.00              |
| <b>PAST DUE BALANCE:</b>   |                         | <hr/> <b>\$24,604.00</b> |

**FORDHARRISON<sup>LLP</sup>**

August 19, 2019

**PRIVILEGED & CONFIDENTIAL**

AssuredPartners Capital, Inc. and Neace Lukens Holding Company  
 200 Colonial Center Parkway, Suite 140  
 Lake Mary, FL 32746

Attention: Stan K. Kinnett, II, Esq.  
 General Counsel & Executive Vice President

TAX I.D. 58-1314995

Invoice #: 761213

For services rendered in connection with our file number 025558-0009:

**ASSUREDPARTNERS CAPITAL, INC. AND NEACE LUKENS HOLDING COMPANY - FORUM  
 BENEFITS, INC. V. ASSUREDPARTNERS, NL AND BRIAN BANNON; CASE NO.:  
 2016-CP-07-02541; BREACH OF CONTRACT**

**FEES**

| <u>Date</u> | <u>Tkpr</u> | <u>Hours</u> | <u>Description</u>                                                                                                                                                                                                                      |
|-------------|-------------|--------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 07/01/19    | JAL         | 12.30        | Preparation for hearing on motions; travel to Beaufort; meet with B. Bannon prior to hearing; conduct hearing; attend post hearing meeting with B. Bannon; telephone conferences with M. Ward and S. Muscatello; travel to Spartanburg. |
| 07/02/19    | JAL         | 2.80         | Analysis of [REDACTED] preparation of discovery requests related to damages issues and proper party in interest issues.                                                                                                                 |
| 07/03/19    | JAL         | 1.30         | Analysis of [REDACTED] preparation of discovery requests related to damages issues and proper party in interest issues; analysis of [REDACTED]                                                                                          |
| 07/05/19    | JAL         | 0.40         | Telephone conference and correspondence to and from B. Bannon regarding [REDACTED]                                                                                                                                                      |
| 07/15/19    | JAL         | 1.60         | Telephone conference and correspondence with court regarding pending motions; emails to and from B. Harvey; preparation of proposed scheduling order and motion for scheduling order; emails to and from opposing counsel LeBlanc.      |

| <u>Date</u>                | <u>Tkpr</u> | <u>Hours</u> | <u>Description</u>                                                                                                                                        |
|----------------------------|-------------|--------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|
| 07/17/19                   | JAL         | 0.50         | Telephone conference and emails to and from court and opposing counsel regarding hearing issues and scheduling order issues.                              |
| 07/23/19                   | JAL         | 0.60         | Preparation of motion for scheduling order and proposed scheduling order dates.                                                                           |
| 07/30/19                   | JAL         | 0.50         | Telephone conference with B. Bannon regarding [REDACTED]                                                                                                  |
| 07/31/19                   | JAL         | 0.80         | Emails to and from mediator, opposing counsel, S. Muscatello, M. Ward and B. Bannon regarding mediation issues; analysis of damages issues for mediation. |
| <b>TOTAL CURRENT FEES:</b> |             |              | <b>\$ 7,904.00</b>                                                                                                                                        |

**TIMEKEEPER SUMMARY**

| <u>Name</u>        | <u>Hours</u> | <u>Hourly Rate</u> | <u>Value</u> |
|--------------------|--------------|--------------------|--------------|
| Lehrer, Jeffrey A. | 20.80        | 380.00             | \$7,904.00   |

**EXPENSES:**

|                                                                                                                       |           |               |
|-----------------------------------------------------------------------------------------------------------------------|-----------|---------------|
| JAL1 - Travel to/from Spartanburg to Beaufort County Courthouse for Summary Judgment Hearing. - 07/01/19 – Mileage    | \$        | 259.86        |
| JAL1 - Filing of Consent Motion for Scheduling Order. - 07/25/19                                                      | \$        | 31.74         |
| JAL1 - Travel to/from Spartanburg, SC to Beaufort County Courthouse for Summary Judgment Hearing. - 07/01/19. – Meals | \$        | 25.85         |
| <b>TOTAL CURRENT EXPENSES:</b>                                                                                        | <b>\$</b> | <b>317.45</b> |

**INVOICE SUMMARY**

*In connection with our file number 025558.0009*

|                             |           |                  |
|-----------------------------|-----------|------------------|
| PAST DUE BALANCE ON ACCOUNT | \$        | 10,785.74        |
| CURRENT FEES                | \$        | 7,904.00         |
| CURRENT EXPENSES            | \$        | 317.45           |
|                             |           | <hr/>            |
| <b>CURRENT AMOUNT DUE:</b>  | <b>\$</b> | <b>8,221.45</b>  |
| <b>TOTAL AMOUNT DUE</b>     | <b>\$</b> | <b>19,007.19</b> |

*(Past Due Balance plus the Current Charges)*

**Payments received after date of statement may not be reflected.**  
**If Past Due Balance has been paid, please disregard and only pay the Current Invoice Total.**



# FORDHARRISON<sup>LLP</sup>

## Remittance Statement

August 19, 2019

Remittance Statement for services in connection with our file number 025558.0009:

AssuredPartners Capital, Inc. and Neace Lukens Holding Company

---

Summary of charges for invoice #761213:

|                                                    |        |                 |
|----------------------------------------------------|--------|-----------------|
| PAST DUE BALANCE ON ACCOUNT .....                  | \$     | 10,785.74       |
| CURRENT FEES.....                                  | \$     | 7,904.00        |
| CURRENT EXPENSES.....                              | \$     | <u>317.45</u>   |
| CURRENT AMOUNT DUE.....                            | \$     | <b>8,221.45</b> |
| <br>TOTAL AMOUNT DUE.....                          | <br>\$ | <br>19,007.19   |
| <i>(Past Due Balance plus the Current Charges)</i> |        |                 |

Please remit this copy with your payment to:

FORD & HARRISON LLP  
Post Office Box 890836  
Charlotte, NC 28289-0836

**Payments received after date of statement may not be reflected.  
If Past Due Balance has been paid, please disregard and only pay the Total Current Invoice.**

# FORDHARRISON<sup>LLP</sup>

## Past Due Balance Summary

August 19, 2019

This Summary reflects the Past Due Balance, in connection with our file number 025558.0009:

**AssuredPartners Capital, Inc. and Neace Lukens Holding Company**

Outstanding Bill Balances are reflected through August 19, 2019:

| <b><u>Invoice Date</u></b> | <b><u>Invoice #</u></b> | <b><u>Amount Due</u></b> |
|----------------------------|-------------------------|--------------------------|
| 07/22/2019                 | #759161                 | \$10,785.74              |
| <b>PAST DUE BALANCE:</b>   |                         | <b>\$10,785.74</b>       |

# FORDHARRISON<sup>LLP</sup>

September 20, 2019

**PRIVILEGED & CONFIDENTIAL**

AssuredPartners Capital, Inc. and Neace Lukens Holding Company  
200 Colonial Center Parkway, Suite 140  
Lake Mary, FL 32746

Attention: Stan K. Kinnett, II, Esq.  
General Counsel & Executive Vice President

TAX I.D. 58-1314995

Invoice #: 765789

For services rendered in connection with our file number 025558-0009:

**ASSUREDPARTNERS CAPITAL, INC. AND NEACE LUKENS HOLDING COMPANY - FORUM  
BENEFITS, INC. V. ASSUREDPARTNERS, NL AND BRIAN BANNON; CASE NO.:  
2016-CP-07-02541; BREACH OF CONTRACT**

**FEES**

| <u>Date</u> | <u>Tkpr</u> | <u>Hours</u> | <u>Description</u>                                                                                                                                                                                                                                                                           |
|-------------|-------------|--------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 08/12/19    | JAL         | 0.80         | Analysis of [REDACTED] and preparation of mediation statement.                                                                                                                                                                                                                               |
| 08/15/19    | JAL         | 2.90         | Preparation for mediation.                                                                                                                                                                                                                                                                   |
| 08/16/19    | JAL         | 3.90         | Correspondence to and from S. LeBlanc and mediator regarding mediation; preparation of [REDACTED] and correspondence with S. Muscatello; correspondence with S. LeBlanc regarding key admissions from depositions of Winston and Filler to assist with mediation; preparation for mediation. |
| 08/19/19    | JAL         | 7.10         | Preparation for and conduct mediation.                                                                                                                                                                                                                                                       |
| 08/20/19    | JAL         | 2.80         | Analysis of [REDACTED] and correspondence with S. Muscatello; correspondence with S. LeBlanc regarding pending motions.                                                                                                                                                                      |
| 08/22/19    | JAL         | 0.50         | Correspondence to and from court and opposing counsel regarding withdrawal of motion for summary judgment and reservation to re-file after further discovery.                                                                                                                                |

**TOTAL CURRENT FEES:**

**\$ 6,840.00**

**TIMEKEEPER SUMMARY**

| <u>Name</u>        | <u>Hours</u> | <u>Hourly Rate</u> | <u>Value</u> |
|--------------------|--------------|--------------------|--------------|
| Lehrer, Jeffrey A. | 18.00        | 380.00             | \$6,840.00   |

**EXPENSES:**

|                                                                                           |    |       |
|-------------------------------------------------------------------------------------------|----|-------|
| JAL1 - Filing Fee for Motion to Withdraw Defendants' Motion for Summary Judgment 8-22-19. | \$ | 31.74 |
|-------------------------------------------------------------------------------------------|----|-------|

|                                                                                                                             |    |       |
|-----------------------------------------------------------------------------------------------------------------------------|----|-------|
| JAL1 - Travel to/from Mediator Tom Stephenson's office in Greenville, SC for mediation on 8-19-19. – Mileage - Local Travel | \$ | 36.55 |
|-----------------------------------------------------------------------------------------------------------------------------|----|-------|

|                                |           |              |
|--------------------------------|-----------|--------------|
| <b>TOTAL CURRENT EXPENSES:</b> | <b>\$</b> | <b>68.29</b> |
|--------------------------------|-----------|--------------|

**INVOICE SUMMARY**

*In connection with our file number 025558.0009*

|                             |    |           |
|-----------------------------|----|-----------|
| PAST DUE BALANCE ON ACCOUNT | \$ | 19,007.19 |
|-----------------------------|----|-----------|

|              |    |          |
|--------------|----|----------|
| CURRENT FEES | \$ | 6,840.00 |
|--------------|----|----------|

|                  |    |       |
|------------------|----|-------|
| CURRENT EXPENSES | \$ | 68.29 |
|------------------|----|-------|

|                            |           |                 |
|----------------------------|-----------|-----------------|
| <b>CURRENT AMOUNT DUE:</b> | <b>\$</b> | <b>6,908.29</b> |
|----------------------------|-----------|-----------------|

|                         |           |                  |
|-------------------------|-----------|------------------|
| <b>TOTAL AMOUNT DUE</b> | <b>\$</b> | <b>25,915.48</b> |
|-------------------------|-----------|------------------|

*(Past Due Balance plus the Current Charges)*

**Payments received after date of statement may not be reflected.**  
**If Past Due Balance has been paid, please disregard and only pay the Current Invoice Total.**

# FORDHARRISON<sup>LLP</sup>

## Remittance Statement

September 20, 2019

Remittance Statement for services in connection with our file number 025558.0009:

AssuredPartners Capital, Inc. and Neace Lukens Holding Company

---

Summary of charges for invoice #765789:

|                                                    |        |               |
|----------------------------------------------------|--------|---------------|
| PAST DUE BALANCE ON ACCOUNT .....                  | \$     | 19,007.19     |
| CURRENT FEES .....                                 | \$     | 6,840.00      |
| CURRENT EXPENSES .....                             | \$     | <u>68.29</u>  |
| CURRENT AMOUNT DUE .....                           | \$     | 6,908.29      |
| <br>TOTAL AMOUNT DUE.....                          | <br>\$ | <br>25,915.48 |
| <i>(Past Due Balance plus the Current Charges)</i> |        |               |

Please remit this copy with your payment to:

FORD & HARRISON LLP  
Post Office Box 890836  
Charlotte, NC 28289-0836

**Payments received after date of statement may not be reflected.  
If Past Due Balance has been paid, please disregard and only pay the Total Current Invoice.**

# FORDHARRISON<sup>LLP</sup>

## Past Due Balance Summary

September 20, 2019

This Summary reflects the Past Due Balance, in connection with our file number 025558.0009:

**AssuredPartners Capital, Inc. and Neace Lukens Holding Company**

Outstanding Bill Balances are reflected through September 20, 2019:

| <b><u>Invoice Date</u></b> | <b><u>Invoice #</u></b> | <b><u>Amount Due</u></b>  |
|----------------------------|-------------------------|---------------------------|
| 07/22/2019                 | #759161                 | \$10,785.74               |
| 08/19/2019                 | #761213                 | \$8,221.45                |
| <b>PAST DUE BALANCE:</b>   |                         | <b><u>\$19,007.19</u></b> |

# FORDHARRISON<sup>LLP</sup>

October 8, 2019

PRIVILEGED & CONFIDENTIAL

AssuredPartners Capital, Inc. and Neace Lukens Holding Company  
200 Colonial Center Parkway, Suite 140  
Lake Mary, FL 32746

Attention: Stan K. Kinnett, II, Esq.  
General Counsel & Executive Vice President

TAX I.D. 58-1314995

Invoice #: 767473

For services rendered in connection with our file number 025558-0009:

ASSUREDPARTNERS CAPITAL, INC. AND NEACE LUKENS HOLDING COMPANY - FORUM  
BENEFITS, INC. V. ASSUREDPARTNERS, NL AND BRIAN BANNON; CASE NO.:  
2016-CP-07-02541; BREACH OF CONTRACT

**FEES**

| <u>Date</u> | <u>Tkpr</u> | <u>Hours</u> | <u>Description</u>                                                                                                                             |
|-------------|-------------|--------------|------------------------------------------------------------------------------------------------------------------------------------------------|
| 09/04/19    | JAL         | 2.40         | Analysis of [REDACTED]<br>[REDACTED]                                                                                                           |
| 09/09/19    | JAL         | 1.70         | Analysis [REDACTED]<br>[REDACTED] and correspondence to opposing counsel;<br>Emails to and from S. Muscatello.                                 |
| 09/10/19    | JAL         | 2.70         | Analysis [REDACTED]<br>[REDACTED] and emails to opposing counsel.                                                                              |
| 09/18/19    | JAL         | 0.70         | Telephone conference and emails to and from opposing counsel<br>LeBlanc regarding deposition request and objections; analysis of<br>[REDACTED] |
| 09/24/19    | JAL         | 0.20         | Emails to and from opposing counsel regarding deposition issues.                                                                               |
| 09/24/19    | JAL         | 0.20         | Emails to and from S. Muscatello and M. Ward regarding [REDACTED]<br>[REDACTED]                                                                |

**TOTAL CURRENT FEES:**

\$ 3,002.00

**TIMEKEEPER SUMMARY**

| <u>Name</u>        | <u>Hours</u> | <u>Hourly Rate</u> | <u>Value</u> |
|--------------------|--------------|--------------------|--------------|
| Lehrer, Jeffrey A. | 7.90         | 380.00             | \$3,002.00   |

**INVOICE SUMMARY**

*In connection with our file number 025558.0009*

|                             |           |                  |
|-----------------------------|-----------|------------------|
| PAST DUE BALANCE ON ACCOUNT | \$        | 25,915.48        |
| CURRENT FEES                | \$        | 3,002.00         |
| <b>CURRENT AMOUNT DUE:</b>  | <b>\$</b> | <b>3,002.00</b>  |
| <b>TOTAL AMOUNT DUE</b>     | <b>\$</b> | <b>28,917.48</b> |

*(Past Due Balance plus the Current Charges)*

**Payments received after date of statement may not be reflected.**  
**If Past Due Balance has been paid, please disregard and only pay the Current Invoice Total.**



# FORDHARRISON<sup>LLP</sup>

## Remittance Statement

October 8, 2019

Remittance Statement for services in connection with our file number 025558.0009:

AssuredPartners Capital, Inc. and Neace Lukens Holding Company

---

Summary of charges for invoice #767473:

|                                                    |    |                 |
|----------------------------------------------------|----|-----------------|
| PAST DUE BALANCE ON ACCOUNT .....                  | \$ | 25,915.48       |
| CURRENT FEES .....                                 | \$ | <u>3,002.00</u> |
| CURRENT AMOUNT DUE .....                           | \$ | <b>3,002.00</b> |
| TOTAL AMOUNT DUE.....                              | \$ | 28,917.48       |
| <i>(Past Due Balance plus the Current Charges)</i> |    |                 |

Please remit this copy with your payment to:

FORD & HARRISON LLP  
Post Office Box 890836  
Charlotte, NC 28289-0836

**Payments received after date of statement may not be reflected.  
If Past Due Balance has been paid, please disregard and only pay the Total Current Invoice.**

# FORDHARRISON<sup>LLP</sup>

## Past Due Balance Summary

October 8, 2019

This Summary reflects the Past Due Balance, in connection with our file number 025558.0009:

**AssuredPartners Capital, Inc. and Neace Lukens Holding Company**

Outstanding Bill Balances are reflected through October 8, 2019:

| <b><u>Invoice Date</u></b> | <b><u>Invoice #</u></b> | <b><u>Amount Due</u></b> |
|----------------------------|-------------------------|--------------------------|
| 07/22/2019                 | #759161                 | \$10,785.74              |
| 08/19/2019                 | #761213                 | \$8,221.45               |
| 09/20/2019                 | #765789                 | \$6,908.29               |
| <b>PAST DUE BALANCE:</b>   |                         | <b>\$25,915.48</b>       |

# FORDHARRISON<sup>LLP</sup>

November 11, 2019

PRIVILEGED & CONFIDENTIAL

AssuredPartners Capital, Inc. and Neace Lukens Holding Company  
200 Colonial Center Parkway, Suite 140  
Lake Mary, FL 32746

Attention: Stan K. Kinnett, II, Esq.  
General Counsel & Executive Vice President

TAX I.D. 58-1314995

Invoice #: 772663

For services rendered in connection with our file number 025558-0009:

ASSUREDPARTNERS CAPITAL, INC. AND NEACE LUKENS HOLDING COMPANY - FORUM  
BENEFITS, INC. V. ASSUREDPARTNERS, NL AND BRIAN BANNON; CASE NO.:  
2016-CP-07-02541; BREACH OF CONTRACT

FEES

| <u>Date</u> | <u>Tkpr</u> | <u>Hours</u> | <u>Description</u>                                                                                                                                             |
|-------------|-------------|--------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 10/01/19    | JAL         | 0.30         | Telephone conference and emails to and from opposing counsel S. LeBlanc regarding deposition issues.                                                           |
| 10/02/19    | JAL         | 0.30         | Telephone conference with S. LeBlanc regarding deposition issues.                                                                                              |
| 10/04/19    | JAL         | 1.40         | Analysis of [REDACTED]<br>[REDACTED]                                                                                                                           |
| 10/15/19    | JAL         | 0.80         | Telephone conference with S. Muscatello regarding [REDACTED]<br>[REDACTED] emails to and from S. LeBlanc regarding discovery issues;<br>analysis of [REDACTED] |
| 10/22/19    | JAL         | 0.60         | Analysis of [REDACTED]<br>[REDACTED]                                                                                                                           |
| 10/23/19    | JAL         | 1.50         | Analysis of [REDACTED]<br>[REDACTED]                                                                                                                           |
| 10/25/19    | JAL         | 0.80         | Telephone conference with G. Bucor's attorney; analysis of [REDACTED]<br>[REDACTED]                                                                            |

TOTAL CURRENT FEES:

\$ 2,166.00

**TIMEKEEPER SUMMARY**

| <u>Name</u>        | <u>Hours</u> | <u>Hourly Rate</u> | <u>Value</u> |
|--------------------|--------------|--------------------|--------------|
| Lehrer, Jeffrey A. | 5.70         | 380.00             | \$2,166.00   |

**INVOICE SUMMARY**

*In connection with our file number 025558.0009*

|                             |           |                 |
|-----------------------------|-----------|-----------------|
| PAST DUE BALANCE ON ACCOUNT | \$        | 6,908.29        |
| CURRENT FEES                | \$        | 2,166.00        |
| <b>CURRENT AMOUNT DUE:</b>  | <b>\$</b> | <b>2,166.00</b> |
| <b>TOTAL AMOUNT DUE</b>     | <b>\$</b> | <b>9,074.29</b> |

*(Past Due Balance plus the Current Charges)*

**Payments received after date of statement may not be reflected.**  
**If Past Due Balance has been paid, please disregard and only pay the Current Invoice Total.**

# FORDHARRISON<sup>LLP</sup>

## Remittance Statement

November 11, 2019

Remittance Statement for services in connection with our file number 025558.0009:

AssuredPartners Capital, Inc. and Neace Lukens Holding Company

---

Summary of charges for invoice #772663:

|                                                    |        |                 |
|----------------------------------------------------|--------|-----------------|
| PAST DUE BALANCE ON ACCOUNT .....                  | \$     | 6,908.29        |
| CURRENT FEES .....                                 | \$     | <u>2,166.00</u> |
| CURRENT AMOUNT DUE .....                           | \$     | <b>2,166.00</b> |
| <br>TOTAL AMOUNT DUE.....                          | <br>\$ | <br>9,074.29    |
| <i>(Past Due Balance plus the Current Charges)</i> |        |                 |

Please remit this copy with your payment to:

FORD & HARRISON LLP  
Post Office Box 890836  
Charlotte, NC 28289-0836

**Payments received after date of statement may not be reflected.**  
**If Past Due Balance has been paid, please disregard and only pay the Total Current Invoice.**

# FORDHARRISON<sup>LLP</sup>

## Past Due Balance Summary

November 11, 2019

This Summary reflects the Past Due Balance, in connection with our file number 025558.0009:

**AssuredPartners Capital, Inc. and Neace Lukens Holding Company**

---

Outstanding Bill Balances are reflected through November 11, 2019:

| <b><u>Invoice Date</u></b> | <b><u>Invoice #</u></b> | <b><u>Amount Due</u></b> |
|----------------------------|-------------------------|--------------------------|
| 09/20/2019                 | #765789                 | \$6,908.29               |
| <b>PAST DUE BALANCE:</b>   |                         | <hr/> <b>\$6,908.29</b>  |

# FORDHARRISON<sup>LLP</sup>

January 15, 2020

PRIVILEGED & CONFIDENTIAL

AssuredPartners Capital, Inc. and Neace Lukens Holding Company  
200 Colonial Center Parkway, Suite 140  
Lake Mary, FL 32746

Attention: Stan K. Kinnett, II, Esq.  
General Counsel & Executive Vice President

TAX I.D. 58-1314995

Invoice #: 777382

For services rendered in connection with our file number 025558-0009:

ASSUREDPARTNERS CAPITAL, INC. AND NEACE LUKENS HOLDING COMPANY - FORUM  
BENEFITS, INC. V. ASSUREDPARTNERS, NL AND BRIAN BANNON; CASE NO.:  
2016-CP-07-02541; BREACH OF CONTRACT

FEES

| <u>Date</u> | <u>Tkpr</u> | <u>Hours</u> | <u>Description</u>                                                                               |
|-------------|-------------|--------------|--------------------------------------------------------------------------------------------------|
| 12/03/19    | JAL         | 0.60         | Telephone conference with attorney for G. Bucor regarding deposition and subpoena for documents. |

**TOTAL CURRENT FEES:** \$ 228.00

TIMEKEEPER SUMMARY

| <u>Name</u>        | <u>Hours</u> | <u>Hourly Rate</u> | <u>Value</u> |
|--------------------|--------------|--------------------|--------------|
| Lehrer, Jeffrey A. | 0.60         | 380.00             | \$228.00     |

**INVOICE SUMMARY**

*In connection with our file number 025558.0009*

|                     |    |        |
|---------------------|----|--------|
| CURRENT FEES        | \$ | 228.00 |
|                     |    | <hr/>  |
| CURRENT AMOUNT DUE: | \$ | 228.00 |



# FORDHARRISON<sup>LLP</sup>

## Remittance Statement

January 15, 2020

Remittance Statement for services in connection with our file number 025558.0009:

AssuredPartners Capital, Inc. and Neace Lukens Holding Company

---

Summary of charges for invoice #777382:

|                          |    |               |
|--------------------------|----|---------------|
| CURRENT FEES .....       | \$ | <u>228.00</u> |
| CURRENT AMOUNT DUE ..... | \$ | <b>228.00</b> |

Please remit this copy with your payment to:

FORD & HARRISON LLP  
Post Office Box 890836  
Charlotte, NC 28289-0836

# FORDHARRISON<sup>LLP</sup>

February 24, 2020

**PRIVILEGED & CONFIDENTIAL**

AssuredPartners Capital, Inc. and Neace Lukens Holding Company  
200 Colonial Center Parkway, Suite 140  
Lake Mary, FL 32746

Attention: Stan K. Kinnett, II, Esq.  
General Counsel & Executive Vice President

TAX I.D. 58-1314995

Invoice #: 780936

For services rendered in connection with our file number 025558-0009:

**ASSUREDPARTNERS CAPITAL, INC. AND NEACE LUKENS HOLDING COMPANY - FORUM  
BENEFITS, INC. V. ASSUREDPARTNERS, NL AND BRIAN BANNON; CASE NO.:  
2016-CP-07-02541; BREACH OF CONTRACT**

**FEES**

| <u>Date</u> | <u>Tkpr</u> | <u>Hours</u> | <u>Description</u>                                                                                                       |
|-------------|-------------|--------------|--------------------------------------------------------------------------------------------------------------------------|
| 01/06/20    | JAL         | 1.50         | Telephone conference and correspondence with opposing counsel regarding deposition issues; analysis of [REDACTED]        |
| 01/07/20    | JAL         | 0.40         | Emails to and from opposing counsel regarding depositions; analysis of [REDACTED]                                        |
| 01/08/20    | JAL         | 1.20         | Telephone conference with and emails to and from opposing counsel regarding deposition issues and analysis of [REDACTED] |
| 01/10/20    | JAL         | 0.40         | [REDACTED]                                                                                                               |
| 01/16/20    | JAL         | 1.50         | Emails to and from S. Muscatello, M. Ward and S. LeBlanc regarding pending issues; analysis of [REDACTED]<br>[REDACTED]  |
| 01/21/20    | JAL         | 1.10         | Emails to and from A. Ketcham regarding [REDACTED] and analysis of [REDACTED]                                            |
| 01/23/20    | JAL         | 0.20         | Email to and from A. Ketcham regarding [REDACTED]                                                                        |
| 01/24/20    | JAL         | 0.70         | Analysis of [REDACTED] and emails to and from opposing counsel and M. Wardk.                                             |

| <u>Date</u>                | <u>Tkpr</u> | <u>Hours</u> | <u>Description</u>                                                                                                                                                                     |
|----------------------------|-------------|--------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 01/27/20                   | JAL         | 1.40         | Telephone conference with and emails to and from opposing counsel regarding deposition issues; preparation for depositions; emails to and from M. Ward; revision of to rule 30 notice. |
| 01/28/20                   | JAL         | 1.20         | Preparation for and conduct call with A. Ketcham; analysis of [REDACTED]                                                                                                               |
| 01/29/20                   | JAL         | 1.70         | Telephone conference with and emails to and from opposing counsel regarding objections to rule 30 deposition and analysis [REDACTED] and preparation of response.                      |
| 01/31/20                   | JAL         | 1.20         | Emails to and from opposing counsel; preparation for depositions.                                                                                                                      |
| <b>TOTAL CURRENT FEES:</b> |             |              | <b>\$ 4,750.00</b>                                                                                                                                                                     |

TIMEKEEPER SUMMARY

| <u>Name</u>        | <u>Hours</u> | <u>Hourly Rate</u> | <u>Value</u> |
|--------------------|--------------|--------------------|--------------|
| Lehrer, Jeffrey A. | 12.50        | 380.00             | \$4,750.00   |

INVOICE SUMMARY

*In connection with our file number 025558.0009*

|                             |                    |
|-----------------------------|--------------------|
| PAST DUE BALANCE ON ACCOUNT | \$ 228.00          |
| CURRENT FEES                | \$ 4,750.00        |
| <b>CURRENT AMOUNT DUE:</b>  | <b>\$ 4,750.00</b> |
| <b>TOTAL AMOUNT DUE</b>     | <b>\$ 4,978.00</b> |

*(Past Due Balance plus the Current Charges)*

**Payments received after date of statement may not be reflected.**  
**If Past Due Balance has been paid, please disregard and only pay the Current Invoice Total.**

# FORDHARRISON<sup>LLP</sup>

## Remittance Statement

February 24, 2020

Remittance Statement for services in connection with our file number 025558.0009:

AssuredPartners Capital, Inc. and Neace Lukens Holding Company

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Summary of charges for invoice #780936:

|                                                    |    |                 |
|----------------------------------------------------|----|-----------------|
| PAST DUE BALANCE ON ACCOUNT .....                  | \$ | 228.00          |
| CURRENT FEES.....                                  | \$ | <u>4,750.00</u> |
| CURRENT AMOUNT DUE.....                            | \$ | <b>4,750.00</b> |
| TOTAL AMOUNT DUE .....                             | \$ | 4,978.00        |
| <i>(Past Due Balance plus the Current Charges)</i> |    |                 |

Please remit this copy with your payment to:

FORD & HARRISON LLP  
Post Office Box 890836  
Charlotte, NC 28289-0836

**Payments received after date of statement may not be reflected.  
If Past Due Balance has been paid, please disregard and only pay the Total Current Invoice.**

# FORDHARRISON<sup>LLP</sup>

## Past Due Balance Summary

February 24, 2020

This Summary reflects the Past Due Balance, in connection with our file number 025558.0009:

**AssuredPartners Capital, Inc. and Neace Lukens Holding Company**

Outstanding Bill Balances are reflected through February 24, 2020:

| <b><u>Invoice Date</u></b> | <b><u>Invoice #</u></b> | <b><u>Amount Due</u></b> |
|----------------------------|-------------------------|--------------------------|
| 01/15/2020                 | #777382                 | \$228.00                 |
| <b>PAST DUE BALANCE:</b>   |                         | <b>\$228.00</b>          |

# FORDHARRISON<sup>LLP</sup>

March 13, 2020

PRIVILEGED & CONFIDENTIAL

AssuredPartners Capital, Inc. and Neace Lukens Holding Company  
200 Colonial Center Parkway, Suite 140  
Lake Mary, FL 32746

Attention: Stan K. Kinnett, II, Esq.  
General Counsel & Executive Vice President

TAX I.D. 58-1314995

Invoice #: 782837

For services rendered in connection with our file number 025558-0009:

ASSUREDPARTNERS CAPITAL, INC. AND NEACE LUKENS HOLDING COMPANY - FORUM  
BENEFITS, INC. V. ASSUREDPARTNERS, NL AND BRIAN BANNON; CASE NO.:  
2016-CP-07-02541; BREACH OF CONTRACT

FEES

| <u>Date</u> | <u>Tkpr</u> | <u>Hours</u> | <u>Description</u>                                                                                                |
|-------------|-------------|--------------|-------------------------------------------------------------------------------------------------------------------|
| 02/05/20    | JAL         | 1.70         | Analysis of [REDACTED] and preparation for conference call with A. Ketcham regarding [REDACTED]                   |
| 02/06/20    | JAL         | 2.70         | Analysis of [REDACTED] telephone conference with A. Ketcham regarding [REDACTED]                                  |
| 02/07/20    | JAL         | 5.20         | Preparation of [REDACTED]<br>[REDACTED] analysis of [REDACTED]                                                    |
| 02/10/20    | JAL         | 8.50         | Preparation for and conduct rule 30(b)(6) deposition and post deposition conference with M. Ward.                 |
| 02/11/20    | JAL         | 3.40         | Post deposition analysis of Rule 30 and final discovery issues; Telephone conference with A. Ketcham and M. Ward. |
| 02/19/20    | JAL         | 2.40         | Analysis of [REDACTED]<br>[REDACTED] analysis of [REDACTED]                                                       |
| 02/24/20    | JAL         | 2.30         | Analysis of [REDACTED]<br>emails to and from A. Ketcham; telephone conference with B. Bannon.                     |

| <u>Date</u> | <u>Tkpr</u> | <u>Hours</u> | <u>Description</u>                                                                                                                                  |
|-------------|-------------|--------------|-----------------------------------------------------------------------------------------------------------------------------------------------------|
| 02/28/20    | JAL         | 0.40         | Emails to and from opposing counsel LeBlanc regarding supplemental discovery and potential date certain trial; analysis of [REDACTED]<br>[REDACTED] |

**TOTAL CURRENT FEES:** \$ 10,108.00

TIMEKEEPER SUMMARY

| <u>Name</u>        | <u>Hours</u> | <u>Hourly Rate</u> | <u>Value</u> |
|--------------------|--------------|--------------------|--------------|
| Lehrer, Jeffrey A. | 26.60        | 380.00             | \$10,108.00  |

INVOICE SUMMARY

*In connection with our file number 025558.0009*

**CURRENT FEES** \$ 10,108.00

**CURRENT AMOUNT DUE:** \$ 10,108.00

# FORDHARRISON<sup>LLP</sup>

## Remittance Statement

March 13, 2020

Remittance Statement for services in connection with our file number 025558.0009:

AssuredPartners Capital, Inc. and Neace Lukens Holding Company

---

Summary of charges for invoice #782837:

|                          |    |                  |
|--------------------------|----|------------------|
| CURRENT FEES .....       | \$ | <u>10,108.00</u> |
| CURRENT AMOUNT DUE ..... | \$ | 10,108.00        |

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Post Office Box 890836  
Charlotte, NC 28289-0836



# FORDHARRISON<sup>LLP</sup>

April 14, 2020

PRIVILEGED & CONFIDENTIAL

AssuredPartners Capital, Inc. and Neace Lukens Holding Company  
200 Colonial Center Parkway, Suite 140  
Lake Mary, FL 32746

Attention: Stan K. Kinnett, II, Esq.  
General Counsel & Executive Vice President

TAX I.D. 58-1314995

Invoice #: 786110  
For services rendered in connection with our file number 025558-0009:

ASSURED PARTNERS CAPITAL, INC. AND NEACE LUKENS HOLDING COMPANY - FORUM  
BENEFITS, INC. V. ASSURED PARTNERS, NL AND BRIAN BANNON; CASE NO.:  
2016-CP-07-02541; BREACH OF CONTRACT

FEES

| <u>Date</u> | <u>Tkpr</u> | <u>Hours</u> | <u>Description</u>                                                                                                                                                                                                                                                                                                   |
|-------------|-------------|--------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 03/02/20    | JAL         | 1.60         | Analysis of [REDACTED]                                                                                                                                                                                                                                                                                               |
| 03/06/20    | JAL         | 0.50         | Preparation of audit response related to case.                                                                                                                                                                                                                                                                       |
| 03/06/20    | JAL         | 0.50         | Emails to and from court regarding case docket and status conference; analysis of trial issues.                                                                                                                                                                                                                      |
| 03/09/20    | JAL         | 0.30         | Emails to and from court reporter regarding status of rule 30 transcript; correspondence to and from opposing counsel regarding trial and status conference issues.                                                                                                                                                  |
| 03/11/20    | JAL         | 3.30         | Telephone conference and emails to and from opposing counsel regarding trial and status conference issues and his attempts to discuss settlement solely with Bannon; analysis of [REDACTED]<br>[REDACTED] telephone conference with court and B. Harvey regarding trial docket issues and potential judge for trial. |
| 03/12/20    | JAL         | 3.60         | Telephone conferences and emails to and from A. Ketcham and B. Bannon; analysis of [REDACTED]; analysis of [REDACTED]<br>[REDACTED] and [REDACTED]<br>preparation of summary judgment motion and memorandum.                                                                                                         |
| 03/13/20    | JAL         | 2.40         | Preparation of summary judgment motion and memorandum.                                                                                                                                                                                                                                                               |

AssuredPartners Capital, Inc. and Neace Lukens Holding Company  
 April 14, 2020  
 Page 2

| <u>Date</u>                | <u>Tkpr</u> | <u>Hours</u> | <u>Description</u>                                                                                                                             |
|----------------------------|-------------|--------------|------------------------------------------------------------------------------------------------------------------------------------------------|
| 03/16/20                   | JAL         | 2.90         | Preparation of summary judgment motion and memorandum.                                                                                         |
| 03/17/20                   | JAL         | 4.50         | Preparation of summary judgment motion and memorandum.                                                                                         |
| 03/18/20                   | JAL         | 5.30         | Preparation of summary judgment motion and memorandum.                                                                                         |
| 03/19/20                   | JAL         | 3.80         | Preparation of summary judgment motion and memorandum; emails to and from A. Ketcham.                                                          |
| 03/20/20                   | JAL         | 4.90         | Analysis of [REDACTED] and preparation of summary judgment motion and memorandum.                                                              |
| 03/23/20                   | JAL         | 5.10         | Preparation of summary judgment motion and memorandum; emails to and from A. Ketcham.                                                          |
| 03/24/20                   | JAL         | 6.50         | Preparation of summary judgment motion and memorandum; emails to and from A. Ketcham.                                                          |
| 03/25/20                   | JAL         | 7.20         | Preparation of summary judgment motion and memorandum; emails to and from A. Ketcham; telephone conference with B. Bannon regarding [REDACTED] |
| 03/26/20                   | JAL         | 0.50         | Telephone conference and emails to and from A. Ketcham; telephone conference with S. LeBlanc regarding deadline issues.                        |
| 03/27/20                   | JAL         | 2.40         | Preparation of summary judgment motion and memorandum and add citations to record.                                                             |
| 03/31/20                   | JAL         | 1.20         | Emails to and from A. Ketcham regarding [REDACTED]                                                                                             |
| <b>TOTAL CURRENT FEES:</b> |             |              | <b>\$ 21,470.00</b>                                                                                                                            |

TIMEKEEPER SUMMARY

| <u>Name</u>        | <u>Hours</u> | <u>Hourly Rate</u> | <u>Value</u> |
|--------------------|--------------|--------------------|--------------|
| Lehrer, Jeffrey A. | 56.50        | 380.00             | \$21,470.00  |

**EXPENSES:**

|                                                                                                                              |           |               |
|------------------------------------------------------------------------------------------------------------------------------|-----------|---------------|
| Bishop Reporting Services, LLC - Invoice: 6928 - Deposition Transcript Fee -<br>Brian Stritt 30(b)6 Deposition. - 03/16/2020 | \$        | 955.95        |
|                                                                                                                              |           | <hr/>         |
| <b>TOTAL CURRENT EXPENSES:</b>                                                                                               | <b>\$</b> | <b>955.95</b> |

**INVOICE SUMMARY**

*In connection with our file number 025558.0009*

|                             |           |                  |
|-----------------------------|-----------|------------------|
| PAST DUE BALANCE ON ACCOUNT | \$        | 10,108.00        |
| CURRENT FEES                | \$        | 21,470.00        |
| CURRENT EXPENSES            | \$        | 955.95           |
|                             |           | <hr/>            |
| <b>CURRENT AMOUNT DUE:</b>  | <b>\$</b> | <b>22,425.95</b> |
| <b>TOTAL AMOUNT DUE</b>     | <b>\$</b> | <b>32,533.95</b> |

*(Past Due Balance plus the Current Charges)*

**Payments received after date of statement may not be reflected.**  
**If Past Due Balance has been paid, please disregard and only pay the Current Invoice Total.**

# FORDHARRISON<sup>LLP</sup>

## Remittance Statement

April 14, 2020

Remittance Statement for services in connection with our file number 025558.0009:

AssuredPartners Capital, Inc. and Neace Lukens Holding Company

---

Summary of charges for invoice #786110:

|                                                    |        |                  |
|----------------------------------------------------|--------|------------------|
| PAST DUE BALANCE ON ACCOUNT .....                  | \$     | 10,108.00        |
| CURRENT FEES .....                                 | \$     | 21,470.00        |
| CURRENT EXPENSES .....                             | \$     | <u>955.95</u>    |
| CURRENT AMOUNT DUE .....                           | \$     | <b>22,425.95</b> |
| <br>TOTAL AMOUNT DUE.....                          | <br>\$ | <br>32,533.95    |
| <i>(Past Due Balance plus the Current Charges)</i> |        |                  |

Please remit this copy with your payment to:

FORD & HARRISON LLP  
Post Office Box 890836  
Charlotte, NC 28289-0836

**Payments received after date of statement may not be reflected.  
If Past Due Balance has been paid, please disregard and only pay the Total Current Invoice.**

# FORDHARRISON<sup>LLP</sup>

## Past Due Balance Summary

April 14, 2020

This Summary reflects the Past Due Balance, in connection with our file number 025558.0009:

**AssuredPartners Capital, Inc. and Neace Lukens Holding Company**

Outstanding Bill Balances are reflected through April 14, 2020:

| <b><u>Invoice Date</u></b> | <b><u>Invoice #</u></b> | <b><u>Amount Due</u></b> |
|----------------------------|-------------------------|--------------------------|
| 03/13/2020                 | #782837                 | \$10,108.00              |
| <b>PAST DUE BALANCE:</b>   |                         | <b>\$10,108.00</b>       |

# FORDHARRISON<sup>LLP</sup>

May 15, 2020

PRIVILEGED & CONFIDENTIAL

AssuredPartners Capital, Inc. and Neace Lukens Holding Company  
200 Colonial Center Parkway, Suite 140  
Lake Mary, FL 32746

Attention: Stan K. Kinnett, II, Esq.  
General Counsel & Executive Vice President

TAX I.D. 58-1314995

Invoice #: 789104

For services rendered in connection with our file number 025558-0009:

ASSUREDPARTNERS CAPITAL, INC. AND NEACE LUKENS HOLDING COMPANY - FORUM  
BENEFITS, INC. V. ASSUREDPARTNERS, NL AND BRIAN BANNON; CASE NO.:  
2016-CP-07-02541; BREACH OF CONTRACT

FEES

| <u>Date</u> | <u>Tkpr</u> | <u>Hours</u> | <u>Description</u>                                                                                                                                                                                                                                  |
|-------------|-------------|--------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 04/01/20    | JAL         | 1.80         | Telephone conference with and emails to and from opposing counsel regarding case, summary judgment arguments, and trial issues.                                                                                                                     |
| 04/02/20    | JAL         | 0.90         | Email to and from A. Ketcham regarding [REDACTED]<br>preparation of summary judgment pleadings; analysis of [REDACTED]<br>[REDACTED]                                                                                                                |
| 04/06/20    | JAL         | 3.60         | Emails to and from A. Ketcham regarding [REDACTED]<br>preparation of summary judgment pleadings; analysis of [REDACTED]<br>[REDACTED] legal research<br>regarding [REDACTED]<br>preparation of additional arguments in support of summary judgment. |
| 04/07/20    | JAL         | 1.60         | Emails to and from opposing counsel and B. Bannon regarding case.<br>Analysis of [REDACTED]<br>[REDACTED]                                                                                                                                           |
| 04/08/20    | JAL         | 0.10         | Email to and from B. Bannon regarding [REDACTED]                                                                                                                                                                                                    |
| 04/13/20    | JAL         | 1.50         | Analysis of [REDACTED] email to and from A. Ketcham;<br>preparation of factual summary and case update; email to and from<br>opposing counsel regarding deadline issues.                                                                            |

| <u>Date</u>                | <u>Tkpr</u> | <u>Hours</u> | <u>Description</u>                                                                                                                                                |
|----------------------------|-------------|--------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 04/14/20                   | JAL         | 0.20         | Email to and from opposing counsel LeBlanc and A. Ketcham regarding summary judgment issues.                                                                      |
| 04/15/20                   | JAL         | 0.50         | Telephone conference with and email to and from A. Ketcham; revision of summary judgment memorandum.                                                              |
| 04/17/20                   | JAL         | 1.20         | Revision of motion and correspondence with Anna.                                                                                                                  |
| 04/20/20                   | JAL         | 2.50         | Revision of and finalize motion for summary judgment and exhibits and documents that must be filed under seal; email to and telephone conference with A. Ketcham. |
| 04/21/20                   | JAL         | 0.40         | Telephone conference with with opposing counsel regarding summary judgment memo and confidentiality arguments and request to seal certain information.            |
| 04/23/20                   | JAL         | 0.60         | Email to and from opposing counsel and analysis of [REDACTED]<br>[REDACTED]                                                                                       |
| 04/24/20                   | JAL         | 0.50         | Email to and from opposing counsel and court regarding confidentiality issues related to memorandum in support of motion.                                         |
| 04/28/20                   | JAL         | 0.30         | Communications with court regarding scheduling issues and options for hearing.                                                                                    |
| <b>TOTAL CURRENT FEES:</b> |             |              | <b>\$ 5,966.00</b>                                                                                                                                                |

**TIMEKEEPER SUMMARY**

| <u>Name</u>        | <u>Hours</u> | <u>Hourly Rate</u> | <u>Value</u> |
|--------------------|--------------|--------------------|--------------|
| Lehrer, Jeffrey A. | 15.70        | 380.00             | \$5,966.00   |

**EXPENSES:**

|                                                                                             |                 |
|---------------------------------------------------------------------------------------------|-----------------|
| JAL1 - Beaufort County Court of Common Pleas - Motion for Summary Judgment\$<br>- 4/20/2020 | 31.74           |
| <b>TOTAL CURRENT EXPENSES:</b>                                                              | <b>\$ 31.74</b> |

**INVOICE SUMMARY**

*In connection with our file number 025558.0009*

|                             |    |           |
|-----------------------------|----|-----------|
| PAST DUE BALANCE ON ACCOUNT | \$ | 22,425.95 |
| CURRENT FEES                | \$ | 5,966.00  |
| CURRENT EXPENSES            | \$ | 31.74     |
|                             |    | <hr/>     |
| CURRENT AMOUNT DUE:         | \$ | 5,997.74  |
| TOTAL AMOUNT DUE            | \$ | 28,423.69 |

*(Past Due Balance plus the Current Charges)*

**Payments received after date of statement may not be reflected.**  
**If Past Due Balance has been paid, please disregard and only pay the Current Invoice Total.**



# FORDHARRISON<sup>LLP</sup>

## Remittance Statement

May 15, 2020

Remittance Statement for services in connection with our file number 025558.0009:

AssuredPartners Capital, Inc. and Neace Lukens Holding Company

---

Summary of charges for invoice #789104:

|                                                    |        |                 |
|----------------------------------------------------|--------|-----------------|
| PAST DUE BALANCE ON ACCOUNT .....                  | \$     | 22,425.95       |
| CURRENT FEES .....                                 | \$     | 5,966.00        |
| CURRENT EXPENSES .....                             | \$     | <u>31.74</u>    |
| CURRENT AMOUNT DUE .....                           | \$     | <b>5,997.74</b> |
| <br>TOTAL AMOUNT DUE .....                         | <br>\$ | <br>28,423.69   |
| <i>(Past Due Balance plus the Current Charges)</i> |        |                 |

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FORD & HARRISON LLP  
Post Office Box 890836  
Charlotte, NC 28289-0836

**Payments received after date of statement may not be reflected.  
If Past Due Balance has been paid, please disregard and only pay the Total Current  
Invoice.**

# FORDHARRISON<sup>LLP</sup>

## Past Due Balance Summary

May 15, 2020

This Summary reflects the Past Due Balance, in connection with our file number 025558.0009:

**AssuredPartners Capital, Inc. and Neace Lukens Holding Company**

Outstanding Bill Balances are reflected through May 15, 2020:

| <b><u>Invoice Date</u></b> | <b><u>Invoice #</u></b> | <b><u>Amount Due</u></b> |
|----------------------------|-------------------------|--------------------------|
| 04/14/2020                 | #786110                 | \$22,425.95              |
| <b>PAST DUE BALANCE:</b>   |                         | <b>\$22,425.95</b>       |

# FORDHARRISON<sup>LLP</sup>

June 15, 2020

PRIVILEGED & CONFIDENTIAL

AssuredPartners Capital, Inc. and Neace Lukens Holding Company  
200 Colonial Center Parkway, Suite 140  
Lake Mary, FL 32746

Attention: Stan K. Kinnett, II, Esq.  
General Counsel & Executive Vice President

TAX I.D. 58-1314995

Invoice #: 791714

For services rendered in connection with our file number 025558-0009:

ASSURED PARTNERS CAPITAL, INC. AND NEACE LUKENS HOLDING COMPANY - FORUM  
BENEFITS, INC. V. ASSURED PARTNERS, NL AND BRIAN BANNON; CASE NO.:  
2016-CP-07-02541; BREACH OF CONTRACT

FEES

| <u>Date</u> | <u>Tkpr</u> | <u>Hours</u> | <u>Description</u>                                                                                                                                                                            |
|-------------|-------------|--------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 05/07/20    | MJG         | 0.70         |                                                                                                                                                                                               |
| 05/07/20    | MJG         | 0.30         |                                                                                                                                                                                               |
| 05/11/20    | MJG         | 0.50         |                                                                                                                                                                                               |
| 05/19/20    | JAL         | 0.70         | Telephone conference and email to and from court regarding hearing issues; Email to and from Anna and opposing counsel; preparation of audit letter update.                                   |
| 05/19/20    | MJG         | 0.60         | Emails to and from B. Taylor regarding                                                                                                                                                        |
| 05/22/20    | JAL         | 0.60         | Telephone conference and email to and from court and opposing counsel regarding motions hearing issues.                                                                                       |
| 05/26/20    | JAL         | 0.60         | Telephone conference and email to and from court and opposing counsel regarding status report and motion hearing issues and dates.                                                            |
| 05/28/20    | JAL         | 2.30         | Telephone conferences and email to and from court and opposing counsel regarding motion issues; Email to and from A. Ketchum regarding analysis of and preparation of MSJ issues for hearing. |

| <u>Date</u> | <u>Tkpr</u> | <u>Hours</u> | <u>Description</u>                                                             |
|-------------|-------------|--------------|--------------------------------------------------------------------------------|
| 05/29/20    | JAL         | 0.30         | Email to and from opposing counsel and court regarding motions hearing issues. |

**TOTAL CURRENT FEES:** \$ 2,508.00

**TIMEKEEPER SUMMARY**

| <u>Name</u>        | <u>Hours</u> | <u>Hourly Rate</u> | <u>Value</u> |
|--------------------|--------------|--------------------|--------------|
| Lehrer, Jeffrey A. | 4.50         | 380.00             | \$1,710.00   |
| Gilley, J. Matthew | 2.10         | 380.00             | \$798.00     |

**INVOICE SUMMARY**

*In connection with our file number 025558.0009*

**CURRENT FEES** \$ 2,508.00

**CURRENT AMOUNT DUE:** \$ 2,508.00

# FORDHARRISON<sup>LLP</sup>

## Remittance Statement

June 15, 2020

Remittance Statement for services in connection with our file number 025558.0009:

AssuredPartners Capital, Inc. and Neace Lukens Holding Company

---

Summary of charges for invoice #791714:

|                          |    |                 |
|--------------------------|----|-----------------|
| CURRENT FEES .....       | \$ | <u>2,508.00</u> |
| CURRENT AMOUNT DUE ..... | \$ | 2,508.00        |

Please remit this copy with your payment to:

FORD & HARRISON LLP  
Post Office Box 890836  
Charlotte, NC 28289-0836

# FORDHARRISON<sup>LLP</sup>

July 9, 2020

PRIVILEGED & CONFIDENTIAL

AssuredPartners Capital, Inc. and Neace Lukens Holding Company  
200 Colonial Center Parkway, Suite 140  
Lake Mary, FL 32746

Attention: Stan K. Kinnett, II, Esq.  
General Counsel & Executive Vice President

TAX I.D. 58-1314995

Invoice #: 793249

For services rendered in connection with our file number 025558-0009:

ASSUREDPARTNERS CAPITAL, INC. AND NEACE LUKENS HOLDING COMPANY - FORUM  
BENEFITS, INC. V. ASSUREDPARTNERS, NL AND BRIAN BANNON; CASE NO.:  
2016-CP-07-02541; BREACH OF CONTRACT

FEES

| <u>Date</u> | <u>Tkpr</u> | <u>Hours</u> | <u>Description</u>                                                                                                |
|-------------|-------------|--------------|-------------------------------------------------------------------------------------------------------------------|
| 06/04/20    | JAL         | 2.60         | Analysis of [REDACTED] and preparation for hearing; telephone conference with Anna.                               |
| 06/08/20    | JAL         | 8.10         | Analysis of [REDACTED] preparation of reply and preparation for hearing.                                          |
| 06/09/20    | JAL         | 7.20         | Analysis of [REDACTED] preparation of reply and preparation for hearing. Telephone conference with court.         |
| 06/10/20    | JAL         | 6.10         | Preparation for and conduct Summary Judgment hearing.                                                             |
| 06/10/20    | MJG         | 0.50         | [REDACTED]                                                                                                        |
| 06/11/20    | JAL         | 4.50         | Preparation of proposed order.                                                                                    |
| 06/12/20    | JAL         | 2.20         | Continued preparation of proposed order.                                                                          |
| 06/16/20    | JAL         | 0.90         | Telephone conference with A. Ketcham regarding [REDACTED]<br>[REDACTED]                                           |
| 06/17/20    | JAL         | 1.20         | Finalize proposed order; telephone conference and email to court regarding proposed order; analysis of [REDACTED] |

| <u>Date</u>                | <u>Tkpr</u> | <u>Hours</u> | <u>Description</u>                                                     |
|----------------------------|-------------|--------------|------------------------------------------------------------------------|
| 06/18/20                   | JAL         | 0.60         | Telephone conference with B. Bannon regarding [REDACTED]<br>[REDACTED] |
| <b>TOTAL CURRENT FEES:</b> |             |              | <b>\$ 12,882.00</b>                                                    |

**TIMEKEEPER SUMMARY**

| <u>Name</u>        | <u>Hours</u> | <u>Hourly Rate</u> | <u>Value</u> |
|--------------------|--------------|--------------------|--------------|
| Lehrer, Jeffrey A. | 33.40        | 380.00             | \$12,692.00  |
| Gilley, J. Matthew | 0.50         | 380.00             | \$190.00     |

**INVOICE SUMMARY**

*In connection with our file number 025558.0009*

|                            |                     |
|----------------------------|---------------------|
| <b>CURRENT FEES</b>        | <b>\$ 12,882.00</b> |
| <b>CURRENT AMOUNT DUE:</b> | <b>\$ 12,882.00</b> |

# FORDHARRISON<sup>LLP</sup>

## Remittance Statement

July 9, 2020

Remittance Statement for services in connection with our file number 025558.0009:

AssuredPartners Capital, Inc. and Neace Lukens Holding Company

---

Summary of charges for invoice #793249:

|                          |    |                  |
|--------------------------|----|------------------|
| CURRENT FEES .....       | \$ | <u>12,882.00</u> |
| CURRENT AMOUNT DUE ..... | \$ | <b>12,882.00</b> |

Please remit this copy with your payment to:

FORD & HARRISON LLP  
Post Office Box 890836  
Charlotte, NC 28289-0836



# FORDHARRISON<sup>LLP</sup>

September 17, 2020

PRIVILEGED & CONFIDENTIAL

AssuredPartners Capital, Inc. and Neace Lukens Holding Company  
200 Colonial Center Parkway, Suite 140  
Lake Mary, FL 32746

Attention: Stan K. Kinnett, II, Esq.  
General Counsel & Executive Vice President

TAX I.D. 58-1314995

Invoice #: 799758

For services rendered in connection with our file number 025558-0009:

ASSUREDPARTNERS CAPITAL, INC. AND NEACE LUKENS HOLDING COMPANY - FORUM  
BENEFITS, INC. V. ASSUREDPARTNERS, NL AND BRIAN BANNON; CASE NO.:  
2016-CP-07-02541; BREACH OF CONTRACT

FEEES

| <u>Date</u>                | <u>Tkpr</u> | <u>Hours</u> | <u>Description</u>                                     |
|----------------------------|-------------|--------------|--------------------------------------------------------|
| 08/03/20                   | JAL         | 0.10         | Emails to and from A. Ketcham regarding [REDACTED]     |
| 08/06/20                   | JAL         | 0.30         | Telephone conference with M. Ward regarding [REDACTED] |
| <b>TOTAL CURRENT FEES:</b> |             |              | <b>\$ 152.00</b>                                       |

TIMEKEEPER SUMMARY

| <u>Name</u>        | <u>Hours</u> | <u>Hourly Rate</u> | <u>Value</u> |
|--------------------|--------------|--------------------|--------------|
| Lehrer, Jeffrey A. | 0.40         | 380.00             | \$152.00     |

**INVOICE SUMMARY**

*In connection with our file number 025558.0009*

|                     |    |               |
|---------------------|----|---------------|
| CURRENT FEES        | \$ | <u>152.00</u> |
| CURRENT AMOUNT DUE: | \$ | 152.00        |

# FORDHARRISON<sup>LLP</sup>

## Remittance Statement

September 17, 2020

Remittance Statement for services in connection with our file number 025558.0009:

AssuredPartners Capital, Inc. and Neace Lukens Holding Company

---

Summary of charges for invoice #799758:

|                          |    |               |
|--------------------------|----|---------------|
| CURRENT FEES .....       | \$ | <u>152.00</u> |
| CURRENT AMOUNT DUE ..... | \$ | 152.00        |

Please remit this copy with your payment to:

FORD & HARRISON LLP  
Post Office Box 890836  
Charlotte, NC 28289-0836

# FORDHARRISON<sup>LLP</sup>

October 15, 2020

**PRIVILEGED & CONFIDENTIAL**

AssuredPartners Capital, Inc. and Neace Lukens Holding Company  
200 Colonial Center Parkway, Suite 140  
Lake Mary, FL 32746

Attention: Stan K. Kinnett, II, Esq.  
General Counsel & Executive Vice President

TAX I.D. 58-1314995

Invoice #: 802622

For services rendered in connection with our file number 025558-0009:

**ASSUREDPARTNERS CAPITAL, INC. AND NEACE LUKENS HOLDING COMPANY - FORUM  
BENEFITS, INC. V. ASSUREDPARTNERS, NL AND BRIAN BANNON; CASE NO.:  
2016-CP-07-02541; BREACH OF CONTRACT**

**FEES**

| <u>Date</u> | <u>Tkpr</u> | <u>Hours</u> | <u>Description</u>                                                                                                                                                                                                               |
|-------------|-------------|--------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 09/16/20    | JAL         | 0.40         | Analysis of [REDACTED]<br>correspondence with A. Ketcham regarding [REDACTED]                                                                                                                                                    |
| 09/23/20    | JAL         | 0.70         | Telephone conferences with court regarding Judge Buckner retiring;<br>telephone conference with administrative judge's clerk; analysis of<br>[REDACTED]; telephone conferences with Anna; email to<br>and from opposing counsel. |
| 09/30/20    | JAL         | 0.50         | Telephone conference with court regarding motion for summary<br>judgment; email to and from A. Ketcham regarding [REDACTED]<br>analysis of [REDACTED]<br>[REDACTED]                                                              |

**TOTAL CURRENT FEES:** \$ 608.00

**TIMEKEEPER SUMMARY**

| <u>Name</u>        | <u>Hours</u> | <u>Hourly Rate</u> | <u>Value</u> |
|--------------------|--------------|--------------------|--------------|
| Lehrer, Jeffrey A. | 1.60         | 380.00             | \$608.00     |

AssuredPartners Capital, Inc. and Neace Lukens Holding Company  
October 15, 2020  
Page 2

**INVOICE SUMMARY**

*In connection with our file number 025558.0009*

|                     |    |        |
|---------------------|----|--------|
| CURRENT FEES        | \$ | 608.00 |
|                     |    | <hr/>  |
| CURRENT AMOUNT DUE: | \$ | 608.00 |

# FORDHARRISON<sup>LLP</sup>

## Remittance Statement

October 15, 2020

Remittance Statement for services in connection with our file number 025558.0009:

AssuredPartners Capital, Inc. and Neace Lukens Holding Company

---

Summary of charges for invoice #802622:

|                         |    |               |
|-------------------------|----|---------------|
| CURRENT FEES.....       | \$ | <u>608.00</u> |
| CURRENT AMOUNT DUE..... | \$ | <b>608.00</b> |

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Post Office Box 890836  
Charlotte, NC 28289-0836

# FORDHARRISON<sup>LLP</sup>

November 19, 2020

PRIVILEGED & CONFIDENTIAL

AssuredPartners, Inc.  
200 Colonial Center Parkway, Suite 140  
Lake Mary, FL 32746

Attention: Steven Muscatello, Esq.  
SVP & Deputy General Counsel

TAX I.D. 58-1314995

Invoice #: 806240

For services rendered in connection with our file number 025558-0009:

ASSUREDPARTNERS, INC. - FORUM BENEFITS, INC. V. ASSUREDPARTNERS, NL AND BRIAN BANNON; CASE NO.: 2016-CP-07-02541; BREACH OF CONTRACT

FEES

| <u>Date</u> | <u>Tkpr</u> | <u>Hours</u> | <u>Description</u>                                                                                                                                                                                                                                         |
|-------------|-------------|--------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 10/01/20    | JAL         | 0.40         | Telephone conference with court regarding summary judgment issue; telephone conference with opposing counsel regarding summary judgment issue and potential for re-hearing; email to and from Anna regarding [REDACTED]                                    |
| 10/05/20    | JAL         | 0.30         | Telephone conference with and email to and from opposing counsel regarding motion and hearing issues.                                                                                                                                                      |
| 10/06/20    | JAL         | 2.50         | Attend and participate in Beaufort jury trial status conference and analysis of trial schedule issues; telephone conference with and email to and from opposing counsel S. LeBlanc regarding trial issues and potential for motion for date certain trial. |
| 10/07/20    | JAL         | 0.40         | Telephone conference with and email to and from court and opposing counsel regarding motion and hearing issues.                                                                                                                                            |
| 10/15/20    | JAL         | 0.40         | Analysis of [REDACTED] [REDACTED] conference with opposing counsel regarding date certain trial issues; analysis of [REDACTED]                                                                                                                             |
| 10/21/20    | JAL         | 0.40         | Analysis of [REDACTED] Telephone conference with and email to and from opposing counsel regarding motion.                                                                                                                                                  |

| <u>Date</u>                | <u>Tkpr</u> | <u>Hours</u> | <u>Description</u>                                                                                           |
|----------------------------|-------------|--------------|--------------------------------------------------------------------------------------------------------------|
| 10/28/20                   | JAL         | 1.40         | Preparation of motion to withdraw jury trial demand; preparation of proposed stipulation of facts for trial. |
| <b>TOTAL CURRENT FEES:</b> |             |              | <b>\$ 2,204.00</b>                                                                                           |

TIMEKEEPER SUMMARY

| <u>Name</u>        | <u>Hours</u> | <u>Hourly Rate</u> | <u>Value</u> |
|--------------------|--------------|--------------------|--------------|
| Lehrer, Jeffrey A. | 5.80         | 380.00             | \$2,204.00   |

INVOICE SUMMARY

*In connection with our file number 025558.0009*

|                            |                    |
|----------------------------|--------------------|
| <b>CURRENT FEES</b>        | <b>\$ 2,204.00</b> |
| <b>CURRENT AMOUNT DUE:</b> | <b>\$ 2,204.00</b> |



# FORDHARRISON<sup>LLP</sup>

## Remittance Statement

November 19, 2020

Remittance Statement for services in connection with our file number 025558.0009:

AssuredPartners, Inc.

---

Summary of charges for invoice #806240:

|                          |    |                 |
|--------------------------|----|-----------------|
| CURRENT FEES .....       | \$ | <u>2,204.00</u> |
| CURRENT AMOUNT DUE ..... | \$ | <b>2,204.00</b> |

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Post Office Box 890836  
Charlotte, NC 28289-0836

# FORDHARRISON<sup>LLP</sup>

December 11, 2020

## PRIVILEGED & CONFIDENTIAL

AssuredPartners, Inc.  
200 Colonial Center Parkway, Suite 140  
Lake Mary, FL 32746

Attention: Steven Muscatello, Esq.  
SVP & Deputy General Counsel

TAX I.D. 58-1314995

Invoice #: 808230

For services rendered in connection with our file number 025558-0009:

ASSUREDPARTNERS, INC. - FORUM BENEFITS, INC. V. ASSUREDPARTNERS, NL AND  
BRIAN BANNON; CASE NO.: 2016-CP-07-02541; BREACH OF CONTRACT

## FEES

| <u>Date</u>                | <u>Tkpr</u> | <u>Hours</u> | <u>Description</u>                                                                                                                       |
|----------------------------|-------------|--------------|------------------------------------------------------------------------------------------------------------------------------------------|
| 11/10/20                   | JAL         | 1.60         | Telephone conferences and emails to and from Court, opposing counsel, Anna, and Brian Bannon regarding [REDACTED] analysis of [REDACTED] |
| 11/20/20                   | JAL         | 0.30         | Emails to and from opposing counsel regarding trial issues and analysis of [REDACTED]                                                    |
| 11/30/20                   | JAL         | 0.70         | Preparation and revision of stipulated facts for trial; analysis of [REDACTED]                                                           |
| <b>TOTAL CURRENT FEES:</b> |             |              | <b>\$ 988.00</b>                                                                                                                         |

## TIMEKEEPER SUMMARY

| <u>Name</u>        | <u>Hours</u> | <u>Hourly Rate</u> | <u>Value</u> |
|--------------------|--------------|--------------------|--------------|
| Lehrer, Jeffrey A. | 2.60         | 380.00             | \$988.00     |

AssuredPartners, Inc.  
December 11, 2020  
Page 2

**INVOICE SUMMARY**

*In connection with our file number 025558.0009*

|                     |    |        |
|---------------------|----|--------|
| CURRENT FEES        | \$ | 988.00 |
|                     |    | <hr/>  |
| CURRENT AMOUNT DUE: | \$ | 988.00 |

# FORDHARRISON<sup>LLP</sup>

## Remittance Statement

December 11, 2020

Remittance Statement for services in connection with our file number 025558.0009:

AssuredPartners, Inc.

---

Summary of charges for invoice #808230:

|                                |           |               |
|--------------------------------|-----------|---------------|
| CURRENT FEES.....              | \$        | <u>988.00</u> |
| <b>CURRENT AMOUNT DUE.....</b> | <b>\$</b> | <b>988.00</b> |

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**Wire/ACH Instructions:**

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SWIFT Code BRBTUS33

For the account of Ford & Harrison LLP

RTN/ABA#061113415

Account #0005244790498

**Check Payment:**

Ford & Harrison LLP

Post Office Box 890836

Charlotte, NC 28289-0836

**For Credit Card Payment:**

<https://www.fordharrison.com/clientlogin.aspx>

# FORDHARRISON<sup>LLP</sup>

January 19, 2021

PRIVILEGED & CONFIDENTIAL

AssuredPartners, Inc.  
200 Colonial Center Parkway, Suite 140  
Lake Mary, FL 32746

Attention: Steven Muscatello, Esq.  
SVP & Deputy General Counsel

TAX I.D. 58-1314995

Invoice #: 810306

For services rendered in connection with our file number 025558-0009:

ASSUREDPARTNERS, INC. - FORUM BENEFITS, INC. V. ASSUREDPARTNERS, NL AND  
BRIAN BANNON; CASE NO.: 2016-CP-07-02541; BREACH OF CONTRACT

FEES

| <u>Date</u>                | <u>Tkpr</u> | <u>Hours</u> | <u>Description</u>                                                                      |
|----------------------------|-------------|--------------|-----------------------------------------------------------------------------------------|
| 12/07/20                   | JAL         | 0.10         | Analysis of [REDACTED]                                                                  |
| 12/07/20                   | JAL         | 0.10         | Email to and from opposing counsel regarding jury trial scheduling and delay issues.    |
| 12/07/20                   | JAL         | 0.10         | Email to and from Anna regarding [REDACTED]<br>[REDACTED]                               |
| 12/08/20                   | JAL         | 0.20         | Telephone conference with opposing counsel regarding case status and options for trial. |
| 12/08/20                   | JAL         | 0.10         | Email with opposing counsel regarding case status and options for trial.                |
| <b>TOTAL CURRENT FEES:</b> |             |              | <b>\$ 228.00</b>                                                                        |

TIMEKEEPER SUMMARY

| <u>Name</u>        | <u>Hours</u> | <u>Hourly Rate</u> | <u>Value</u> |
|--------------------|--------------|--------------------|--------------|
| Lehrer, Jeffrey A. | 0.60         | 380.00             | \$228.00     |

AssuredPartners, Inc.  
January 19, 2021  
Page 2

**INVOICE SUMMARY**

*In connection with our file number 025558.0009*

|                     |    |        |
|---------------------|----|--------|
| CURRENT FEES        | \$ | 228.00 |
|                     |    | <hr/>  |
| CURRENT AMOUNT DUE: | \$ | 228.00 |

# FORDHARRISON<sup>LLP</sup>

## Remittance Statement

January 19, 2021

Remittance Statement for services in connection with our file number 025558.0009:

AssuredPartners, Inc.

---

Summary of charges for invoice #810306:

|                          |    |        |
|--------------------------|----|--------|
| CURRENT FEES .....       | \$ | 228.00 |
| CURRENT AMOUNT DUE ..... | \$ | 228.00 |

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**Wire/ACH Instructions:**

BB&T, now Truist  
SWIFT Code BRBTUS33  
For the account of Ford & Harrison LLP  
RTN/ABA#061113415  
Account #0005244790498

**Check Payment:**

Ford & Harrison LLP  
Post Office Box 890836  
Charlotte, NC 28289-0836

**For Credit Card Payment:**

<https://www.fordharrison.com/clientlogin.aspx>

# FORDHARRISON<sup>LLP</sup>

February 15, 2021

**PRIVILEGED & CONFIDENTIAL**

AssuredPartners, Inc.  
200 Colonial Center Parkway, Suite 140  
Lake Mary, FL 32746

Attention: Steven Muscatello, Esq.  
SVP & Deputy General Counsel

TAX I.D. 58-1314995

Invoice #: 813286

For services rendered in connection with our file number 025558-0009:

**ASSUREDPARTNERS, INC. - FORUM BENEFITS, INC. V. ASSUREDPARTNERS, NL AND BRIAN BANNON; CASE NO.: 2016-CP-07-02541; BREACH OF CONTRACT**

**FEES**

| <u>Date</u>                | <u>Tkpr</u> | <u>Hours</u> | <u>Description</u>                                          |
|----------------------------|-------------|--------------|-------------------------------------------------------------|
| 01/11/21                   | JAL         | 0.30         | Telephone conference with Brian Bannon regarding [REDACTED] |
| 01/19/21                   | JAL         | 0.10         | Telephone conference with B. Bannon regarding [REDACTED]    |
| <b>TOTAL CURRENT FEES:</b> |             |              | <b>\$ 152.00</b>                                            |

**TIMEKEEPER SUMMARY**

| <u>Name</u>        | <u>Hours</u> | <u>Hourly Rate</u> | <u>Value</u> |
|--------------------|--------------|--------------------|--------------|
| Lehrer, Jeffrey A. | 0.40         | 380.00             | \$152.00     |



**INVOICE SUMMARY**

*In connection with our file number 025558.0009*

|                             |    |        |
|-----------------------------|----|--------|
| PAST DUE BALANCE ON ACCOUNT | \$ | 228.00 |
| CURRENT FEES                | \$ | 152.00 |
| CURRENT AMOUNT DUE:         | \$ | 152.00 |
| TOTAL AMOUNT DUE            | \$ | 380.00 |

*(Past Due Balance plus the Current Charges)*

**Payments received after date of statement may not be reflected.  
If Past Due Balance has been paid, please disregard and only pay the Current Invoice Total.**

**FORDHARRISON<sup>LLP</sup>****Remittance Statement**

February 15, 2021

Remittance Statement for services in connection with our file number 025558.0009:

AssuredPartners, Inc.

Summary of charges for invoice #813286:

|                                                    |           |               |
|----------------------------------------------------|-----------|---------------|
| PAST DUE BALANCE ON ACCOUNT .....                  | \$        | 228.00        |
| CURRENT FEES.....                                  | \$        | <u>152.00</u> |
| <b>CURRENT AMOUNT DUE.....</b>                     | <b>\$</b> | <b>152.00</b> |
| <br>TOTAL AMOUNT DUE .....                         | <br>\$    | <br>380.00    |
| <i>(Past Due Balance plus the Current Charges)</i> |           |               |

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 SWIFT Code BRBTUS33  
 For the account of Ford & Harrison LLP  
 RTN/ABA#061113415  
 Account #0005244790498

**Check Payment:**

Ford & Harrison LLP  
 Post Office Box 890836  
 Charlotte, NC 28289-0836

**For Credit Card Payment:**<https://www.fordharrison.com/clientlogin.aspx>

**Payments received after date of statement may not be reflected.**  
**If Past Due Balance has been paid, please disregard and only pay the Total Current Invoice.**

# FORDHARRISON<sup>LLP</sup>

## Past Due Balance Summary

February 15, 2021

This Summary reflects the Past Due Balance, in connection with our file number 025558.0009:

**AssuredPartners, Inc.**

---

Outstanding Bill Balances are reflected through February 15, 2021:

| <b><u>Invoice Date</u></b> | <b><u>Invoice #</u></b> | <b><u>Amount Due</u></b> |
|----------------------------|-------------------------|--------------------------|
| 01/19/2021                 | #810306                 | \$228.00                 |
| <b>PAST DUE BALANCE:</b>   |                         | <hr/> \$228.00           |

# FORDHARRISON<sup>LLP</sup>

March 15, 2021

## PRIVILEGED & CONFIDENTIAL

AssuredPartners, Inc.  
200 Colonial Center Parkway, Suite 140  
Lake Mary, FL 32746

Attention: Steven Muscatello, Esq.  
SVP & Deputy General Counsel

TAX I.D. 58-1314995

Invoice #: 815342

For services rendered in connection with our file number 025558-0009:

ASSUREDPARTNERS, INC. - FORUM BENEFITS, INC. V. ASSUREDPARTNERS, NL AND  
BRIAN BANNON; CASE NO.: 2016-CP-07-02541; BREACH OF CONTRACT

## FEES

| <u>Date</u> | <u>Tkpr</u> | <u>Hours</u> | <u>Description</u> |
|-------------|-------------|--------------|--------------------|
|-------------|-------------|--------------|--------------------|

|          |     |      |  |
|----------|-----|------|--|
| 02/04/21 | JAL | 1.50 |  |
|----------|-----|------|--|

|          |     |      |  |
|----------|-----|------|--|
| 02/04/21 | JAL | 0.30 |  |
|----------|-----|------|--|

|          |     |      |  |
|----------|-----|------|--|
| 02/04/21 | JAL | 0.40 |  |
|----------|-----|------|--|

**TOTAL CURRENT FEES:**

\$ 836.00

## TIMEKEEPER SUMMARY

| <u>Name</u>        | <u>Hours</u> | <u>Hourly Rate</u> | <u>Value</u> |
|--------------------|--------------|--------------------|--------------|
| Lehrer, Jeffrey A. | 2.20         | 380.00             | \$836.00     |

AssuredPartners, Inc.  
March 15, 2021  
Page 2

**INVOICE SUMMARY**

*In connection with our file number 025558.0009*

|                     |    |        |
|---------------------|----|--------|
| CURRENT FEES        | \$ | 836.00 |
|                     |    | <hr/>  |
| CURRENT AMOUNT DUE: | \$ | 836.00 |

# FORDHARRISON<sup>LLP</sup>

## Remittance Statement

March 15, 2021

Remittance Statement for services in connection with our file number 025558.0009:

AssuredPartners, Inc.

---

Summary of charges for invoice #815342:

|                                |           |               |
|--------------------------------|-----------|---------------|
| CURRENT FEES.....              | \$        | 836.00        |
| <b>CURRENT AMOUNT DUE.....</b> | <b>\$</b> | <b>836.00</b> |

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For the account of Ford & Harrison LLP  
RTN/ABA#061113415  
Account #0005244790498

**Check Payment:**

Ford & Harrison LLP  
Post Office Box 890836  
Charlotte, NC 28289-0836

**For Credit Card Payment:**

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# FORDHARRISON<sup>LLP</sup>

April 16, 2021

PRIVILEGED & CONFIDENTIAL

AssuredPartners, Inc.  
200 Colonial Center Parkway, Suite 140  
Lake Mary, FL 32746

Attention: Steven Muscatello, Esq.  
SVP & Deputy General Counsel

TAX I.D. 58-1314995

Invoice #: 818041

For services rendered in connection with our file number 025558-0009:

ASSUREDPARTNERS, INC. - FORUM BENEFITS, INC. V. ASSUREDPARTNERS, NL AND  
BRIAN BANNON; CASE NO.: 2016-CP-07-02541; BREACH OF CONTRACT

FEES

| <u>Date</u> | <u>Tkpr</u> | <u>Hours</u> | <u>Description</u>                                                                                                                                          |
|-------------|-------------|--------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 03/05/21    | JAL         | 0.50         | Telephone conference with Mack regarding [REDACTED]                                                                                                         |
| 03/05/21    | JAL         | 0.20         | Telephone conference with Anna regarding [REDACTED]<br>[REDACTED]                                                                                           |
| 03/18/21    | JAL         | 0.50         | Telephone conference with Bannon regarding [REDACTED]                                                                                                       |
| 03/29/21    | JAL         | 0.40         | Telephone conferences with Beaufort County officials regarding<br>potential trial dates and scheduling issues and need for motion for<br>status conference. |

**TOTAL CURRENT FEES:** \$ 608.00

TIMEKEEPER SUMMARY

| <u>Name</u>        | <u>Hours</u> | <u>Hourly Rate</u> | <u>Value</u> |
|--------------------|--------------|--------------------|--------------|
| Lehrer, Jeffrey A. | 1.60         | 380.00             | \$608.00     |

AssuredPartners, Inc.  
April 16, 2021  
Page 2

**INVOICE SUMMARY**

*In connection with our file number 025558.0009*

|                     |    |        |
|---------------------|----|--------|
| CURRENT FEES        | \$ | 608.00 |
|                     |    | <hr/>  |
| CURRENT AMOUNT DUE: | \$ | 608.00 |



# FORDHARRISON<sup>LLP</sup>

## Remittance Statement

April 16, 2021

Remittance Statement for services in connection with our file number 025558.0009:

AssuredPartners, Inc.

---

Summary of charges for invoice #818041:

|                          |    |               |
|--------------------------|----|---------------|
| CURRENT FEES .....       | \$ | <u>608.00</u> |
| CURRENT AMOUNT DUE ..... | \$ | 608.00        |

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**Wire/ACH Instructions:**

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For the account of Ford & Harrison LLP  
RTN/ABA#061113415  
Account #0005244790498

**Check Payment:**

Ford & Harrison LLP  
Post Office Box 890836  
Charlotte, NC 28289-0836

**For Credit Card Payment:**

<https://www.fordharrison.com/clientlogin.aspx>

# FORDHARRISON<sup>LLP</sup>

May 17, 2021

PRIVILEGED & CONFIDENTIAL

AssuredPartners, Inc.  
200 Colonial Center Parkway, Suite 140  
Lake Mary, FL 32746

Attention: Steven Muscatello, Esq.  
SVP & Deputy General Counsel

TAX I.D. 58-1314995

Invoice #: 820691

For services rendered in connection with our file number 025558-0009:

ASSUREDPARTNERS, INC. - FORUM BENEFITS, INC. V. ASSUREDPARTNERS, NL AND BRIAN  
BANNON; CASE NO.: 2016-CP-07-02541; BREACH OF CONTRACT

FEES

| <u>Date</u> | <u>Tkpr</u> | <u>Hours</u> | <u>Description</u>                                                                              |
|-------------|-------------|--------------|-------------------------------------------------------------------------------------------------|
| 04/13/21    | JAL         | 0.20         | Analysis of [REDACTED]                                                                          |
| 04/13/21    | JAL         | 0.40         | Preparation of motion for status conference .                                                   |
| 04/13/21    | JAL         | 0.30         | Telephone conference and emails to and from opposing counsel regarding trial scheduling issues. |
| 04/15/21    | JAL         | 0.40         | Telephone conference with opposing counsel regarding trial scheduling issues.                   |
| 04/15/21    | JAL         | 0.10         | Email to and from Anna regarding [REDACTED]                                                     |
| 04/16/21    | JAL         | 0.10         | Emails to and from Anna regarding [REDACTED]                                                    |
| 04/16/21    | JAL         | 0.30         | Finalization of and file consent motion.                                                        |
| 04/16/21    | JAL         | 0.20         | Emails to and from opposing counsel regarding trial.                                            |

**TOTAL CURRENT FEES:**

\$ 760.00

AssuredPartners, Inc.  
 May 17, 2021  
 Page 2

**TIMEKEEPER SUMMARY**

| <u>Name</u>        | <u>Hours</u> | <u>Hourly Rate</u> | <u>Value</u> |
|--------------------|--------------|--------------------|--------------|
| Lehrer, Jeffrey A. | 2.00         | 380.00             | \$760.00     |

**EXPENSES:**

|                                                                                     |    |       |
|-------------------------------------------------------------------------------------|----|-------|
| JAL1 - Consent Motion to Date Certain Trial and Status Conference filed on 4-16-21. | \$ | 31.74 |
|-------------------------------------------------------------------------------------|----|-------|

|                                |           |              |
|--------------------------------|-----------|--------------|
| <b>TOTAL CURRENT EXPENSES:</b> | <b>\$</b> | <b>31.74</b> |
|--------------------------------|-----------|--------------|

**INVOICE SUMMARY**

*In connection with our file number 025558.0009*

|                             |    |        |
|-----------------------------|----|--------|
| PAST DUE BALANCE ON ACCOUNT | \$ | 608.00 |
|-----------------------------|----|--------|

|              |    |        |
|--------------|----|--------|
| CURRENT FEES | \$ | 760.00 |
|--------------|----|--------|

|                  |    |       |
|------------------|----|-------|
| CURRENT EXPENSES | \$ | 31.74 |
|------------------|----|-------|

|                            |           |               |
|----------------------------|-----------|---------------|
| <b>CURRENT AMOUNT DUE:</b> | <b>\$</b> | <b>791.74</b> |
|----------------------------|-----------|---------------|

|                         |           |                 |
|-------------------------|-----------|-----------------|
| <b>TOTAL AMOUNT DUE</b> | <b>\$</b> | <b>1,399.74</b> |
|-------------------------|-----------|-----------------|

*(Past Due Balance plus the Current Charges)*

**Payments received after date of statement may not be reflected.**  
**If Past Due Balance has been paid, please disregard and only pay the Current Invoice Total.**

# FORDHARRISON<sup>LLP</sup>

## Remittance Statement

May 17, 2021

Remittance Statement for services in connection with our file number 025558.0009:

AssuredPartners, Inc.

---

Summary of charges for invoice #820691:

|                                                    |        |              |
|----------------------------------------------------|--------|--------------|
| PAST DUE BALANCE ON ACCOUNT .....                  | \$     | 608.00       |
| CURRENT FEES .....                                 | \$     | 760.00       |
| CURRENT EXPENSES .....                             | \$     | <u>31.74</u> |
| CURRENT AMOUNT DUE .....                           | \$     | 791.74       |
| <br>TOTAL AMOUNT DUE.....                          | <br>\$ | <br>1,399.74 |
| <i>(Past Due Balance plus the Current Charges)</i> |        |              |

Please remit this copy if paying via check.

Please forward pay confirmation to [ar@fordharrison.com](mailto:ar@fordharrison.com) if paying electronically.

**Wire/ACH Instructions:**

BB&T, now Truist  
SWIFT Code BRBTUS33  
For the account of Ford & Harrison LLP  
RTN/ABA#061113415  
Account #0005244790498

**Check Payment:**

Ford & Harrison LLP  
Post Office Box 890836  
Charlotte, NC 28289-0836

**For Credit Card Payment:**

<https://www.fordharrison.com/clientlogin.aspx>

Payments received after date of statement may not be reflected.

If Past Due Balance has been paid, please disregard and only pay the Total Current Invoice.

# FORDHARRISON<sup>LLP</sup>

## Past Due Balance Summary

May 17, 2021

This Summary reflects the Past Due Balance, in connection with our file number 025558.0009:

**AssuredPartners, Inc.**

---

Outstanding Bill Balances are reflected through May 17, 2021:

| <b><u>Invoice Date</u></b> | <b><u>Invoice #</u></b> | <b><u>Amount Due</u></b> |
|----------------------------|-------------------------|--------------------------|
| 04/16/2021                 | #818041                 | \$608.00                 |
| <b>PAST DUE BALANCE:</b>   |                         | <hr/> <b>\$608.00</b>    |

# FORDHARRISON<sup>LLP</sup>

June 15, 2021

PRIVILEGED & CONFIDENTIAL

AssuredPartners, Inc.  
200 Colonial Center Parkway, Suite 140  
Lake Mary, FL 32746

Attention: Steven Muscatello, Esq.  
SVP & Deputy General Counsel

TAX I.D. 58-1314995

Invoice #: 823543

For services rendered in connection with our file number 025558-0009:

ASSUREDPARTNERS, INC. - FORUM BENEFITS, INC. V. ASSUREDPARTNERS, NL AND BRIAN  
BANNON; CASE NO.: 2016-CP-07-02541; BREACH OF CONTRACT

FEES

| <u>Date</u> | <u>Tkpr</u> | <u>Hours</u> | <u>Description</u>                                                      |
|-------------|-------------|--------------|-------------------------------------------------------------------------|
| 05/03/21    | JAL         | 0.20         | Telephone conference with Anna regarding [REDACTED]                     |
| 05/17/21    | JAL         | 0.20         | Correspondence with court regarding status conference.                  |
| 05/17/21    | JAL         | 0.10         | Email to and from Anna regarding [REDACTED]                             |
| 05/17/21    | JAL         | 0.20         | Emails to and from opposing counsel regarding status conference issues. |
| 05/18/21    | JAL         | 0.10         | Telephone conference with Anna guarding [REDACTED]<br>[REDACTED]        |
| 05/20/21    | JAL         | 0.70         | Preparation for and conduct conference with court.                      |
| 05/20/21    | JAL         | 0.20         | Email to and from with Mac Ward regarding [REDACTED]                    |
| 05/20/21    | JAL         | 0.10         | Email to and from Anna regarding [REDACTED]                             |
| 05/20/21    | JAL         | 0.30         | Telephone conference with Anna regarding [REDACTED]                     |
| 05/20/21    | JAL         | 0.40         | Analysis of [REDACTED]                                                  |
| 05/21/21    | JAL         | 0.30         | Correspondence with Mac regarding [REDACTED]                            |

| <u>Date</u>                | <u>Tkpr</u> | <u>Hours</u> | <u>Description</u>                           |
|----------------------------|-------------|--------------|----------------------------------------------|
| 05/21/21                   | JAL         | 0.50         | Analysis of [REDACTED]                       |
| 05/21/21                   | JAL         | 0.10         | Email to and from Anna regarding [REDACTED]  |
| 05/21/21                   | JAL         | 0.20         | Email to and from Brian regarding [REDACTED] |
| 05/24/21                   | JAL         | 0.20         | Email to and from Anna regarding [REDACTED]  |
| 05/24/21                   | JAL         | 1.60         | Analysis of [REDACTED]                       |
| <b>TOTAL CURRENT FEES:</b> |             |              | <b>\$ 2,052.00</b>                           |

TIMEKEEPER SUMMARY

| <u>Name</u>        | <u>Hours</u> | <u>Hourly Rate</u> | <u>Value</u> |
|--------------------|--------------|--------------------|--------------|
| Lehrer, Jeffrey A. | 5.40         | 380.00             | \$2,052.00   |

INVOICE SUMMARY

*In connection with our file number 025558.0009*

|                             |                    |
|-----------------------------|--------------------|
| PAST DUE BALANCE ON ACCOUNT | \$ 791.74          |
| CURRENT FEES                | \$ 2,052.00        |
| <b>CURRENT AMOUNT DUE:</b>  | <b>\$ 2,052.00</b> |
| TOTAL AMOUNT DUE            | \$ 2,843.74        |

*(Past Due Balance plus the Current Charges)*

**Payments received after date of statement may not be reflected.**  
**If Past Due Balance has been paid, please disregard and only pay the Current Invoice Total.**

# FORDHARRISON<sup>LLP</sup>

## Remittance Statement

June 15, 2021

Remittance Statement for services in connection with our file number 025558.0009:

AssuredPartners, Inc.

---

Summary of charges for invoice #823543:

PAST DUE BALANCE ON ACCOUNT ..... \$ 791.74

CURRENT FEES ..... \$ 2,052.00

**CURRENT AMOUNT DUE ..... \$ 2,052.00**

TOTAL AMOUNT DUE..... \$ 2,843.74  
(Past Due Balance plus the Current Charges)

Please remit this copy if paying via check.  
Please forward pay confirmation to [ar@fordharrison.com](mailto:ar@fordharrison.com) if paying electronically.

**Wire/ACH Instructions:**  
BB&T, now Truist  
SWIFT Code BRBTUS33  
For the account of Ford & Harrison LLP  
RTN/ABA#061113415  
Account #0005244790498

**Check Payment:**  
Ford & Harrison LLP  
Post Office Box 890836  
Charlotte, NC 28289-0836

**For Credit Card Payment:**  
<https://www.fordharrison.com/clientlogin.aspx>

**Payments received after date of statement may not be reflected.**  
**If Past Due Balance has been paid, please disregard and only pay the Total Current Invoice.**



# FORDHARRISON<sup>LLP</sup>

## Past Due Balance Summary

June 15, 2021

This Summary reflects the Past Due Balance, in connection with our file number 025558.0009:

**AssuredPartners, Inc.**

---

Outstanding Bill Balances are reflected through June 15, 2021:

| <u>Invoice Date</u>      | <u>Invoice #</u> | <u>Amount Due</u> |
|--------------------------|------------------|-------------------|
| 05/17/2021               | #820691          | \$791.74          |
| <b>PAST DUE BALANCE:</b> |                  | <hr/> \$791.74    |

# FORDHARRISON<sup>LLP</sup>

July 19, 2021

## PRIVILEGED & CONFIDENTIAL

AssuredPartners, Inc.  
200 Colonial Center Parkway, Suite 140  
Lake Mary, FL 32746

Attention: Steven Muscatello, Esq.  
SVP & Deputy General Counsel

TAX I.D. 58-1314995

Invoice #: 826246

For services rendered in connection with our file number 025558-0009:

ASSUREDPARTNERS, INC. - FORUM BENEFITS, INC. V. ASSUREDPARTNERS, NL AND BRIAN  
BANNON; CASE NO.: 2016-CP-07-02541; BREACH OF CONTRACT

## FEES

| <u>Date</u> | <u>Tkpr</u> | <u>Hours</u> | <u>Description</u>                                                 |
|-------------|-------------|--------------|--------------------------------------------------------------------|
| 06/03/21    | JAL         | 0.50         | Telephone conference with opposing counsel regarding trial issues. |
| 06/03/21    | JAL         | 0.40         | Analysis of [REDACTED]                                             |
| 06/09/21    | JAL         | 0.20         | Emails to and from court regarding trial schedule issues.          |
| 06/09/21    | JAL         | 0.20         | Emails to and from Anna regarding [REDACTED]                       |
| 06/18/21    | JAL         | 3.60         | Analysis of [REDACTED]                                             |
| 06/21/21    | JAL         | 1.40         | Analysis of [REDACTED]                                             |
| 06/21/21    | JAL         | 0.50         | Preparation of executive summary of case.                          |
| 06/21/21    | JAL         | 0.70         | Preparation of trial schedule, strategy and deadlines.             |
| 06/21/21    | JAL         | 0.30         | Analysis of [REDACTED]                                             |
| 06/21/21    | JAL         | 0.50         | Email to and from Anna regarding [REDACTED]                        |
| 06/24/21    | JAL         | 0.60         | Email to and from Anna regarding [REDACTED]<br>[REDACTED]          |
| 06/24/21    | JAL         | 0.40         | Analysis of [REDACTED]                                             |

| <u>Date</u>                | <u>Tkpr</u> | <u>Hours</u> | <u>Description</u>                                                         |
|----------------------------|-------------|--------------|----------------------------------------------------------------------------|
| 06/25/21                   | JAL         | 0.50         | Telephone conference with client regarding [REDACTED]                      |
| 06/25/21                   | JAL         | 0.10         | Voicemail and email to opposing counsel regarding trial discussions.       |
| 06/28/21                   | JAL         | 0.70         | Telephone conference with opposing counsel LeBlanc regarding trial issues. |
| 06/28/21                   | JAL         | 0.60         | Telephone conference with B. Bannon regarding [REDACTED]                   |
| 06/28/21                   | JAL         | 0.50         | Correspondence to witnesses regarding [REDACTED]                           |
| 06/28/21                   | JAL         | 0.20         | Correspondence to M. Ward regarding [REDACTED]                             |
| 06/28/21                   | JAL         | 0.30         | Email to and from Anna regarding [REDACTED]                                |
| 06/29/21                   | JAL         | 0.90         | Telephone conference with Mack Ward regarding [REDACTED]<br>[REDACTED]     |
| <b>TOTAL CURRENT FEES:</b> |             |              | <b>\$ 4,978.00</b>                                                         |

TIMEKEEPER SUMMARY

| <u>Name</u>        | <u>Hours</u> | <u>Hourly Rate</u> | <u>Value</u> |
|--------------------|--------------|--------------------|--------------|
| Lehrer, Jeffrey A. | 13.10        | 380.00             | \$4,978.00   |

**INVOICE SUMMARY**

*In connection with our file number 025558.0009*

|                             |    |          |
|-----------------------------|----|----------|
| PAST DUE BALANCE ON ACCOUNT | \$ | 2,052.00 |
| CURRENT FEES                | \$ | 4,978.00 |
| CURRENT AMOUNT DUE:         | \$ | 4,978.00 |
| TOTAL AMOUNT DUE            | \$ | 7,030.00 |

*(Past Due Balance plus the Current Charges)*

**Payments received after date of statement may not be reflected.  
If Past Due Balance has been paid, please disregard and only pay the Current Invoice Total.**

**FORDHARRISON<sup>LLP</sup>****Remittance Statement**

July 19, 2021

Remittance Statement for services in connection with our file number 025558.0009:

AssuredPartners, Inc.

Summary of charges for invoice #826246:

PAST DUE BALANCE ON ACCOUNT ..... \$ 2,052.00

CURRENT FEES..... \$ 4,978.00**CURRENT AMOUNT DUE..... \$ 4,978.00**TOTAL AMOUNT DUE ..... \$ 7,030.00  
(Past Due Balance plus the Current Charges)

Please remit this copy if paying via check.

Please forward pay confirmation to [ar@fordharrison.com](mailto:ar@fordharrison.com) if paying electronically.**Wire/ACH Instructions:**

BB&amp;T, now Truist

SWIFT Code BRBTUS33

For the account of Ford &amp; Harrison LLP

RTN/ABA#061113415

Account #0005244790498

**Check Payment:**

Ford &amp; Harrison LLP

Post Office Box 890836

Charlotte, NC 28289-0836

**For Credit Card Payment:**<https://www.fordharrison.com/clientlogin.aspx>**Payments received after date of statement may not be reflected.****If Past Due Balance has been paid, please disregard and only pay the Total Current Invoice.**

# FORDHARRISON<sup>LLP</sup>

## Past Due Balance Summary

July 19, 2021

This Summary reflects the Past Due Balance, in connection with our file number 025558.0009:

**AssuredPartners, Inc.**

---

Outstanding Bill Balances are reflected through July 19, 2021:

| <u>Invoice Date</u>      | <u>Invoice #</u> | <u>Amount Due</u>       |
|--------------------------|------------------|-------------------------|
| 06/15/2021               | #823543          | \$2,052.00              |
| <b>PAST DUE BALANCE:</b> |                  | <hr/> <b>\$2,052.00</b> |

# FORDHARRISON<sup>LLP</sup>

August 16, 2021

PRIVILEGED & CONFIDENTIAL

AssuredPartners, Inc.  
200 Colonial Center Parkway, Suite 140  
Lake Mary, FL 32746

Attention: Steven Muscatello, Esq.  
SVP & Deputy General Counsel

TAX I.D. 58-1314995

Invoice #: 828566

For services rendered in connection with our file number 025558-0009:

ASSUREDPARTNERS, INC. - FORUM BENEFITS, INC. V. ASSUREDPARTNERS, NL AND  
BRIAN BANNON; CASE NO.: 2016-CP-07-02541; BREACH OF CONTRACT

FEES

| <u>Date</u> | <u>Tkpr</u> | <u>Hours</u> | <u>Description</u>                                                          |
|-------------|-------------|--------------|-----------------------------------------------------------------------------|
| 07/12/21    | JAL         | 2.50         | Analysis of [REDACTED]                                                      |
| 07/13/21    | EBC         | 0.80         | Analysis of [REDACTED]<br>[REDACTED]                                        |
| 07/13/21    | JAL         | 5.20         | Analysis of [REDACTED] and meeting with witnesses.                          |
| 07/13/21    | JAL         | 0.40         | Telephone conference with Anna regarding [REDACTED]                         |
| 07/13/21    | JAL         | 0.60         | Emails to and from Anna and Mack regarding [REDACTED]<br>[REDACTED]         |
| 07/13/21    | JAL         | 0.80         | Telephone conferences with Court regarding trial issues.                    |
| 07/13/21    | JAL         | 0.50         | Telephone conference with Anna and Steve regarding [REDACTED]<br>[REDACTED] |
| 07/13/21    | JAL         | 0.30         | Emails to and from Anna regarding [REDACTED]                                |
| 07/14/21    | EBC         | 0.90         | Analysis of [REDACTED]<br>[REDACTED]                                        |

| <u>Date</u> | <u>Tkpr</u> | <u>Hours</u> | <u>Description</u>                                                                   |
|-------------|-------------|--------------|--------------------------------------------------------------------------------------|
| 07/14/21    | JAL         | 5.70         | Analysis of [REDACTED]<br>[REDACTED]                                                 |
| 07/14/21    | JAL         | 2.50         | Attendance at meeting in Greenville with [REDACTED]<br>[REDACTED]                    |
| 07/14/21    | JAL         | 0.30         | Telephone conference with opposing counsel regarding trial issues.                   |
| 07/14/21    | JAL         | 0.30         | Email to and from Jim Brady regarding [REDACTED]<br>[REDACTED]                       |
| 07/15/21    | EBC         | 0.80         | Analysis of [REDACTED]                                                               |
| 07/15/21    | JAL         | 8.00         | Attendance at meeting in Greenville with [REDACTED]<br>[REDACTED]                    |
| 07/16/21    | JAL         | 3.80         | Analysis of [REDACTED] and begin preparation of<br>witness outlines.                 |
| 07/19/21    | JAL         | 3.20         | Analysis of [REDACTED] and preparation of<br>witness outlines.                       |
| 07/19/21    | JAL         | 0.30         | Email to and from Anna regarding [REDACTED]                                          |
| 07/19/21    | JAL         | 0.20         | Email to and from opposing counsel regarding settlement offer.                       |
| 07/20/21    | EBC         | 0.50         | Analysis of [REDACTED]<br>[REDACTED]                                                 |
| 07/20/21    | JAL         | 0.70         | Telephone conference with Anna regarding [REDACTED]                                  |
| 07/20/21    | JAL         | 0.10         | Email to Anna regarding [REDACTED]                                                   |
| 07/20/21    | JAL         | 0.80         | Telephone conferences (2) with Mack Ward regarding [REDACTED]                        |
| 07/20/21    | JAL         | 0.20         | Email to and from Mack Ward and Michelle Coffield regarding [REDACTED]<br>[REDACTED] |
| 07/20/21    | JAL         | 0.30         | Email to and from Mack Ward and Lauren Barkley regarding [REDACTED]<br>[REDACTED]    |
| 07/20/21    | JAL         | 3.50         | Analysis of [REDACTED]<br>[REDACTED]                                                 |



| <u>Date</u> | <u>Tkpr</u> | <u>Hours</u> | <u>Description</u>                                                                                     |
|-------------|-------------|--------------|--------------------------------------------------------------------------------------------------------|
| 07/21/21    | JAL         | 0.50         | Telephone conference with opposing counsel regarding trial issues and continuance of Spartanburg case. |
| 07/21/21    | JAL         | 0.30         | Telephone conference with Anna regarding [REDACTED]                                                    |
| 07/21/21    | JAL         | 1.10         | Telephone conference with Michelle Coffield regarding [REDACTED]                                       |
| 07/21/21    | JAL         | 1.50         | Analysis of [REDACTED] and preparation of [REDACTED]                                                   |
| 07/21/21    | JAL         | 2.20         | Preparation of trial brief.                                                                            |
| 07/21/21    | JAL         | 2.70         | Analysis of [REDACTED] and preparation of instructions.                                                |
| 07/21/21    | JAL         | 0.30         | Email to and from Bill Harvey regarding [REDACTED]                                                     |
| 07/22/21    | JAL         | 6.20         | Analysis of [REDACTED] and preparation of instructions.                                                |
| 07/22/21    | JAL         | 0.60         | Telephone conferences with Court regarding trial issues.                                               |
| 07/23/21    | JAL         | 3.40         | Preparation of trial brief.                                                                            |
| 07/23/21    | JAL         | 1.70         | Analysis of [REDACTED]                                                                                 |
| 07/26/21    | EBC         | 0.20         | Analysis of [REDACTED]                                                                                 |
| 07/26/21    | JAL         | 2.50         | Preparation of proposed jury instructions.                                                             |
| 07/26/21    | JAL         | 2.40         | Analysis of [REDACTED] and preparation of witness outlines.                                            |
| 07/26/21    | JAL         | 0.70         | Telephone conference with Anna regarding [REDACTED]                                                    |
| 07/26/21    | JAL         | 0.20         | Email to and from Anna regarding [REDACTED]                                                            |
| 07/26/21    | JAL         | 1.50         | Preparation of Trial Brief.                                                                            |
| 07/27/21    | JAL         | 0.20         | Email to and from Anna regarding [REDACTED]                                                            |
| 07/27/21    | JAL         | 0.70         | Telephone conference with Paula Gant regarding [REDACTED]                                              |

| <u>Date</u>                | <u>Tkpr</u> | <u>Hours</u> | <u>Description</u>                                                                 |
|----------------------------|-------------|--------------|------------------------------------------------------------------------------------|
| 07/27/21                   | JAL         | 1.40         | Analysis of [REDACTED] and preparation of [REDACTED]                               |
| 07/27/21                   | JAL         | 3.30         | Analysis of [REDACTED] and preparation of [REDACTED]                               |
| 07/28/21                   | JAL         | 6.50         | Analysis of [REDACTED] and preparation of witness outlines.                        |
| 07/29/21                   | JAL         | 0.40         | Telephone conference with Anna regarding [REDACTED]                                |
| 07/29/21                   | JAL         | 0.50         | Email to and from Anna regarding [REDACTED]                                        |
| 07/29/21                   | JAL         | 0.40         | Telephone conference with C. Holderness regarding [REDACTED]                       |
| 07/29/21                   | JAL         | 0.30         | Telephone conference with Paula Gant regarding [REDACTED]                          |
| 07/29/21                   | JAL         | 0.50         | Email to and from Paula Gant regarding [REDACTED]                                  |
| 07/29/21                   | JAL         | 0.30         | Email to and from opposing counsel regarding discovery documents needed for trial. |
| 07/29/21                   | JAL         | 5.80         | Analysis of [REDACTED] and preparation of witness outlines.                        |
| 07/30/21                   | JAL         | 0.40         | Telephone conferences with Anna regarding [REDACTED]                               |
| 07/30/21                   | JAL         | 0.70         | Telephone conferences with Court regarding [REDACTED]                              |
| 07/30/21                   | JAL         | 1.30         | Analysis of [REDACTED]                                                             |
| 07/30/21                   | JAL         | 0.30         | Email to and from Anna regarding [REDACTED]                                        |
| 07/30/21                   | JAL         | 0.60         | Email to and from opposing counsel regarding [REDACTED]                            |
| 07/30/21                   | JAL         | 1.50         | Preparation of proposed jury verdict form.                                         |
| 07/30/21                   | JAL         | 0.30         | Telephone conferences with Mack regarding [REDACTED]                               |
| 07/30/21                   | JAL         | 2.50         | Analysis of [REDACTED]                                                             |
| <b>TOTAL CURRENT FEES:</b> |             |              | <b>\$ 37,722.00</b>                                                                |

**TIMEKEEPER SUMMARY**

| <u>Name</u>          | <u>Hours</u> | <u>Hourly Rate</u> | <u>Value</u> |
|----------------------|--------------|--------------------|--------------|
| Carlstedt, Edward B. | 3.20         | 400.00             | \$1,280.00   |
| Lehrer, Jeffrey A.   | 95.90        | 380.00             | \$36,442.00  |

**EXPENSES:**

|                                                                                                                                                                                  |           |               |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|---------------|
| JAL1 - Filing Fee on 7-20-21 for Motion of Pro Hac Vice Admission of Ed Carlstedt.                                                                                               | \$        | 31.74         |
| JAL1 - Travel to and from AssuredPartners Office in Greenville, SC to attend pre-trial meetings on 7-14-21 and 7-15-21. – Mileage - Local Travel                                 | \$        | 29.51         |
| JAL1 - Travel to/from AssuredPartners Office in Greenville, SC to attend pre-trial meetings on 7-14-21 and 7-15-21. – Mileage - Local Travel                                     | \$        | 29.51         |
| JAL1 - Travel to and from AssuredPartners Office in Greenville, SC to attend pre-trial meetings on 7-14-21 and 7-15-21. – Parking - Local Travel                                 | \$        | 7.00          |
| JAL1 - Travel to and from AssuredPartners Office in Greenville, SC to attend pre-trial meetings on 7-14-21 and 7-15-21. – Parking - Local Travel                                 | \$        | 7.00          |
| Supreme Court of South Carolina - Fees for Pro Hac Vice Application of Ed Carlstedt - 07/16/2021                                                                                 | \$        | 250.00        |
| Federal Express Airbill 281460581264 to Heather Ratliff on 07/14/2021 from Ford & Harrison LLP transmitting Pro Hac Vice Admission Application on behalf of Edward B. Carlstedt. | \$        | 26.70         |
| Federal Express Airbill 281515176621 to Clerk on 07/16/2021 from Ford & Harrison LLP transmitting original Pro Hac Vice Admission Application on behalf of Edward B. Carlstedt.  | \$        | 17.84         |
| Federal Express Airbill 796175854774 to Jeffrey Lehrer on 07/21/2021 from Ford & Harrison LLP.                                                                                   | \$        | 50.28         |
| <b>TOTAL CURRENT EXPENSES:</b>                                                                                                                                                   | <b>\$</b> | <b>449.58</b> |

AssuredPartners, Inc.  
August 16, 2021  
Page 6

**INVOICE SUMMARY**

*In connection with our file number 025558.0009*

|                     |    |           |
|---------------------|----|-----------|
| CURRENT FEES        | \$ | 37,722.00 |
| CURRENT EXPENSES    | \$ | 449.58    |
|                     |    | <hr/>     |
| CURRENT AMOUNT DUE: | \$ | 38,171.58 |

# FORDHARRISON<sup>LLP</sup>

## Remittance Statement

August 16, 2021

Remittance Statement for services in connection with our file number 025558.0009:

AssuredPartners, Inc.

---

Summary of charges for invoice #828566:

|                          |    |               |
|--------------------------|----|---------------|
| CURRENT FEES .....       | \$ | 37,722.00     |
| CURRENT EXPENSES .....   | \$ | <u>449.58</u> |
| CURRENT AMOUNT DUE ..... | \$ | 38,171.58     |

Please remit this copy if paying via check.

Please forward pay confirmation to [ar@fordharrison.com](mailto:ar@fordharrison.com) if paying electronically.

**Wire/ACH Instructions:**

BB&T, now Truist

SWIFT Code BRBTUS33

For the account of Ford & Harrison LLP

RTN/ABA#061113415

Account #0005244790498

**Check Payment:**

Ford & Harrison LLP

Post Office Box 890836

Charlotte, NC 28289-0836

**For Credit Card Payment:**

<https://www.fordharrison.com/clientlogin.aspx>

# FORDHARRISON<sup>LLP</sup>

September 20, 2021

PRIVILEGED & CONFIDENTIAL

AssuredPartners, Inc.  
200 Colonial Center Parkway, Suite 140  
Lake Mary, FL 32746

Attention: Steven Muscatello, Esq.  
SVP & Deputy General Counsel

TAX I.D. 58-1314995

Invoice #: 831729

For services rendered in connection with our file number 025558-0009:

ASSUREDPARTNERS, INC. - FORUM BENEFITS, INC. V. ASSUREDPARTNERS, NL AND BRIAN BANNON; CASE NO.: 2016-CP-07-02541; BREACH OF CONTRACT

FEES

| <u>Date</u> | <u>Tkpr</u> | <u>Hours</u> | <u>Description</u>                   |
|-------------|-------------|--------------|--------------------------------------|
| 08/03/21    | EBC         | 1.40         | Analysis of [REDACTED]<br>[REDACTED] |
| 08/03/21    | EBC         | 0.40         | Begin analysis of [REDACTED]         |
| 08/04/21    | EBC         | 0.20         | Analysis of [REDACTED]               |
| 08/06/21    | JAL         | 3.50         | Trial Preparation and communication. |
| 08/07/21    | EBC         | 0.10         | Analysis of [REDACTED]               |
| 08/08/21    | JAL         | 6.40         | Trial Preparation and communication. |
| 08/09/21    | JAL         | 7.30         | Trial Preparation and communication. |
| 08/10/21    | EBC         | 0.90         | Analysis of [REDACTED]<br>[REDACTED] |
| 08/10/21    | EBC         | 0.40         | Analysis of [REDACTED]<br>[REDACTED] |
| 08/10/21    | JAL         | 8.60         | Trial Preparation and communication. |
| 08/11/21    | JAL         | 12.00        | Trial Preparation and communication. |

| <u>Date</u> | <u>Tkpr</u> | <u>Hours</u> | <u>Description</u>                                                               |
|-------------|-------------|--------------|----------------------------------------------------------------------------------|
| 08/12/21    | EBC         | 0.40         | Analysis of [REDACTED]<br>[REDACTED]                                             |
| 08/12/21    | JAL         | 7.70         | Trial Preparation and communication.                                             |
| 08/13/21    | JAL         | 1.60         | [REDACTED] analysis related to [REDACTED]                                        |
| 08/13/21    | JAL         | 1.20         | Preparation of settlement agreement related to two claims.                       |
| 08/13/21    | JAL         | 5.80         | Trial Preparation and communication.                                             |
| 08/14/21    | EBC         | 3.30         | Complete analysis of [REDACTED]<br>[REDACTED]                                    |
| 08/14/21    | JAL         | 7.20         | Trial Preparation and communications.                                            |
| 08/15/21    | JAL         | 7.00         | Trial Preparation and communications.                                            |
| 08/16/21    | JAL         | 8.20         | Trial Preparation and communications.                                            |
| 08/16/21    | MMC         | 1.60         | Analysis of [REDACTED]<br>[REDACTED]                                             |
| 08/17/21    | EBC         | 1.80         | Attention to numerous trial issues including witness examinations,<br>[REDACTED] |
| 08/17/21    | JAL         | 8.70         | Trial Preparation and communications.                                            |
| 08/17/21    | MMC         | 1.70         | Analysis of [REDACTED]<br>[REDACTED]                                             |
| 08/18/21    | EBC         | 1.90         | Continue preparations for trial including analysis of [REDACTED]<br>[REDACTED]   |
| 08/18/21    | JAL         | 9.40         | Trial preparation and communications.                                            |
| 08/18/21    | MMC         | 1.00         | Analysis of [REDACTED]<br>[REDACTED]                                             |

| <u>Date</u> | <u>Tkpr</u> | <u>Hours</u> | <u>Description</u>                                                                                                                                                                                            |
|-------------|-------------|--------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 08/18/21    | NSA         | 7.10         | Analysis of [REDACTED]<br>[REDACTED]                                                                                                                                                                          |
| 08/19/21    | JAL         | 6.40         | Trial Preparation and communications.                                                                                                                                                                         |
| 08/19/21    | NSA         | 2.20         | Finalize analysis of [REDACTED]<br>[REDACTED]                                                                                                                                                                 |
| 08/19/21    | NSA         | 2.50         | Preparation of memorandum outlining results of research on [REDACTED]<br>[REDACTED]                                                                                                                           |
| 08/19/21    | NSA         | 2.80         | Finalize analysis of case law interpreting [REDACTED]<br>[REDACTED]<br>[REDACTED]                                                                                                                             |
| 08/20/21    | EBC         | 3.60         | Preparation of motion in limine to redact and remove confidential designations.                                                                                                                               |
| 08/20/21    | EBC         | 0.40         | Confer with J. Lehrer regarding [REDACTED]<br>[REDACTED]                                                                                                                                                      |
| 08/21/21    | EBC         | 3.60         | Complete analysis of [REDACTED]; begin analysis of legal research regarding [REDACTED]                                                                                                                        |
| 08/21/21    | JAL         | 7.40         | Trial Preparation and communications.                                                                                                                                                                         |
| 08/22/21    | EBC         | 5.10         | Preparation of cross examinations of plaintiff's computer forensic witnesses and experts; preparation of cross examination of B. Bannon for trial testimony preparation; analysis of [REDACTED]<br>[REDACTED] |
| 08/22/21    | JAL         | 5.20         | Trial preparation and communications.                                                                                                                                                                         |
| 08/23/21    | EBC         | 4.40         | Continue preparation for trial [REDACTED]<br>[REDACTED]<br>[REDACTED]                                                                                                                                         |
| 08/23/21    | JAL         | 0.90         | Analysis of [REDACTED]<br>[REDACTED]                                                                                                                                                                          |



| <u>Date</u>                | <u>Tkpr</u> | <u>Hours</u> | <u>Description</u>                                                                                                                             |
|----------------------------|-------------|--------------|------------------------------------------------------------------------------------------------------------------------------------------------|
| 08/24/21                   | JAL         | 0.50         | Communication with trial participants regarding [REDACTED]                                                                                     |
| 08/24/21                   | KSG         | 2.80         | Legal analysis of [REDACTED]<br>[REDACTED]                                                                                                     |
| 08/25/21                   | JAL         | 0.30         | Emails to and from trial participants regarding [REDACTED]<br>[REDACTED]                                                                       |
| 08/25/21                   | JAL         | 0.10         | Email to and from Opposing Counsel regarding rescheduling trial issues.                                                                        |
| 08/25/21                   | JAL         | 0.20         | Telephone conferences and emails to and from court, Anna, and opposing counsel regarding rescheduling trial; finalization of motion in limine. |
| 08/25/21                   | JAL         | 0.40         | Finalization of motion in limine.                                                                                                              |
| 08/25/21                   | JAL         | 0.20         | Telephone conferences with opposing counsel regarding rescheduling trial.                                                                      |
| 08/25/21                   | JAL         | 0.20         | Telephone conferences with Anna regarding [REDACTED]                                                                                           |
| 08/25/21                   | JAL         | 0.20         | Telephone conferences with Court regarding rescheduling trial.                                                                                 |
| 08/25/21                   | JAL         | 0.10         | Email to and from Judge Morgan about cancelling pre-trial conference scheduled for Thursday.                                                   |
| 08/31/21                   | JAL         | 1.30         | Analysis of [REDACTED]                                                                                                                         |
| 08/31/21                   | JAL         | 0.20         | Emails to and from court regarding new trial date and judge assignment.                                                                        |
| <b>TOTAL CURRENT FEES:</b> |             |              | <b>\$ 62,152.00</b>                                                                                                                            |

TIMEKEEPER SUMMARY

| <u>Name</u>          | <u>Hours</u> | <u>Hourly Rate</u> | <u>Value</u> |
|----------------------|--------------|--------------------|--------------|
| Carlstedt, Edward B. | 27.90        | 400.00             | \$11,160.00  |
| Lehrer, Jeffrey A.   | 118.20       | 380.00             | \$44,916.00  |
| Gray, Kristin S.     | 2.80         | 320.00             | \$896.00     |
| Castillo, Melissa M. | 4.30         | 220.00             | \$946.00     |
| Andrews, Nicholas S. | 14.60        | 290.00             | \$4,234.00   |

**INVOICE SUMMARY**

*In connection with our file number 025558.0009*

|                             |           |                  |
|-----------------------------|-----------|------------------|
| PAST DUE BALANCE ON ACCOUNT | \$        | 38,171.58        |
| CURRENT FEES                | \$        | 62,152.00        |
| <b>CURRENT AMOUNT DUE:</b>  | <b>\$</b> | <b>62,152.00</b> |
| TOTAL AMOUNT DUE            | \$        | 100,323.58       |

*(Past Due Balance plus the Current Charges)*

**Payments received after date of statement may not be reflected.  
If Past Due Balance has been paid, please disregard and only pay the Current Invoice Total.**

# FORDHARRISON<sup>LLP</sup>

## Remittance Statement

September 20, 2021

Remittance Statement for services in connection with our file number 025558.0009:

AssuredPartners, Inc.

---

Summary of charges for invoice #831729:

|                                                    |    |                  |
|----------------------------------------------------|----|------------------|
| PAST DUE BALANCE ON ACCOUNT .....                  | \$ | 38,171.58        |
| CURRENT FEES .....                                 | \$ | <u>62,152.00</u> |
| CURRENT AMOUNT DUE .....                           | \$ | <b>62,152.00</b> |
| TOTAL AMOUNT DUE.....                              | \$ | 100,323.58       |
| <i>(Past Due Balance plus the Current Charges)</i> |    |                  |

Please remit this copy if paying via check.

Please forward pay confirmation to [ar@fordharrison.com](mailto:ar@fordharrison.com) if paying electronically.

**Wire/ACH Instructions:**

BB&T, now Truist  
SWIFT Code BRBTUS33  
For the account of Ford & Harrison LLP  
RTN/ABA#061113415  
Account #0005244790498

**Check Payment:**

Ford & Harrison LLP  
Post Office Box 890836  
Charlotte, NC 28289-0836

**For Credit Card Payment:**

<https://www.fordharrison.com/clientlogin.aspx>

**Payments received after date of statement may not be reflected.**

**If Past Due Balance has been paid, please disregard and only pay the Total Current Invoice.**

# FORDHARRISON<sup>LLP</sup>

## Past Due Balance Summary

September 20, 2021

This Summary reflects the Past Due Balance, in connection with our file number 025558.0009:

**AssuredPartners, Inc.**

---

Outstanding Bill Balances are reflected through September 20, 2021:

| <u>Invoice Date</u>      | <u>Invoice #</u> | <u>Amount Due</u> |
|--------------------------|------------------|-------------------|
| 08/16/2021               | #828566          | \$38,171.58       |
| <b>PAST DUE BALANCE:</b> |                  | <hr/> \$38,171.58 |

# FORDHARRISON<sup>LLP</sup>

October 26, 2021

PRIVILEGED & CONFIDENTIAL

AssuredPartners, Inc.  
200 Colonial Center Parkway, Suite 140  
Lake Mary, FL 32746

Attention: Steven Muscatello, Esq.  
SVP & Deputy General Counsel

TAX I.D. 58-1314995

Invoice #: 836190  
For services rendered in connection with our file number 025558-0009:

ASSUREDPARTNERS, INC. - FORUM BENEFITS, INC. V. ASSUREDPARTNERS, NL AND  
BRIAN BANNON; CASE NO.: 2016-CP-07-02541; BREACH OF CONTRACT

FEES

| <u>Date</u> | <u>Tkpr</u> | <u>Hours</u> | <u>Description</u>                                                                 |
|-------------|-------------|--------------|------------------------------------------------------------------------------------|
| 09/01/21    | JAL         | 0.20         | Emails to and from Anna regarding [REDACTED]                                       |
| 09/01/21    | JAL         | 0.20         | Emails to and from opposing counsel regarding requested deposition of S. Hildreth. |
| 09/01/21    | JAL         | 0.50         | Analysis of [REDACTED]                                                             |
| 09/06/21    | JAL         | 1.20         | Preparation for deposition of S. Hildreth.                                         |
| 09/07/21    | JAL         | 1.50         | Continued preparation for deposition of S. Hildreth.                               |
| 09/07/21    | JAL         | 1.70         | Analysis of [REDACTED]                                                             |
| 09/07/21    | JAL         | 0.30         | Email to and from opposing counsel regarding trial issues.                         |
| 09/07/21    | JAL         | 0.30         | Email to and from Anna regarding [REDACTED]                                        |
| 09/07/21    | MDG         | 0.20         | Analysis with JAL regarding [REDACTED]                                             |
| 09/07/21    | MDG         | 0.50         | Analysis of [REDACTED]                                                             |

| <u>Date</u> | <u>Tkpr</u> | <u>Hours</u> | <u>Description</u>                                                                                                                                                                           |
|-------------|-------------|--------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 09/07/21    | MDG         | 1.00         | Research [REDACTED]<br>[REDACTED]                                                                                                                                                            |
| 09/07/21    | MDG         | 0.30         | Analysis with TDD regarding [REDACTED]<br>[REDACTED]                                                                                                                                         |
| 09/07/21    | MDG         | 0.60         | Analysis of case law regarding [REDACTED]<br>[REDACTED]                                                                                                                                      |
| 09/08/21    | JAL         | 1.50         | Conduct deposition of S. Hildreth.                                                                                                                                                           |
| 09/08/21    | JAL         | 1.80         | Post deposition analysis of S. Hildreth testimony.                                                                                                                                           |
| 09/08/21    | JAL         | 0.50         | Email to and from Anna regarding [REDACTED]                                                                                                                                                  |
| 09/08/21    | JAL         | 0.40         | Analysis of [REDACTED]                                                                                                                                                                       |
| 09/08/21    | JAL         | 0.20         | Email to and from Bannon regarding [REDACTED]                                                                                                                                                |
| 09/08/21    | MDG         | 1.00         | Analysis [REDACTED]<br>[REDACTED]                                                                                                                                                            |
| 09/08/21    | MDG         | 0.20         | Analysis with JAL regarding [REDACTED]<br>[REDACTED]                                                                                                                                         |
| 09/08/21    | MDG         | 2.70         | Preparation of motion in limine.                                                                                                                                                             |
| 09/08/21    | MDG         | 0.10         | Analysis with TDD regarding [REDACTED]                                                                                                                                                       |
| 09/09/21    | JAL         | 0.30         | Email to and from Mack Ward regarding [REDACTED]                                                                                                                                             |
| 09/09/21    | MDG         | 1.40         | Continue preparation of motion in limine for HIPAA reference at trial.                                                                                                                       |
| 09/10/21    | JAL         | 0.20         | Email to and from Bannon regarding [REDACTED]                                                                                                                                                |
| 09/10/21    | JAL         | 0.20         | Email to and from Anna regarding [REDACTED]                                                                                                                                                  |
| 09/10/21    | JAL         | 0.30         | Telephone conference with court regarding trial and docket roster issues.                                                                                                                    |
| 09/10/21    | JAL         | 0.30         | Telephone conference with attorneys on case prioritized as first on docket roster to obtain status of likelihood of their case settling to determine our potential priority on trial docket. |
| 09/10/21    | JAL         | 0.50         | Preparation of HIPAA motion in limine.                                                                                                                                                       |

| <u>Date</u> | <u>Tkpr</u> | <u>Hours</u> | <u>Description</u>                                                                                                                               |
|-------------|-------------|--------------|--------------------------------------------------------------------------------------------------------------------------------------------------|
| 09/10/21    | MDG         | 0.20         | Analysis with TDD1 regarding [REDACTED]<br>[REDACTED]                                                                                            |
| 09/10/21    | MDG         | 0.20         | Final analysis of [REDACTED]                                                                                                                     |
| 09/10/21    | MDG         | 0.10         | Analysis with JAL regarding [REDACTED]<br>[REDACTED]                                                                                             |
| 09/13/21    | JAL         | 0.50         | Telephone conference with Anna regarding [REDACTED]                                                                                              |
| 09/13/21    | JAL         | 0.20         | Telephone conference with Mack Ward regarding [REDACTED]                                                                                         |
| 09/13/21    | JAL         | 0.30         | Email to and from Anna regarding [REDACTED]                                                                                                      |
| 09/20/21    | EBC         | 0.40         | Confer with J. Lehrer regarding [REDACTED]<br>[REDACTED]                                                                                         |
| 09/20/21    | EBC         | 2.60         | Analysis and revision of motion in limine to preclude HIPAA references.                                                                          |
| 09/21/21    | EBC         | 0.60         | Revision of motion in limine regarding HIPAA.                                                                                                    |
| 09/21/21    | JAL         | 0.50         | Additional revision of verdict form.                                                                                                             |
| 09/21/21    | JAL         | 0.20         | Telephone conference with attorney for other case on Beaufort docket for 10/11.                                                                  |
| 09/22/21    | JAL         | 0.80         | Analysis of [REDACTED]<br>[REDACTED]                                                                                                             |
| 09/22/21    | JAL         | 0.20         | Email to and from Anna regarding [REDACTED]<br>[REDACTED]                                                                                        |
| 09/22/21    | JAL         | 0.20         | Email to and from opposing counsel regarding jury charges, verdict form, objections, and fiduciary duty being an equitable issues for the court. |
| 09/22/21    | JAL         | 1.30         | Analysis of [REDACTED]<br>[REDACTED]                                                                                                             |
| 09/22/21    | JAL         | 0.90         | Analysis of [REDACTED]<br>[REDACTED]                                                                                                             |

| <u>Date</u> | <u>Tkpr</u> | <u>Hours</u> | <u>Description</u>                                                                                                                                 |
|-------------|-------------|--------------|----------------------------------------------------------------------------------------------------------------------------------------------------|
| 09/22/21    | JAL         | 0.20         | Email to and from counsel in #1 prioritized case on trial roster regarding status of their case and potential that it will go to trial October 11. |
| 09/22/21    | JAL         | 0.90         | Finalize motion in limine regarding HIPAA references.                                                                                              |
| 09/22/21    | JAL         | 1.20         | Preparation of objections to deposition designations for Marlene Gray.                                                                             |
| 09/22/21    | JKP         | 0.60         | Research of [REDACTED]                                                                                                                             |
| 09/23/21    | JAL         | 0.30         | Email to and from C. Holderness regarding [REDACTED]                                                                                               |
| 09/23/21    | JAL         | 0.20         | Email to and from P. Gant regarding [REDACTED]                                                                                                     |
| 09/23/21    | JAL         | 0.20         | Email to and from opposing counsel regarding need for C. Holderness to testify on Wednesday and alternative motion for protective order.           |
| 09/23/21    | JAL         | 0.20         | Email to and from M. Coffield regarding [REDACTED]                                                                                                 |
| 09/23/21    | JAL         | 2.10         | Analysis of [REDACTED]                                                                                                                             |
| 09/23/21    | JAL         | 0.20         | Email to and from opposing counsel regarding fiduciary duty claim objections.                                                                      |
| 09/23/21    | JKP         | 0.50         | Research of [REDACTED]                                                                                                                             |
| 09/24/21    | JAL         | 0.40         | Telephone conference with Anna regarding [REDACTED]                                                                                                |
| 09/24/21    | JAL         | 0.50         | Analysis and revision of jury verdict form.                                                                                                        |
| 09/24/21    | JAL         | 1.60         | Analysis and preparation of objections to Plaintiff's revised jury charges.                                                                        |
| 09/24/21    | JAL         | 0.20         | Email to and from Anna regarding [REDACTED]                                                                                                        |
| 09/24/21    | JAL         | 0.20         | Email to and from attorney on #1 prioritized case on trial docket roster regarding their mediation and settlement.                                 |



| <u>Date</u> | <u>Tkpr</u> | <u>Hours</u> | <u>Description</u>                                                          |
|-------------|-------------|--------------|-----------------------------------------------------------------------------|
| 09/27/21    | EBC         | 0.60         | Analysis of [REDACTED]<br>[REDACTED]                                        |
| 09/27/21    | JAL         | 1.50         | Additional revisions to trial brief.                                        |
| 09/27/21    | JAL         | 0.20         | Email to and from Anna regarding [REDACTED]                                 |
| 09/27/21    | JAL         | 0.40         | Revision of verdict form.                                                   |
| 09/27/21    | JAL         | 0.80         | Analysis of [REDACTED]<br>[REDACTED]                                        |
| 09/27/21    | JAL         | 0.70         | Analysis of [REDACTED]<br>[REDACTED]                                        |
| 09/27/21    | JAL         | 1.20         | Analysis of [REDACTED]                                                      |
| 09/27/21    | JKP         | 0.20         | Conference with JAL1 on [REDACTED]                                          |
| 09/27/21    | JKP         | 2.70         | Analysis of [REDACTED]                                                      |
| 09/28/21    | JAL         | 0.50         | Telephone conference with Anna [REDACTED]<br>[REDACTED]                     |
| 09/28/21    | JAL         | 0.20         | Email to and from opposing counsel regarding IT testimony stipulation.      |
| 09/28/21    | JAL         | 1.50         | Revision of cross examination outline of Brian Stritt.                      |
| 09/29/21    | EBC         | 1.50         | Preparation of objections of plaintiff's proposed voir dire.                |
| 09/29/21    | EBC         | 0.60         | Begin analysis of [REDACTED]                                                |
| 09/29/21    | JAL         | 1.20         | Preparation for meeting with M. Coffield regarding [REDACTED]<br>[REDACTED] |
| 09/29/21    | JAL         | 1.30         | Telephone conference with M. Coffield regarding [REDACTED]<br>[REDACTED]    |
| 09/29/21    | JAL         | 0.30         | Email to and from M. Coffield regarding [REDACTED]<br>[REDACTED]            |
| 09/29/21    | JAL         | 0.80         | Revision of objections to Plaintiff's voir dire questions.                  |

| <u>Date</u>                | <u>Tkpr</u> | <u>Hours</u> | <u>Description</u>                                                                                                 |
|----------------------------|-------------|--------------|--------------------------------------------------------------------------------------------------------------------|
| 09/29/21                   | JAL         | 0.30         | Email to and from opposing counsel regarding pre-trial issues.                                                     |
| 09/29/21                   | JAL         | 0.30         | Email to and from opposing counsel and BCBS regarding Labine subpoena.                                             |
| 09/29/21                   | JAL         | 0.40         | Analysis of [REDACTED]                                                                                             |
| 09/29/21                   | JAL         | 0.30         | Email to and from witnesses regarding [REDACTED]                                                                   |
| 09/29/21                   | JAL         | 1.30         | Finalize objections to Marlene Gray deposition and preparation of Defendants' designations.                        |
| 09/29/21                   | JAL         | 0.80         | Revision of opening statement.                                                                                     |
| 09/29/21                   | JKP         | 0.40         | Analysis of [REDACTED]                                                                                             |
| 09/30/21                   | JAL         | 0.70         | Telephone conference with P. Gant regarding [REDACTED]<br>[REDACTED]                                               |
| 09/30/21                   | JAL         | 1.10         | Preparation for conference with P. Gant regarding [REDACTED]<br>[REDACTED]                                         |
| 09/30/21                   | JAL         | 0.80         | Revision of question outline based on discussions with P. Gant regarding [REDACTED]                                |
| 09/30/21                   | JAL         | 1.10         | Revision of cross examination of L. Winston.                                                                       |
| 09/30/21                   | JAL         | 2.60         | Revision of cross examination of B. Stritt.                                                                        |
| 09/30/21                   | JAL         | 0.50         | Revision of opening statement.                                                                                     |
| 09/30/21                   | JAL         | 0.10         | Email to Anna regarding [REDACTED]                                                                                 |
| 09/30/21                   | JAL         | 0.20         | Email to and from Jon Taylor regarding [REDACTED]                                                                  |
| 09/30/21                   | JAL         | 0.40         | Email to and from opposing counsel regarding trial issues, objections to voir dire and Jon Taylor trial conflicts. |
| <b>TOTAL CURRENT FEES:</b> |             |              | <b>\$ 24,446.00</b>                                                                                                |

**TIMEKEEPER SUMMARY**

| <u>Name</u>          | <u>Hours</u> | <u>Hourly Rate</u> | <u>Value</u> |
|----------------------|--------------|--------------------|--------------|
| Carlstedt, Edward B. | 6.30         | 400.00             | \$2,520.00   |
| Lehrer, Jeffrey A.   | 47.10        | 380.00             | \$17,898.00  |
| Patton, James K.     | 4.40         | 220.00             | \$968.00     |
| Grabell, Matthew D.  | 8.50         | 360.00             | \$3,060.00   |

**EXPENSES:**

|                                                                                                      |           |              |
|------------------------------------------------------------------------------------------------------|-----------|--------------|
| JAL1 - 09-22-2021 Filing Fees for Motion in Limine to exclude references to HIPAA at Trial.          | \$        | 31.74        |
| Federal Express Airbill 284346625248 to Amy Michelle Coffield on 09/30/2021 from Ford & Harrison LLP | \$        | 26.33        |
|                                                                                                      |           | <hr/>        |
| <b>TOTAL CURRENT EXPENSES:</b>                                                                       | <b>\$</b> | <b>58.07</b> |

**INVOICE SUMMARY**

*In connection with our file number 025558.0009*

|                            |           |                  |
|----------------------------|-----------|------------------|
| CURRENT FEES               | \$        | 24,446.00        |
| CURRENT EXPENSES           | \$        | 58.07            |
|                            |           | <hr/>            |
| <b>CURRENT AMOUNT DUE:</b> | <b>\$</b> | <b>24,504.07</b> |

# FORDHARRISON<sup>LLP</sup>

## Remittance Statement

October 26, 2021

Remittance Statement for services in connection with our file number 025558.0009:

AssuredPartners, Inc.

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Summary of charges for invoice #836190:

|                          |    |                  |
|--------------------------|----|------------------|
| CURRENT FEES .....       | \$ | 24,446.00        |
| CURRENT EXPENSES .....   | \$ | <u>58.07</u>     |
| CURRENT AMOUNT DUE ..... | \$ | <b>24,504.07</b> |

Please remit this copy if paying via check.

Please forward pay confirmation to [ar@fordharrison.com](mailto:ar@fordharrison.com) if paying electronically.

**Wire/ACH Instructions:**

BB&T, now Truist

SWIFT Code BRBTUS33

For the account of Ford & Harrison LLP

RTN/ABA#061113415

Account #0005244790498

**Check Payment:**

Ford & Harrison LLP

Post Office Box 890836

Charlotte, NC 28289-0836

**For Credit Card Payment:**

<https://www.fordharrison.com/clientlogin.aspx>

# DRAFT

November 1, 2021

PRIVILEGED & CONFIDENTIAL

AssuredPartners, Inc.  
200 Colonial Center Parkway, Suite 140  
Lake Mary, FL 32746

Attention: Steven Muscatello, Esq.  
SVP & Deputy General Counsel

TAX I.D. 58-1314995

Invoice #: 0

For services rendered in connection with our file number 025558-0009:

ASSUREDPARTNERS, INC. - FORUM BENEFITS, INC. V. ASSUREDPARTNERS, NL AND BRIAN BANNON; CASE NO.: 2016-CP-07-02541; BREACH OF CONTRACT

**FEES**

| <u>Date</u> | <u>Tkpr</u> | <u>Hours</u> | <u>Fee</u> | <u>Description</u>                                                       |
|-------------|-------------|--------------|------------|--------------------------------------------------------------------------|
| 10/01/21    | JAL         | 0.40         | 152.00     | Emails to and from court and opposing counsel regarding pretrial issues. |
| 10/01/21    | JAL         | 1.30         | 494.00     | Preparation of jury charge objections.                                   |
| 10/01/21    | JAL         | 0.80         | 304.00     | Analysis of [REDACTED]                                                   |
| 10/01/21    | JAL         | 0.30         | 114.00     | Emails to and from Anna regarding [REDACTED]                             |
| 10/01/21    | JAL         | 0.30         | 114.00     | Email to and from opposing counsel regarding trial issues.               |
| 10/01/21    | JAL         | 1.60         | 608.00     | Revision of trial brief.                                                 |
| 10/02/21    | EBC         | 8.50         | 3,400.00   | Continue trial preparation, including [REDACTED]                         |

| <u>Date</u> | <u>Tkpr</u> | <u>Hours</u> | <u>Fee</u> | <u>Description</u>                                                          |
|-------------|-------------|--------------|------------|-----------------------------------------------------------------------------|
| 10/02/21    | JAL         | 4.40         | 1,672.00   | Trial preparation, including [REDACTED]<br>[REDACTED]                       |
| 10/03/21    | EBC         | 4.80         | 1,920.00   | Trial preparation, including [REDACTED]<br>[REDACTED]                       |
| 10/03/21    | JAL         | 2.80         | 1,064.00   | Trial preparation, including [REDACTED]<br>[REDACTED]                       |
| 10/04/21    | EBC         | 4.80         | 1,920.00   | Continue trial preparation, including [REDACTED]<br>[REDACTED]              |
| 10/04/21    | JAL         | 0.20         | 76.00      | Emails to and from opposing counsel and his forensic witnesses and P. Gant. |
| 10/04/21    | JAL         | 0.20         | 76.00      | Emails to and from opposing counsel regarding [REDACTED]<br>[REDACTED]      |
| 10/04/21    | JAL         | 0.70         | 266.00     | Finalize trial brief and exhibits.                                          |
| 10/04/21    | JAL         | 0.60         | 228.00     | Finalize and file objections to plaintiff's voir dire.                      |
| 10/04/21    | JAL         | 3.60         | 1,368.00   | Trial preparation, including [REDACTED]<br>[REDACTED]                       |
| 10/05/21    | EBC         | 6.40         | 2,560.00   | Continued trial preparation, including [REDACTED]<br>[REDACTED]             |

| <u>Date</u> | <u>Tkpr</u> | <u>Hours</u> | <u>Fee</u> | <u>Description</u>                                                                                                                   |
|-------------|-------------|--------------|------------|--------------------------------------------------------------------------------------------------------------------------------------|
| 10/05/21    | JAL         | 0.30         | 114.00     | Email to and from opposing counsel regarding [REDACTED]<br>[REDACTED]                                                                |
| 10/05/21    | JAL         | 3.90         | 1,482.00   | [REDACTED] analysis of [REDACTED]<br>[REDACTED]                                                                                      |
| 10/05/21    | JAL         | 0.60         | 228.00     | Emails to and from Steven Johnson at BCBS regarding setting trial preparation call with Mr. Labine and analysis of testimony issues. |
| 10/05/21    | JAL         | 2.80         | 1,064.00   | Trial preparation, including [REDACTED]<br>[REDACTED]                                                                                |
| 10/05/21    | JAL         | 0.20         | 76.00      | Emails to and from opposing counsel regarding S. Hildreth deposition designations.                                                   |
| 10/05/21    | JAL         | 0.50         | 190.00     | Emails to and from court regarding jury list and information and analysis of list.                                                   |
| 10/05/21    | JAL         | 0.30         | 114.00     | Emails to and from opposing counsel regarding pre-trial hearing issues.                                                              |
| 10/05/21    | JAL         | 0.20         | 76.00      | Emails to and from court regarding trial brief and exhibits.                                                                         |
| 10/06/21    | EBC         | 0.90         | 360.00     | Continued revision of mock cross examination of B. Bannon.                                                                           |
| 10/06/21    | EBC         | 3.80         | 1,520.00   | Legal research regarding [REDACTED]<br>[REDACTED]                                                                                    |
| 10/06/21    | EBC         | 0.60         | 240.00     | Revision of outline and index for motion for directed verdict.                                                                       |
| 10/06/21    | EBC         | 0.50         | 200.00     | Analysis of [REDACTED]<br>[REDACTED]                                                                                                 |
| 10/06/21    | EBC         | 0.30         | 120.00     | Analysis and revision of [REDACTED]<br>[REDACTED]                                                                                    |

| <u>Date</u> | <u>Tkpr</u> | <u>Hours</u> | <u>Fee</u> | <u>Description</u>                                                                                                          |
|-------------|-------------|--------------|------------|-----------------------------------------------------------------------------------------------------------------------------|
| 10/06/21    | EBC         | 0.60         | 240.00     | Analysis of [REDACTED]<br>[REDACTED]                                                                                        |
| 10/06/21    | JAL         | 2.40         | 912.00     | Preparation for pretrial hearing issues and arguments.                                                                      |
| 10/06/21    | JAL         | 0.40         | 152.00     | Communication with court regarding hearing issues and pleadings.                                                            |
| 10/06/21    | JAL         | 0.30         | 114.00     | Communication with opposing counsel regarding trial issues.                                                                 |
| 10/06/21    | JAL         | 1.10         | 418.00     | Preparation for meeting with M. Ward and possible cross examination questions.                                              |
| 10/06/21    | JAL         | 2.30         | 874.00     | Meeting with M. Ward in preparation of potential trial testimony.                                                           |
| 10/06/21    | JAL         | 2.80         | 1,064.00   | Analysis of [REDACTED]<br>[REDACTED]                                                                                        |
| 10/07/21    | EBC         | 0.70         | 280.00     | Preparation for and telephone conference with S. Johnson and R. Labine of Blue Cross Blue Shield regarding trial testimony. |
| 10/07/21    | EBC         | 0.10         | 40.00      | Email to S. Johnson of Blue Cross Blue Shield regarding trial subpoena to R. Labine.                                        |
| 10/07/21    | EBC         | 1.90         | 760.00     | Revision of mock cross examination of B. Bannon.                                                                            |
| 10/07/21    | EBC         | 0.40         | 160.00     | Analysis of [REDACTED]<br>[REDACTED]                                                                                        |
| 10/07/21    | EBC         | 0.40         | 160.00     | Preparation of additional cross examination questions for B. Stritt in light of information from Blue Cross Blue Shield.    |
| 10/07/21    | JAL         | 3.00         | 1,140.00   | Travel to Charleston, SC for meeting with C. Holderness.                                                                    |
| 10/07/21    | JAL         | 1.20         | 456.00     | Meeting with C. Holderness.                                                                                                 |
| 10/07/21    | JAL         | 1.30         | 494.00     | Travel to Beaufort for pretrial hearing.                                                                                    |
| 10/07/21    | JAL         | 1.50         | 570.00     | Preparation for and attendance at pretrial hearing.                                                                         |



| <u>Date</u> | <u>Tkpr</u> | <u>Hours</u> | <u>Fee</u> | <u>Description</u>                                                                                                             |
|-------------|-------------|--------------|------------|--------------------------------------------------------------------------------------------------------------------------------|
| 10/07/21    | JAL         | 1.80         | 684.00     | Analysis of [REDACTED]<br>[REDACTED]                                                                                           |
| 10/07/21    | JAL         | 0.70         | 266.00     | Communications with witnesses regarding trial issues.                                                                          |
| 10/08/21    | EBC         | 6.00         | 2,400.00   | Travel from Tampa to South Carolina for trial.                                                                                 |
| 10/08/21    | EBC         | 1.10         | 440.00     | Analysis of [REDACTED]<br>[REDACTED]                                                                                           |
| 10/08/21    | JAL         | 2.50         | 950.00     | Research regarding [REDACTED]<br>[REDACTED]                                                                                    |
| 10/08/21    | JAL         | 3.10         | 1,178.00   | Communications with witnesses to prepare for trial testimony and potential cross examination.                                  |
| 10/08/21    | JAL         | 4.80         | 1,824.00   | Trial preparation, [REDACTED]<br>[REDACTED]                                                                                    |
| 10/08/21    | JAL         | 0.40         | 152.00     | Telephone conference and emails with A. Ketcham regarding [REDACTED]                                                           |
| 10/08/21    | JAL         | 0.10         | 38.00      | Email to opposing counsel regarding his claim that M. Gray would be appearing to testify via Zoom and her contact information. |
| 10/08/21    | JAL         | 0.50         | 190.00     | Analysis of [REDACTED]                                                                                                         |
| 10/09/21    | EBC         | 0.70         | 280.00     | Analysis of [REDACTED]<br>[REDACTED]                                                                                           |
| 10/09/21    | EBC         | 3.50         | 1,400.00   | Conduct witness preparation with B. Bannon, including [REDACTED]<br>[REDACTED]                                                 |
| 10/09/21    | EBC         | 2.30         | 920.00     | Meet with and conduct witness preparation with witness B. Taylor.                                                              |
| 10/09/21    | EBC         | 0.90         | 360.00     | Analysis of [REDACTED]                                                                                                         |
| 10/09/21    | EBC         | 1.20         | 480.00     | Preparation of cross-examination of witness M. Gray.                                                                           |

| <u>Date</u> | <u>Tkpr</u> | <u>Hours</u> | <u>Fee</u> | <u>Description</u>                                                                                                         |
|-------------|-------------|--------------|------------|----------------------------------------------------------------------------------------------------------------------------|
| 10/09/21    | EBC         | 0.10         | 40.00      | Email and telephone call to witness M. Gray regarding trial testimony.                                                     |
| 10/09/21    | JAL         | 0.20         | 76.00      | Email to and from opposing counsel regarding new M. Coffield subpoena.                                                     |
| 10/09/21    | JAL         | 0.40         | 152.00     | Email to and from opposing counsel regarding P. Gant testimony and additional trial exhibits, and order of witness issues. |
| 10/09/21    | JAL         | 0.50         | 190.00     | Communication with M. Coffield regarding [REDACTED]                                                                        |
| 10/09/21    | JAL         | 0.60         | 228.00     | Communication with M. Ward regarding [REDACTED]                                                                            |
| 10/09/21    | JAL         | 1.20         | 456.00     | Preparation for meeting with Brian Bannon.                                                                                 |
| 10/09/21    | JAL         | 3.50         | 1,330.00   | Conduct trial preparation with Brian Bannon, [REDACTED]                                                                    |
| 10/09/21    | JAL         | 2.30         | 874.00     | Meeting with Ben Taylor to prepare for trial.                                                                              |
| 10/09/21    | JAL         | 2.40         | 912.00     | Trial preparation, including [REDACTED]                                                                                    |
| 10/10/21    | EBC         | 1.30         | 520.00     | Analysis and revision [REDACTED]                                                                                           |
| 10/10/21    | EBC         | 0.10         | 40.00      | Follow up email to M. Gray regarding deposition transcript and request for conference call.                                |
| 10/10/21    | EBC         | 1.20         | 480.00     | Analysis of [REDACTED]                                                                                                     |
| 10/10/21    | EBC         | 3.10         | 1,240.00   | Analysis of [REDACTED]                                                                                                     |
| 10/10/21    | JAL         | 0.30         | 114.00     | Communication with M. Coffield regarding subpoena and testimony.                                                           |

| <u>Date</u> | <u>Tkpr</u> | <u>Hours</u> | <u>Fee</u> | <u>Description</u>                                                               |
|-------------|-------------|--------------|------------|----------------------------------------------------------------------------------|
| 10/10/21    | JAL         | 6.50         | 2,470.00   | Trial preparation, including [REDACTED]<br>[REDACTED]<br>[REDACTED]              |
| 10/10/21    | JAL         | 1.30         | 494.00     | Communication with Brian Bannon regarding [REDACTED]<br>[REDACTED]               |
| 10/10/21    | JAL         | 1.80         | 684.00     | Communications with witnesses.                                                   |
| 10/11/21    | EBC         | 9.00         | 3,600.00   | Attend day one of trial.                                                         |
| 10/11/21    | EBC         | 0.80         | 320.00     | Analysis of [REDACTED]<br>[REDACTED]                                             |
| 10/11/21    | JAL         | 2.80         | 1,064.00   | Preparation for day one of trial.                                                |
| 10/11/21    | JAL         | 8.00         | 3,040.00   | Conduct trial, day one.                                                          |
| 10/11/21    | JAL         | 2.70         | 1,026.00   | Preparation for day two of trial and communication with clients and witnesses.   |
| 10/11/21    | JAL         | 0.20         | 76.00      | Communication with opposing counsel regarding trial issues.                      |
| 10/12/21    | EBC         | 0.50         | 200.00     | Analysis and revision of [REDACTED]<br>[REDACTED]                                |
| 10/12/21    | EBC         | 9.00         | 3,600.00   | Attend day two of trial.                                                         |
| 10/12/21    | EBC         | 0.70         | 280.00     | Analysis of [REDACTED]<br>[REDACTED]                                             |
| 10/12/21    | JAL         | 1.80         | 684.00     | Preparation for day two of trial.                                                |
| 10/12/21    | JAL         | 9.00         | 3,420.00   | Conduct trial, day two.                                                          |
| 10/12/21    | JAL         | 3.20         | 1,216.00   | Preparation for day three of trial and communication with clients and witnesses. |

| <u>Date</u> | <u>Tkpr</u> | <u>Hours</u> | <u>Fee</u> | <u>Description</u>                                                                                                                   |
|-------------|-------------|--------------|------------|--------------------------------------------------------------------------------------------------------------------------------------|
| 10/13/21    | EBC         | 2.10         | 840.00     | Preparations for day three of trial, including analysis of [REDACTED]<br>[REDACTED]                                                  |
| 10/13/21    | EBC         | 9.00         | 3,600.00   | Attend day three of trial.                                                                                                           |
| 10/13/21    | EBC         | 0.90         | 360.00     | Preparation of key points from testimony of plaintiff's forensic witnesses and B. Labine for closing argument.                       |
| 10/13/21    | JAL         | 1.50         | 570.00     | Preparation for day three of trial.                                                                                                  |
| 10/13/21    | JAL         | 9.00         | 3,420.00   | Conduct trial, day three.                                                                                                            |
| 10/13/21    | JAL         | 3.50         | 1,330.00   | Preparation for day four of trial, including [REDACTED]<br>[REDACTED]                                                                |
| 10/13/21    | JAL         | 0.30         | 114.00     | Communication with court regarding jury charges, objections and verdict form.                                                        |
| 10/13/21    | JAL         | 0.20         | 76.00      | Communication with opposing counsel regarding jury charges, objections and verdict form.                                             |
| 10/14/21    | EBC         | 1.30         | 520.00     | Analysis of [REDACTED]<br>[REDACTED]                                                                                                 |
| 10/14/21    | EBC         | 2.20         | 880.00     | Attend day four of trial and attend court's decision granted defendants' motion for directed verdict and motion for attorneys' fees. |
| 10/14/21    | EBC         | 6.10         | 2,440.00   | Travel from Beaufort, South Carolina to Tampa, Florida following trial.                                                              |
| 10/14/21    | JAL         | 2.20         | 836.00     | Conduct trial, day four.                                                                                                             |
| 10/14/21    | JAL         | 0.80         | 304.00     | Post-trial analysis of directed verdict and fee issues.                                                                              |
| 10/14/21    | JAL         | 0.60         | 228.00     | Communications with clients and witnesses regarding trial victory.                                                                   |
| 10/14/21    | JAL         | 4.50         | 1,710.00   | Travel from Beaufort to Spartanburg.                                                                                                 |

| <u>Date</u> | <u>Tkpr</u> | <u>Hours</u> | <u>Fee</u> | <u>Description</u>                                                                                            |
|-------------|-------------|--------------|------------|---------------------------------------------------------------------------------------------------------------|
| 10/15/21    | JAL         | 0.30         | 114.00     | Communications with Anna regarding [REDACTED]                                                                 |
| 10/15/21    | JAL         | 0.30         | 114.00     | Communications with Bill Harvey regarding [REDACTED]                                                          |
| 10/15/21    | JAL         | 1.20         | 456.00     | Analysis of [REDACTED]                                                                                        |
| 10/15/21    | JAL         | 1.50         | 570.00     | Preparation of orders documenting Judge Price's rulings on name change, directed verdict, and attorneys fees. |
| 10/18/21    | JAL         | 0.20         | 76.00      | Emails to and from B. Harvey regarding [REDACTED]                                                             |
| 10/18/21    | JAL         | 1.40         | 532.00     | Analysis of [REDACTED]                                                                                        |
| 10/19/21    | JAL         | 0.20         | 76.00      | Email to and from B. Harvey regarding [REDACTED]                                                              |
| 10/19/21    | JAL         | 0.10         | 38.00      | Email to Anna regarding [REDACTED]                                                                            |
| 10/19/21    | JAL         | 1.10         | 418.00     | Analysis of [REDACTED]                                                                                        |
| 10/20/21    | JAL         | 0.20         | 76.00      | Emails to and from court regarding proposed order relating to name change and filing of proposed order.       |
| 10/20/21    | JAL         | 0.50         | 190.00     | Revision of directed verdict proposed order.                                                                  |
| 10/20/21    | JAL         | 0.20         | 76.00      | Email to and from Anna regarding [REDACTED]                                                                   |
| 10/20/21    | JAL         | 0.10         | 38.00      | Email to and from opposing counsel regarding Plaintiff's new co-counsel and email to and from new counsel.    |
| 10/25/21    | EBC         | 0.30         | 120.00     | Analysis of [REDACTED]                                                                                        |
| 10/25/21    | JAL         | 0.80         | 304.00     | Continued preparation of affidavit of fees.                                                                   |
| 10/26/21    | JAL         | 3.80         | 1,444.00   | Analysis of [REDACTED]                                                                                        |
| 10/26/21    | JAL         | 0.20         | 76.00      | Email to and from Anna regarding [REDACTED]                                                                   |
| 10/26/21    | JAL         | 0.50         | 190.00     | Telephone conference with M. Ward regarding false allegations by Plaintiff relating to his wife.              |

| <u>Date</u> | <u>Tkpr</u> | <u>Hours</u> | <u>Fee</u> | <u>Description</u>                                                                          |
|-------------|-------------|--------------|------------|---------------------------------------------------------------------------------------------|
| 10/26/21    | JKP         | 2.50         | 550.00     | Analysis of [REDACTED]                                                                      |
| 10/27/21    | EBC         | 0.60         | 240.00     | Legal research regarding [REDACTED]<br>[REDACTED]                                           |
| 10/27/21    | JAL         | 2.70         | 1,026.00   | Analysis of [REDACTED]<br>preparation of reply.                                             |
| 10/27/21    | JAL         | 0.30         | 114.00     | Email to and from M. Ward regarding false allegations by<br>Plaintiff relating to his wife. |
| 10/27/21    | JAL         | 0.50         | 190.00     | Preparation of Ward affidavits.                                                             |
| 10/27/21    | JKP         | 1.30         | 286.00     | Analysis of [REDACTED]                                                                      |
| 10/28/21    | EBC         | 0.50         | 200.00     | Analysis of [REDACTED]<br>[REDACTED]                                                        |
| 10/28/21    | EBC         | 2.10         | 840.00     | Analysis and revision of [REDACTED]<br>[REDACTED]                                           |
| 10/28/21    | JAL         | 0.20         | 76.00      | Telephone conference with Anna regarding [REDACTED]<br>[REDACTED]                           |
| 10/28/21    | JAL         | 3.10         | 1,178.00   | Preparation of reply in support of fees.                                                    |
| 10/28/21    | JAL         | 3.40         | 1,292.00   | Analysis of Plaintiff's motion for new trial and preparation of<br>response.                |
| 10/28/21    | JAL         | 0.20         | 76.00      | Email to and from court reporter regarding transcript.                                      |
| 10/28/21    | JAL         | 0.40         | 152.00     | Analysis of [REDACTED]                                                                      |
| 10/28/21    | JAL         | 0.70         | 266.00     | Revision of Directed Verdict proposed order.                                                |
| 10/29/21    | EBC         | 0.40         | 160.00     | Analysis of [REDACTED]<br>[REDACTED]                                                        |
| 10/29/21    | EBC         | 0.80         | 320.00     | Analysis of [REDACTED]                                                                      |
| 10/29/21    | EBC         | 0.30         | 120.00     | Analysis of [REDACTED]<br>[REDACTED]                                                        |

| <u>Date</u>               | <u>Tkpr</u> | <u>Hours</u> | <u>Fee</u> | <u>Description</u>                                  |
|---------------------------|-------------|--------------|------------|-----------------------------------------------------|
| 10/29/21                  | JAL         | 1.20         | 456.00     | Preparation of reply in support of fees.            |
| 10/29/21                  | JAL         | 2.40         | 912.00     | Analysis of [REDACTED] and preparation of response. |
| 10/31/21                  | EBC         | 0.70         | 280.00     | Analysis of [REDACTED]                              |
| 10/31/21                  | EBC         | 0.80         | 320.00     | Analysis and revision of [REDACTED]                 |
| <b>TOTAL CURRENT FEES</b> |             |              | <b>\$</b>  | <b>101,532.00</b>                                   |

TIMEKEEPER SUMMARY

| <u>Name</u>          | <u>Hours</u> | <u>Hourly Rate</u> | <u>Value</u> |
|----------------------|--------------|--------------------|--------------|
| Carlstedt, Edward B. | 104.30       | 400.00             | \$41,720.00  |
| Lehrer, Jeffrey A.   | 155.20       | 380.00             | \$58,976.00  |
| Patton, James K.     | 3.80         | 220.00             | \$836.00     |

EXPENSES:

| <u>Phase/Task Code</u> | <u>Description</u>                                                                           |    |          |
|------------------------|----------------------------------------------------------------------------------------------|----|----------|
| E100 E110              | EBC - Travel to Beaufort, SC 10-08-2021 - 10-13-2021 for Trial                               | \$ | 1,007.70 |
| E100 E110              | EBC - Travel to Beaufort, SC 10-08-2021 - 10-13-2021 for Trial                               | \$ | 416.45   |
| E100 E112              | JAL1 - Forum Benefits v. AssuredPartners - Post-Trial Proposed Order Filing Fee on 10-20-21. | \$ | 31.74    |
| E100 E111              | EBC - Travel to Beaufort, SC 10-08-2021 - 10-13-2021 for Trial                               | \$ | 69.77    |
| E100 E111              | EBC - Travel to Beaufort, SC 10-08-2021 - 10-13-2021 for Trial                               | \$ | 67.92    |

**EXPENSES:**

| <u>Phase/Task Code</u>         | <u>Description</u> |                    |
|--------------------------------|--------------------|--------------------|
|                                |                    | <hr/>              |
| <b>TOTAL CURRENT EXPENSES:</b> |                    | <b>\$ 1,593.58</b> |

**INVOICE SUMMARY**  
*In connection with our file number 025558.0009*

|                             |           |                   |
|-----------------------------|-----------|-------------------|
| PAST DUE BALANCE ON ACCOUNT | \$        | 24,504.07         |
| CURRENT FEES                | \$        | 101,532.00        |
| CURRENT EXPENSES            | \$        | 1,593.58          |
|                             |           | <hr/>             |
| <b>CURRENT AMOUNT DUE:</b>  | <b>\$</b> | <b>103,125.58</b> |
| TOTAL AMOUNT DUE            | \$        | 127,629.65        |

*(Past Due Balance plus the Current Charges)*

**Payments received after date of statement may not be reflected.**  
**If Past Due Balance has been paid, please disregard and only pay the Current Invoice Total.**



# FORDHARRISON<sup>LLP</sup>

# DRAFT

## Remittance Statement

November 1, 2021

Remittance Statement for services in connection with our file number 025558.0009:

AssuredPartners, Inc.

Summary of charges for invoice #0:

|                                                    |           |                   |
|----------------------------------------------------|-----------|-------------------|
| PAST DUE BALANCE ON ACCOUNT .....                  | \$        | 24,504.07         |
| CURRENT FEES .....                                 | \$        | 101,532.00        |
| CURRENT EXPENSES .....                             | \$        | <u>1,593.58</u>   |
| <b>CURRENT AMOUNT DUE .....</b>                    | <b>\$</b> | <b>103,125.58</b> |
| <br>TOTAL AMOUNT DUE.....                          | <br>\$    | <br>127,629.65    |
| <i>(Past Due Balance plus the Current Charges)</i> |           |                   |

Please remit this copy if paying via check.

Please forward pay confirmation to [ar@fordharrison.com](mailto:ar@fordharrison.com) if paying electronically.

**Wire/ACH Instructions:**

BB&T, now Truist  
SWIFT Code BRBTUS33  
For the account of Ford & Harrison LLP  
RTN/ABA#061113415  
Account #0005244790498

**Check Payment:**

Ford & Harrison LLP  
Post Office Box 890836  
Charlotte, NC 28289-0836

**For Credit Card Payment:**

<https://www.fordharrison.com/clientlogin.aspx>

**Payments received after date of statement may not be reflected.**

**If Past Due Balance has been paid, please disregard and only pay the Total Current Invoice.**

# FORDHARRISON<sup>LLP</sup>

## Past Due Balance Summary

November 1, 2021

This Summary reflects the Past Due Balance, in connection with our file number 025558.0009:

**AssuredPartners, Inc.**

Outstanding Bill Balances are reflected through November 3, 2021:

| <u>Invoice Date</u>      | <u>Invoice #</u> | <u>Amount Due</u>  |
|--------------------------|------------------|--------------------|
| 10/26/2021               | #836190          | \$24,504.07        |
| <b>PAST DUE BALANCE:</b> |                  | <b>\$24,504.07</b> |

## Expense Report

Report ID: 0100-4796-0035

|                  |                                          |
|------------------|------------------------------------------|
| Report Name      | AssuredPartners - Forum - Beaufort Trial |
| Expense Owner    | Jeffrey Lehrer (JAL1)                    |
| Expense Owner ID | JLEHRER / JAL1                           |
| Created By       | Heather Ratliff (HMR)                    |
| Submit Date      | Nov 3, 2021                              |
| To Be Paid In    | USD                                      |



Please place this cover sheet in front of hardcopy receipt pages and then scan or fax to:  
 Email: [expense@chromefile.com](mailto:expense@chromefile.com) Fax: (214) 540-1162

## Financial Summary

|                          | Total (USD) |
|--------------------------|-------------|
| Total Expenses Reported  | 3,873.70    |
| Amount Due Expense Owner | 3,873.70    |

## Expense Summary

| Expense Type        | Total (USD) |
|---------------------|-------------|
| Dinner              | 41.20       |
| Hotel - Lodging     | 1,325.41    |
| Hotel - Other       | 154.52      |
| Meeting Room Rental | 2,100.00    |
| Mileage             | 252.57      |
| Total               | 3,873.70    |

## Allocation

| Allocations Charged                                                                                | Total (USD) |
|----------------------------------------------------------------------------------------------------|-------------|
| 025558-0009 AssuredPartners,<br>Forum Benefits, Inc. v. AssuredPartners, NL and Brian Bannon; Case | 3,873.70    |
| Total                                                                                              | 3,873.70    |

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## Certificate of Electronic Notification

### Recipients

**Steven LeBlanc** - Notification transmitted on 11-08-2021 03:48:19 PM.

**Jeffrey Lehrer** - Notification transmitted on 11-08-2021 03:48:18 PM.

**Timothy St. Clair** - Notification transmitted on 11-08-2021 03:48:19 PM.

**William Newton** - Notification transmitted on 11-08-2021 03:48:18 PM.

**William Harvey** - Notification transmitted on 11-08-2021 03:48:18 PM.

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
NOTICE OF ELECTRONIC FILING [NEF]

-

**A filing has been submitted to the court RE:** 2016CP0702541

**Official File Stamp:** 11-08-2021 03:45:46 PM

**Court:** CIRCUIT COURT

Common Pleas

Beaufort

**Case Caption:** Forum Benefits Inc VS Brian Bannon , defendant,  
et al

**Event(s):**

Order/Order Cover Sheet \$25.00

**Document(s) Submitted:** Proposed Order/Attorney Fees

**Filed by or on behalf of:** Jeffrey Andrew Lehrer

This notice was automatically generated by the Court's auto-notification system.

-

**The following people were served electronically:**

Jeffrey Andrew Lehrer for Brian Bannon et al

Steven R. LeBlanc for Forum Benefits Inc

William B. Harvey, III for Brian Bannon et al

William Weston Jones Newton for Forum Benefits  
Inc

Timothy David St. Clair for Forum Benefits Inc

**The following people have not been served electronically by the Court. Therefore, they must  
be served by traditional means:**

Edward Carlstedt for Brian Bannon, Assured  
Partners NL

**STATE OF SOUTH CAROLINA**  
**COUNTY OF BEAUFORT**

**IN THE COURT OF COMMON PLEAS**  
**CIVIL ACTION NO. 2016-CP-07-2541**

**Forum Benefits, LLC,**  
  
**Plaintiff,**  
  
**v.**  
  
**Brian Bannon and Assured Partners, NL**  
  
**Defendants.**

**ORDER GRANTING DEFENDANTS’  
MOTION FOR DIRECTED VERDICT  
AND AWARDING PREVAILING PARTY  
ATTORNEYS’ FEES AND COSTS TO  
DEFENDANTS**

This case came before the Court for a jury trial beginning October 11, 2021. At the close of Plaintiff’s case in chief, Defendants Brian Bannon (“Defendant Bannon”) and Assured Partners, NL (“Defendant Assured Partners”) made a Motion for Directed Verdict pursuant to Rule 50 of the South Carolina Rules of Civil Procedure to dismiss all of Plaintiff’s claims. The Court carefully reviewed Defendants Motion for Directed Verdict and the extensive information and case citations presented to the Court. The Court also reviewed some of the previous filings in the case. On October 14, 2021, the Court granted Defendants’ Motion for Directed Verdict on all of Plaintiff’s claims.<sup>1</sup> This ruling was placed on the record and is hereby confirmed by this ORDER.<sup>2</sup>

Defendants subsequently moved for an award of attorneys’ fees and costs related to Plaintiff’s breach of contract claim and trade secrets claim. The Court granted Defendants’ motion for attorneys’ fees and costs. Plaintiff subsequently filed a Response to Defendants’ Motions for Attorneys’ Fees (“Plaintiff’s Response”). Defendants then filed a Reply in Support of Defendants’

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<sup>1</sup> During the parties’ arguments on Defendants’ Motion for Directed Verdict, Plaintiff’s counsel announced that Plaintiff was voluntarily dismissing Plaintiff’s tortious interference claim against Defendants. The Court notes that Plaintiff pursued its tortious interference claim in this matter for approximately five years before suddenly abandoning this claim during the parties’ directed verdict arguments.

<sup>2</sup> The case law discussed and cited by Defendants’ counsel during Defendants’ Motion for Directed Verdict is hereby incorporated by reference.

Motion for Attorneys' Fees/Costs and the Court's Award of Fees/Costs ("Defendants' Reply"). The Court has reviewed the parties' pleadings and arguments on this issue. This ORDER hereby confirms the Court's award of Defendants' attorneys' fees and costs.

**A. DIRECTED VERDICT ON PLAINTIFF'S BREACH OF CONTRACT CLAIM**

Defendants' Motion for Directed Verdict on Plaintiff's breach of contract claim against Defendant Bannon is GRANTED for the reasons described by this Court on October 14, 2021. The Court adopts all of Defendants' directed verdict arguments in connection with this claim, incorporates those arguments and attendant case law into this ruling, and holds that Plaintiff's breach of contract claim fails because:

- (1) Plaintiff failed to produce or prove the existence of a signed contract and, therefore, the alleged contract does not satisfy the Statute of Frauds;
- (2) Plaintiff failed to prove that there was a meeting of the minds on the essential terms of the alleged contract;
- (3) Even assuming the alleged contract was signed as Plaintiff alleged, the restrictions relating to the disclosure of confidential information and solicitation of customers expired two years after the employment relationship. Therefore, these restrictions expired at the latest in May of 2015, which was prior to the alleged breaches in this case; and
- (4) Plaintiff failed to establish the required elements of a restrictive covenant agreement which must be strictly construed against the employer under South Carolina law.

**B. DIRECTED VERDICT ON PLAINTIFF'S BREACH OF FIDUCIARY DUTY CLAIM**

Defendants' Motion for Directed Verdict on Plaintiff's breach of fiduciary duty claim

against Defendant Bannon is GRANTED for the reasons described by the Court on October 14, 2021. The Court adopts all of Defendants' directed verdict arguments in connection with this claim, incorporates those arguments and attendant case law into this ruling, and holds that the Plaintiff's breach of fiduciary duty claim fails because:

- (1) The question of whether a fiduciary exists is a question of law for the Court to decide;  
and
- (2) Plaintiff failed to establish any evidence that Defendant Bannon's relationship to Plaintiff as an independent contractor created any type of fiduciary duty to Plaintiff.

**C. DIRECTED VERDICT ON PLAINTIFF'S TRADE SECRETS ACT CLAIM**

Defendants' Motion for Directed Verdict on Plaintiff's claim under the South Carolina Trade Secrets Act ("SCTSA") against Defendants is GRANTED for the reasons described by the Court on October 14, 2021. The Court adopts all of Defendants' directed verdict arguments in connection with this claim, incorporates those arguments and attendant case law into this ruling, and holds that the Plaintiff's trade secrets claim fails because:

- (1) The facts supporting Plaintiff's trade secrets claim, even taken in a light most favorable to Plaintiff, show that Plaintiff wholly and completely failed to prove the existence of any trade secret information;
- (2) Plaintiff failed to prove that it took efforts that were reasonable under the circumstances to maintain the alleged secrecy of its alleged trade secrets;
- (3) Plaintiff failed to prove that Defendant Bannon (or Defendant Assured Partners) obtained access to Plaintiff's trade secrets by improper means;
- (4) Plaintiff failed to prove that Defendants misappropriated, wrongfully disclosed, or wrongfully used its trade secrets;



- (5) Plaintiff failed to prove any causal link between Defendants' alleged misappropriation of Plaintiff's alleged trade secrets and Plaintiff's alleged damage. Plaintiff failed to prove damages that were proximately caused by Defendants' alleged conduct;
- (6) Plaintiff's alleged damages were wholly speculative and Plaintiff offered no evidence from any clients to establish that clients moved their business from Plaintiff to Defendant Assured Partners because of Defendants' use and/or disclosure of Plaintiff's trade secrets;
- (7) Plaintiff's introduced no evidence showing that Defendant Assured Partners ever had access to or used in any fashion any information of Plaintiff's that could be considered a trade secret; and
- (8) Plaintiff's trade secrets claim was so deficient in every respect that the Court finds that Plaintiff brought its misappropriation of trade secrets claim in bad faith.

**D. DIRECTED VERDICT ON PLAINTIFF'S CONVERSION CLAIM**

Defendants' Motion for Directed Verdict on Plaintiff's conversion claim against Defendant Bannon is GRANTED for the reasons described by the Court on October 14, 2021. The Court adopts all of Defendants' directed verdict arguments in connection with this claim, incorporates those arguments and attendant case law into this ruling, and holds that the Plaintiff's conversion claim fails because:

- (1) Plaintiff could not prove the elements of a conversion against Defendant Bannon;
- (2) Plaintiff failed to prove that Defendant Bannon converted any property of Plaintiff to the exclusion of Plaintiff's rights as Plaintiff always retained access and rights to the information at issue;
- (3) The property Plaintiff alleged that Defendant Bannon converted was intangible

property which, under South Carolina law, is not properly the subject of a conversion claim; and

- (4) Even if Defendant Bannon converted any of Plaintiff's alleged property, Plaintiff failed to prove any causal link between Defendant Bannon's alleged conversion and Plaintiff's alleged damages.

**E. PLAINTIFF'S TORTIOUS INTERFERENCE WITH CONTRACT CLAIM**

As referenced in footnote 1 above, during the directed verdict arguments, Plaintiff voluntarily dismissed its tortious interference claim against Defendants. Accordingly, the Court dismissed this claim.

**F. AWARD OF DEFENDANTS' ATTORNEYS' FEES AND COSTS**

With regard to the issue of awarding attorneys' fees and costs related to Plaintiff's breach of contract claim, the Court has reviewed Plaintiff's Response along with Defendants' Reply on this issue. The alleged contract upon which Plaintiff sued Defendant Bannon states, "In any litigation between the parties related to this Agreement, the prevailing party shall be entitled to recover all reasonable costs and attorney's fees." (Complaint Ex. A, ¶11.).

The Court confirms its ruling and finding that Defendant Bannon is the prevailing party related to this claim. Therefore, the Court GRANTS Defendant Bannon's motion for attorneys' fees and costs. Defendant Bannon is hereby awarded all attorneys' fees and costs incurred by him or paid by Defendant Assured Partners on his behalf and for his benefit in the defense of this case. These attorneys' fees and costs are assessed against and to be paid by Plaintiff.

With regard to the issue of awarding attorneys' fees related to Plaintiff's trade secrets claim, the Court has reviewed Plaintiff's Response along with Defendants' Reply on this issue. The SCTSA states: "If (1) a claim of misappropriation is made in bad faith, (2) a motion to

terminate an injunction is made or resisted in bad faith, or (3) wilful misappropriation exists, the court may award reasonable attorney's fees to the prevailing party.” S.C. Code Ann. §39-8-80. The Court confirms its ruling and finding that the evidence at trial proved that Plaintiff made and pursued this claim against Defendants in bad faith. The Court has also determined that Defendants are the prevailing parties related to this claim. Therefore, the Court GRANTS Defendants motion for attorneys’ fees under the SCTSA. Defendants Bannon and Assured Partners are hereby awarded all of their attorneys’ fees incurred in the defense of this case. These attorneys’ fees and costs are assessed against and to be paid by Plaintiff.

The Court has reviewed the Affidavits of Jeffrey A. Lehrer and William B. Harvey, III for attorneys’ fees and costs. The Court finds these fees and costs reasonable pursuant to the six factors established by the South Carolina Supreme Court in *Taylor v. Medenica*, 331 S.C. 575, 503 S.E.2d 458 (1998). The Court finds that the Affidavit of Jeffrey A. Lehrer provides sufficient support for the reasonableness of the fees and costs sought related to each of these factors.

**G. CONCLUSION**

It is confirmed and ORDERED that Defendants’ Motion for Directed Verdict is GRANTED in full and all of Plaintiff’s claims have been and are hereby DISMISSED. The Court hereby awards Defendants their attorneys’ fees and costs. JUDGMENT is hereby entered against Plaintiff in the amount of \$484,312.10.

It is so ORDERED.

Dated: \_\_\_\_\_

\_\_\_\_\_, County

\_\_\_\_\_

Judge Bentley Price  
Presiding Circuit Court Judge

**FORM 4**

**STATE OF SOUTH CAROLINA  
COUNTY OF BEAUFORT  
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE**

**CASE NO. 2016 CP-07-2541**

**FORUM BENEFITS, LLC**

**BRIAN BANNON AND  
ASSURED PARTNER, NL**

PLAINTIFF(S)

DEFENDANT(S)

**Submitted by: BRIAN BANNON AND ASSURED PARTNERS,  
NL**

**Attorney for :** ☐ Plaintiff ☒ Defendant  
or  
☐ Self-Represented Litigant

**DISPOSITION TYPE (CHECK ONE)**

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☒ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:** ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

**ORDER INFORMATION**

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : \_\_\_\_\_

**INFORMATION FOR THE JUDGMENT INDEX**

**Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.**

| <b>Judgment in Favor of<br/>(List name(s) below)</b> | <b>Judgment Against<br/>(List name(s) below)</b> | <b>Judgment Amount To be Enrolled<br/>(List amount(s) below)</b> |
|------------------------------------------------------|--------------------------------------------------|------------------------------------------------------------------|
| <b>BRIAN BANNON AND<br/>ASSURED PARTNERS, NL</b>     | <b>FORUM BENEFITS, LLC</b>                       | <b>\$484,312.10</b>                                              |

If applicable, describe the property, including tax map information and address, referenced in the order:  
N/A

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

**Note: Title abstractors and researchers should refer to the official court order for judgment details.**

**E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.**

\_\_\_\_\_  
**Circuit Court Judge**

\_\_\_\_\_  
**Judge Code**

\_\_\_\_\_  
**Date**

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or to parties (when appearing pro se) as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
**ATTORNEY(S) FOR THE PLAINTIFF(S)**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
**ATTORNEY(S) FOR THE DEFENDANT(S)**

\_\_\_\_\_  
**CLERK OF COURT**

**Court Reporter:**

**E-Filing Note:** In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial before the court. The issues have been tried or heard and a decision rendered.

The Court has GRANTED Defendants' motion for directed verdict on all of Plaintiff's remaining claims.

The Court has GRANTED Defendants' motion for attorneys' fees and costs.

Judgment is hereby entered against Plaintiff.

WSACTIVE LLP:12702731.1

**STATE OF SOUTH CAROLINA  
BEAUFORT COUNTY**

**IN THE COURT OF COMMON PLEAS  
CIVIL ACTION NO. 2016-CP-07-2541**

Forum Benefits, LLC,

Plaintiff,

v.

Brian Bannon and Assured Partners, NL

Defendants.

**PLAINTIFF'S REPLY IN SUPPORT OF  
MOTION FOR A NEW TRIAL**

Plaintiff Forum Benefits, LLC has requested a new trial based on (1) the Court's refusal to recuse itself despite a reasonable appearance of bias and (2) multiple erroneous directed verdict rulings. In response, Defendants criticize Plaintiff's request for recusal as an egregious personal attack on the trial judge that should be sanctioned, while Defendants also attempt to reconcile the Court's inconsistent evidentiary rulings. Notably, Defendants do not discuss any of the Court's directed verdict rulings and instead subsequently filed an unsolicited proposed Order that bears no resemblance to the Court's actual directed verdict rulings.

Plaintiff has respectfully questioned the trial judge's appearance of bias at all times, with understandable trepidation. However, the Court's own actions and rulings provide overwhelming evidence of the trial judge's impartiality that warrant recusal and a new trial.

**I. Defendants Completely Ignore the Trial Judge's Displays of Bias During Trial**

Defendants argue that Plaintiff's recusal motion was "primarily based" on the fact that the trial judge attended college with Mack Ward. Defs.' Resp., p. 1. This is simply not accurate, and Defendants' failure to discuss or to even acknowledge the trial judge's displays of bias during the trial speaks volumes – Defendants cannot rationalize that behavior or its appearance.

Plaintiff sought recusal based on the trial judge's actions during the second day of trial that revealed bias in favor of Defendants. The trial judge and Mack Ward – a Vice President of

Defendant Assured Partners who was identified by both parties as a likely trial witness – engaged in mutual hugging, back slapping, and generally rowdy laughter in the courtroom during a break in the trial. After this public display of familiarity, the trial judge announced from the front of the bench to all present in the courtroom that he knew Mack Ward from their days attending college at Wofford and, if cell phones had existed then, neither would be in the position they are in now. The trial judge further revealed that he had invited Mack Ward back into chambers to continue their reunion in private. Defendants completely ignore each of these actions by the trial judge – any one of which provides a reasonable basis to question the trial judge’s impartiality.

Instead, Defendants accuse Plaintiff of “fabricating evidence to disparage this Court and innocent third parties.” Defs.’ Resp., p. 2. According to Defendants, “Plaintiff falsely alleges that Mack Ward’s wife (Michelle Ward) posted a message to Judge Price’s Facebook account on October 19, 2021, that allegedly said, ‘Happy birthday Judge. We love you!’” *Id.* Defendants further assert that “Judge Price has not posted anything on Facebook since June 10, 2015, prior to becoming a judge.” *Id.* The trial judge knows that Plaintiff did not fabricate any evidence and is well-aware of his own recent Facebook® activity.

Plaintiff mentioned Michelle Ward in a single sentence on page 4 of Plaintiff’s Motion for a New Trial. That single sentence reads as follows:

Specifically, someone named Bentley Price maintains a personal Facebook® account, is currently Facebook® friends with some [sic] named Michelle Ward, which is the name of Mack Ward’s wife, and received and responded to Facebook® messages on October 19, 2021, that include photos of someone who appears to be the trial judge in a black robe and stating, “Happy birthday Judge. We love you!”

Pl.’s Mot., p. 4. Grammatically, the quoted sentence above is a simple sentence with a single subject and a compound predicate. The single subject of the sentence is “someone named

Bentley Price.” The predicates that follow this single subject state that someone named Bentley Price: (1) maintains a personal Facebook® account, (2) is currently Facebook® friends with someone named Michelle Ward, which is the name of Mack Ward’s wife, and (3) received and responded to Facebook® messages on October 19, 2021, that include photos of someone who appears to be the trial judge in a black robe and stating, “Happy birthday Judge. We love you!”

***Nothing in this sentence remotely suggests that Michelle Price sent Judge Price a message on October 19, 2021.***

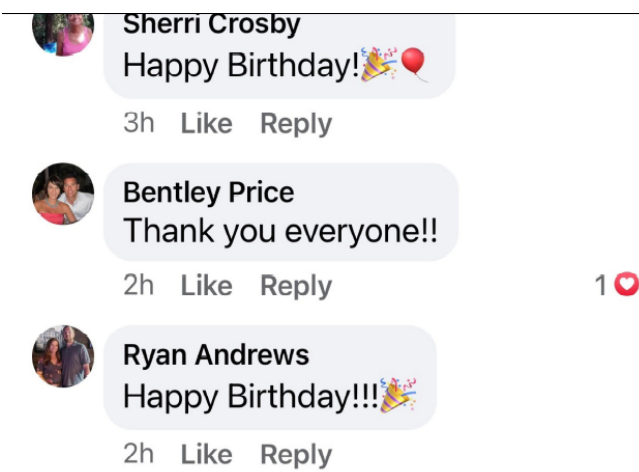
The sentence ***does*** state that someone named Bentley Price received and responded to Facebook® messages on October 19, 2021, that include photos of someone who appears to be the trial judge in a black robe and the statement, “Happy birthday Judge. We love you!”

Attached as Exhibit 1 is a declaration from Lisa Stritt who authenticates the Facebook® messages described in this sentence. Specifically, on October 19, 2021, Julie Stewart posted the message below which includes a tag for Bentley Price, three photographs of Judge Price wearing a judge’s robe, and the statement “Happy birthday Judge. We love you!”





The above posting indicates that Facebook® users posted 19 comments, including the following comment posted by Bentley Price:



The above Facebook® postings are significant because they directly contradict unsolicited statements made on the record by the trial judge six days earlier in response to Plaintiff's recusal motion. Specifically, on October 13, 2021, the trial judge declared that he does not do Facebook® and there is nothing on Facebook® that says he is a judge. Not only does the trial judge "do" Facebook® with his own Facebook® account,<sup>1</sup> but also, less than a week after making those unsolicited statements, the trial judge received and responded to Facebook® postings that clearly identify Bentley Price as a judge.

After ignoring the trial judge's public displays of bias and falsely accusing Plaintiff of fabricating evidence, Defendants then argue that Plaintiff presented no "basis or justification" for recusal because Plaintiff did not provide evidence of any of the four examples for disqualification listed in Canon 3(E)(1). Defs.' Resp., pp. 3-5. This argument ignores the plain language of Canon 3(E)(1).

Canon 3(E)(1) states as follows:

E. Disqualification

(1) A judge *shall disqualify himself* or herself in a proceeding in which the *judge's impartiality might reasonably be questioned*, including but not limited to instances where:

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, . . .

Canon 3(E)(1) (emphasis added). Plaintiff's stated basis for recusal – that the trial judge displayed and revealed a personal bias toward Mack Ward, a Vice President of Defendant Assured Partners – squarely fits in the first example provided by Canon 3(E)(1)(a). Moreover, the Commentary to Canon 3(E)(1) specifically states, "Under this rule, a judge is disqualified

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<sup>1</sup> In his Judicial Merit Selection Commission Personal Data Questionnaire, Judge Price stated that "if elected to the Circuit Court I would cease all social media as it would no longer be beneficial."

*whenever the judge's impartiality might reasonably be questioned*, regardless whether any of the specific rules in Section 3E(1) apply.” Plaintiff respectfully submits that the trial judge’s public displays of bias directed toward Mack Ward provide concrete evidence by which “the judge’s impartiality might reasonably be questioned.” Therefore, pursuant to the specific language of Canon 3(E), the trial judge should have disqualified himself.<sup>2</sup>

## **II. The Trial Judge’s Inconsistent Rulings Further Demonstrate Bias Toward Defendants**

Defendants further criticize Plaintiff for pointing out inconsistent rulings by the trial judge that provide further evidence of the trial judge’s partiality. Defs.’ Resp., p. 6. As described in detail in Plaintiff’s Motion, the Court’s inconsistent rulings on the same evidentiary issues provide probative and compelling evidence of the Court’s bias.

Prior to the pre-trial hearing on October 7, 2021, Plaintiff identified two witnesses – Mrs. Gray and Mrs. Hildreth – who were not available to provide live testimony in the courtroom during trial. Mrs. Gray asked to be excused from her trial subpoena because she was retired, 72 years old, had no transportation, and was then undergoing chemotherapy for cancer. Mrs. Hildreth lives outside of the Court’s subpoena power in Central Florida and was not able to travel to Beaufort due to previous work commitments. Defendants argued Mrs. Gray could provide live testimony at trial remotely from her home via WebEx®, but objected to Mrs. Hildreth providing live testimony the same way.

Defendants need not be consistent, but the Court should.

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<sup>2</sup> Defendants correctly note that Plaintiff had no concern that Judge Morgan had any judicial bias. When Defendants’ counsel inquired about any relationship the undersigned may have had with Judge Morgan, the undersigned fully disclosed that Judge Morgan graduated from The Citadel two years ahead of the undersigned, that Judge Morgan may have been in the same company as the undersigned’s brother, and that Judge Morgan was a member of the Greenville Country Club. But the undersigned also informed Defendants’ counsel that the undersigned and Judge Morgan have never met, and neither would likely even recognize the other.

Adopting Defendants' inconsistent positions, the Court directed Plaintiff to arrange for the 72-year-old chemotherapy patient retiree to testify remotely from her home via WebEx® while preventing Mrs. Hildreth from testifying remotely the same way. Defendants point out that the "decision to permit testimony by remote means at trial is within the discretion of the trial court." Defs.' Resp., p. 7. Plaintiff agrees, and the Court's inconsistent application of that discretion to two unavailable witnesses is probative evidence of the Court's bias.

At trial, Defendants objected to the admissibility of Defendant Bannon's Responses to Admission Requests (Plaintiff's Exhibit 9) as being a pleading: "Your Honor, I object, it's a pleading." Trial Tr., p. 193. The Court sustained the objection: "I'm – I'm not going to allow it in. He's correct, it's a pleading." *Id.* Plaintiff's Exhibit 9 is not a pleading. Defendants apparently now concede that a discovery response is not a pleading, despite that being the sole basis for their objection at trial, because Defendants now abandon that objection and argue that Plaintiff failed to lay a proper foundation for the exhibit. Defs.' Resp., p. 8. Defendants' new-found objection is equally wrong, though, as the witness unambiguously testified that he recognized that Plaintiff's Exhibit 9 was exactly what it purported to be – his own responses to admission requests. Trial Tr., p. 193. No further foundation is required to authenticate the discovery responses and have them admitted into evidence. S.C. R. Evid. 901.

Exhibit C to the Complaint actually is a pleading, and when Plaintiff objected to admitting this pleading into evidence, the Court overruled Plaintiff's objection without any explanation: "I'll allow it." Trial Tr., p. 574. Instead of attempting to reconcile the Court's directly doubly-inconsistent rulings about the admissibility of pleadings, Defendants now accuse Plaintiff of being inconsistent because Plaintiff had previously admitted Exhibit A to the Complaint into evidence as Plaintiff's Exhibit 137. Notably, Plaintiff moved Exhibit A to the

Complaint into evidence without any objection from Defendants. Trial Tr., p. 42. The Court's ruling that Defendant Bannon's Responses to Admission Requests are inadmissible pleadings, when they are not even pleadings, cannot be reconciled with the Court's subsequent improper ruling allowing Defendants to admit into evidence what is indisputably a pleading, but the two rulings together are further probative and compelling evidence of the Court's bias.

Defendants' attempts to reconcile the Court's evidentiary rulings on damages conflate evidence, misstate the law, and find no support in the Rules of Evidence. After much debate and evidently after consultation with another judge, the Court conceded that Stritt could testify based on his own personal knowledge of the dollar amount of commissions lost due to Defendants' actions. However, the Court would not allow Stritt to authenticate contemporaneously-generated exhibits that corroborate his testimony about these same lost commissions. Nor would the Court allow Stritt to testify based on his own personal knowledge that within weeks of the events giving rise to this litigation, a buyer in an arms-length transaction reduced the previously negotiated purchase price of Plaintiff by \$1.5M based solely on the commissions lost because of Defendants' actions.

In compounding their mistaken position, first Defendants conflate the \$1.5M reduction in the purchase price of Plaintiff that occurred in December 2016 with a completely unrelated \$1.5M earnout that took place over a year later. Although the dollar amounts are the same, the former is direct, first-hand, factual evidence of the reduction in the value of Plaintiff's business caused by Defendants' actions. The latter is a performance bonus earned over a year later after Plaintiff increased profitability by a specific percentage established by the buyer. The former is directly relevant evidence of damages, and the latter has nothing to do with damages.

Next, Defendants misstate the law by arguing that Plaintiff's evidence of lost commissions was not relevant to damages because "Plaintiff was required to establish lost profits, not lost revenues." Defs.' Resp., p. 10. Defendants cite no authority for their unilateral proclamation that recoverable damages are limited to lost profits, and the South Carolina Trade Secrets Act provides them with no support. Instead, the South Carolina Trade Secrets Act states that a plaintiff "is entitled to recover actual damages for misappropriation of trade secrets." S.C. Code § 39-8-40(A). The evidence of lost commissions is directly linked to Plaintiff's actual damages from Defendants' actions.

Defendants summarily proclaim, without legal authority, that Plaintiff could only prove damages through expert testimony. Defs.' Resp., p. 10. Ignoring Rules 601-603 of the South Carolina Rules of Evidence, Defendants repeatedly objected to first-hand, factual testimony from Stritt simply because Defendants believed that the testimony was "self-serving" and therefore inadmissible. Ignoring their own "self-serving" standard for admissibility, Defendants suggest that "Plaintiff could have easily asked Defendant Bannon to confirm" the same testimony. Defendants' objection to self-serving testimony, unless it comes from Defendants' own witness, is frivolous, and Defendants' suggestion that damages can only be proven through expert testimony has no support in the Rules of Evidence.

Defendants try to reconcile the Court's directed verdict ruling – that there was no meeting of the minds to support a contract between Plaintiff and Defendant Bannon – with the Court's anticipated award of attorneys' fees under the Court-declared non-existent contract by claiming that the directed verdict ruling was based on the Statute of Frauds and Plaintiff is judicially estopped from arguing that no contract existed. Defs.' Resp., pp. 10-11.

Contrary to Defendants' argument, the Court did not even mention the Statute of Frauds in its directed verdict ruling, but instead acknowledged evidence of a signed contract. Trial Tr., p. 677. The Court specifically ruled, "There was, obviously, no meeting of the minds, if, in fact, Mr. LeBlanc's client is accurate and correct that there was a signed contract." *Id.* It is axiomatic that if no meeting of the minds existed to establish a contract, then there can be no attorneys' fees contract provision to enforce. In the only case cited by Defendants on this issue, the South Carolina Supreme Court affirmed that a contract for the sale of real property did not satisfy the Statute of Frauds because the contract did not adequately describe the property to be conveyed. *Fici v. Koon*, 372 S.C. 341, 348, 642 S.E.2d 602, 605 (2007). However, the court also held that the contract was not void in its entirety, and the "Statute of Frauds does not affect the validity of the attorney's fee provision" in the otherwise valid contract. *Id.* In contrast to *Fici*, the Court in the case at bar ruled as a matter of law that no contract existed between Plaintiff and Defendant Bannon. Ruling that no contract existed is irreconcilable with enforcement of an attorneys' fee provision in the non-existent contract, but the two rulings together are further probative and compelling evidence of the Court's bias.

Defendants' argument that Plaintiff is judicially estopped makes no sense. Judicial estoppel is an equitable concept that protects the integrity of the judicial process (ironically, the same objective as that of Canon 3(E)(1), which Defendants resist). *See Hawkins v. Bruno Yacht Sales*, 353 S.C. 31, 42, 577 S.E.2d 202, 208 (2003). Plaintiff certainly continues to take the position that an enforceable contract existed between Plaintiff and Defendant Bannon and that the Court erred in ruling as a matter of law that no contract existed. However, the Court has for now found against Plaintiff on this issue, and Plaintiff is constrained to follow the Court's rulings. If judicial estoppel applies, it applies to prevent Defendant Bannon from first

convincing the Court that no contract existed and then asking the Court to enforce an attorneys' fee provision in the non-existent contract.

### **III. Defendants Do Not Address the Court's Directed Verdict Rulings**

Plaintiff challenged each of the Courts' directed verdict rulings as being legally erroneous and/or impermissible rulings on disputed facts. In their response, Defendants declined to respond to any of Plaintiff's arguments. Defs.' Resp., p. 12. However, Defendants subsequently filed an unsolicited order that adds arguments and rulings that appear nowhere in the transcript of the Court's rulings. Defendants' failure to respond to Plaintiff's Motion and subsequent attempt to whitewash the Court's directed verdict rulings demonstrates that even Defendants could not defend the Court's rulings.

### **IV. Conclusion**

Plaintiff respectfully asserts that the Court's conduct in this case violated Canon 3(E)(1) and required recusal. In addition, the Court's directed verdict rulings failed to follow the law and/or impermissibly prevented the Jury from deciding disputed questions of fact. For each of these reasons, Plaintiff respectfully requests that the Court grant Plaintiff's request for recusal and a new trial on all issues.

Respectfully submitted,

s/Steven R. LeBlanc  
 Steven R. LeBlanc (SC Bar 14221)  
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E-mail: [timstclair@parkerpoe.com](mailto:timstclair@parkerpoe.com)

*Attorneys for Plaintiff Forum Benefits, LLC*

**CERTIFICATE OF SERVICE**

I certify that on November 16, 2021, I electronically filed a **PLAINTIFF'S REPLY IN SUPPORT OF MOTION FOR A NEW TRIAL** to be served on all counsel of record by means of the Court's Notice of Electronic Filing.

Respectfully submitted,

s/Steven R. LeBlanc  
Steven R. LeBlanc (SC Bar 14221)  
Steve LeBlanc, LLC  
P.O. Box 9198  
Greenville, S.C. 29604  
Tel: (864) 902-4411  
Steve@LeBlancLLC.com

*Attorneys for Plaintiff Forum Benefits, LLC*

STATE OF SOUTH CAROLINA  
BEAUFORT COUNTY

IN THE COURT OF COMMON PLEAS  
CIVIL ACTION NO. 2016-CP-07-2541

Forum Benefits, LLC

Plaintiff,

v.

Brian Bannon and Assured Partners, NL

Defendants.

**DECLARATION OF LISA HOLLINGSWORTH STRITT**

I, Lisa Hollingsworth Stritt, make the following declaration based on my personal knowledge of the facts described herein:

1. I have had a Facebook® account for more than five years, and I am knowledgeable about the use of Facebook® and the information that may be observed in Facebook® postings.
2. On October 19, 2021, I searched Facebook® accounts for “Bentley Price” and identified an active account for “Bentley Price” that appeared to be associated with Judge Price.
3. Attachment 1 to this declaration is a true and accurate copy of a screenshot I took on October 19, 2021, which identifies that the owner of the Facebook® account for Bentley Price is a Facebook® friend of Michelle Ward.
4. Attachment 2 to this declaration is a true and accurate copy of a screenshot I took on October 19, 2021, of a Facebook® posting from Julie Stewart on the same day.
5. As shown in Attachment 2, the Facebook® posting from Julie Stewart on October 19, 2021, includes a tag for Bentley Price, three photographs of Judge Price wearing a judge’s robe, and the statement “Happy birthday Judge. We love you!”

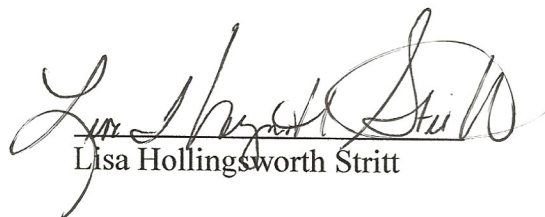
6. As shown in Attachment 2, the Facebook® posting from Julie Stewart on October 19, 2021, had received 19 comments at the time that the screenshot was taken.

7. Attachment 3 to this declaration is a true and accurate copy of a screenshot I took on October 19, 2021, of a portion of the 19 comments to the Facebook® posting shown in Attachment 2.

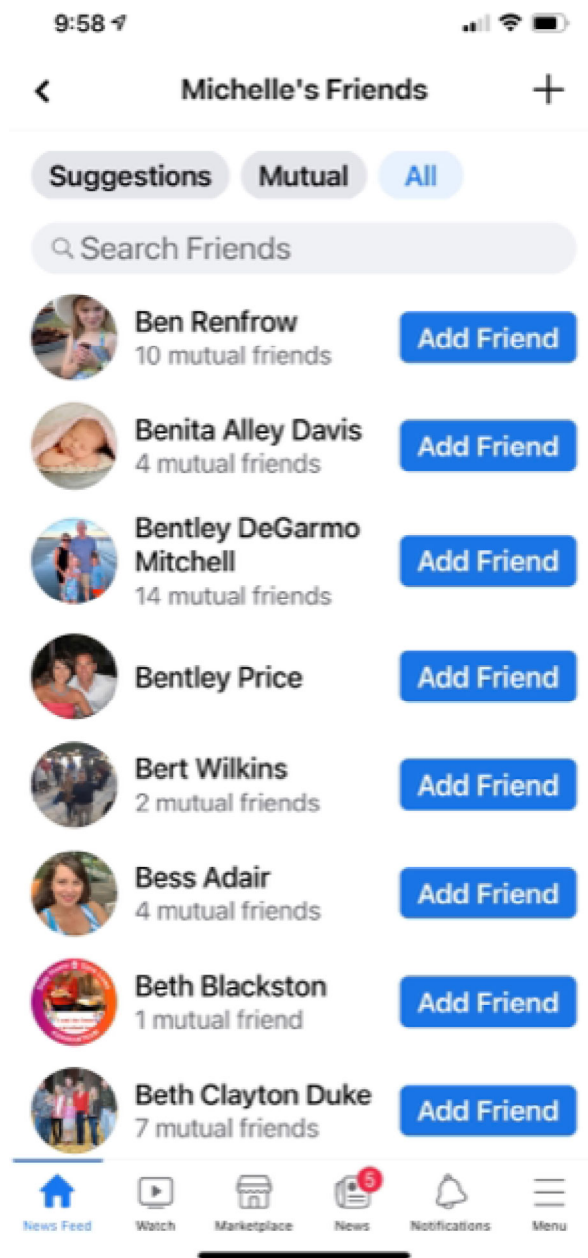
8. As shown in Attachment 3, Bentley Price was one of the 19 people who posted a comment to the Facebook® posting shown in Attachment 2, stating, "Thank you everyone!!"

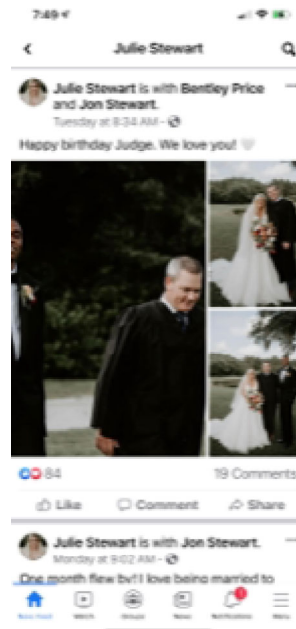
I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt.

Executed on November 15, 2021, in Desert Hot Springs, CA.



Lisa Hollingsworth Stritt







**Sherri Crosby**

Happy Birthday! 🎉🎈

3h Like Reply

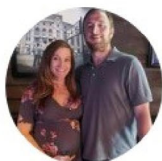


**Bentley Price**

Thank you everyone!!

2h Like Reply

1 ❤️



**Ryan Andrews**

Happy Birthday!!! 🎉

2h Like Reply



Write a comment...



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**STATE OF SOUTH CAROLINA  
BEAUFORT COUNTY**

**IN THE COURT OF COMMON PLEAS  
CIVIL ACTION NO. 2016-CP-07-2541**

Forum Benefits, LLC,

Plaintiff,

v.

Brian Bannon and Assured Partners, NL

Defendants.

**PLAINTIFF'S SUPPLEMENTAL  
RESPONSE TO DEFENDANTS'  
MOTIONS FOR ATTORNEYS' FEES**

Plaintiff Forum Benefits, LLC files this Supplemental Response to Defendants' Motions for Attorneys' Fees to address arguments and evidence presented for the first time by Defendants' in their Reply. Specifically, Defendants now argue that Plaintiff is judicially estopped from denying the existence of a contract that the Court determined as a matter of law did not exist. Defs.' Reply, pp. 2-3. Defendants also now acknowledge that Defendant Bannon never incurred any fees and costs but nonetheless argue that Defendant Bannon should "recover" the fees and costs incurred by Defendant Assured Partners. *Id.*, pp. 4-7. Defendants' new arguments have no legal support.

**I. If Judicial Estoppel Applies, It Applies to Defendants' Attorneys' Fee Request Based on a Provision in a Contract that the Court Ruled Did Not Exist**

Plaintiff has opposed Defendants' request for attorneys' fees, *inter alia*, as being inconsistent with the Court's ruling that the contract containing the attorneys' fee provision did not exist. Defendants now argue that Plaintiff is judicially estopped from taking the position that no contract existed between Plaintiff and Defendant Bannon. Defs.' Reply, pp. 2-3. According to Defendants, Plaintiffs alleged this contract in the Complaint and successfully argued that this contract existed for almost five years. *Id.* Therefore, Defendants believe that Plaintiff is now judicially estopped from arguing that no such contract existed – even though the Court has ruled that no such contract existed. *Id.*



Defendants' judicial estoppel argument is specious. Plaintiff certainly alleged an employment contract between Plaintiff and Defendant Bannon, provided evidence at trial that the contract existed, and continues to believe that the contract existed. However, the trial judge ruled as a matter of law that there was no meeting of the minds to support a contract. 10/14/21 Tr., p. 3. Therefore, not only was Plaintiff **not** successful on this issue, one of the required elements for judicial estoppel, but Defendants fail to explain how Plaintiff's argument that no contract existed – which is precisely how the Court ruled – can possibly be “part of an intentional effort to mislead the court,” another required element for judicial estoppel. *Cothran v. Brown*, 357 S.C. 210, 216 (2004). Therefore, judicial estoppel does not bar Plaintiff from arguing that no attorneys' fees can be awarded pursuant to a provision in a contract that the Court has ruled did not exist.

To the contrary, Defendants' attempt to enforce an attorneys' fee provision in a contract that Defendants successfully convinced the Court never existed is precisely the kind of inconsistent position that judicial estoppel prevents. Defendants took the position that there was no meeting of the minds between Plaintiff and Defendant Bannon to support the existence of the contract. After the Court agreed with Defendants' argument and ruled that no such contract existed, Defendants now take the opposite position and argue that an attorneys' fee provision in the nonexistent contract is still enforceable. Defendants' positions are inconsistent, and awarding attorneys' fees pursuant to a provision in a nonexistent contract would be equally inconsistent.

## **II. Defendant Bannon Has No Fees and Costs to Recover**

The attorneys' fee provision in the contract, which the Court ruled does not exist, provides, “In any litigation between the parties related to this Agreement, the prevailing party shall be entitled to **recover** all reasonable costs and attorneys' fees.” (emphasis added). Plaintiff

has previously questioned whether Defendant Bannon ever incurred any attorneys' fees and costs to recover, and Defendants dismiss this argument as mere speculation. Defs.' Reply, p. 4.

However, instead of providing any evidence that Defendant Bannon actually incurred any fees and costs, Defendants instead direct the Court to authority from other states to argue that Defendant Bannon should be able recover the fees and costs incurred by Defendant Assured Partners. *Id.*, pp. 4-7. Defendants' arguments ignore controlling authority directly on point from the South Carolina Supreme Court.

In *Williamson v. Middleton*, 383 S.C. 490 (S.C. 2009), the South Carolina Supreme Court answered the question of whether a party can recover attorneys' fees that were not actually incurred. In that case, an attorney represented an employee, who was also a personal friend, in a lawsuit for unpaid commissions. *Id.* at 493. The attorney testified that he did not have a fee agreement with the employee, had never sent a bill for attorneys' fees to the employee, and that the employee had no obligation to pay any attorneys' fees. *Id.* at 495. After a jury returned a verdict for the employee, the trial court awarded the employee \$35,000 in attorneys' fees. *Id.* at 493. The Court of Appeals *en banc* affirmed the attorneys' fee award, finding that the employee might discuss a fee at the end of the case. *Id.* at 496. The Supreme Court reversed the award of attorneys' fees, finding "no competent evidence to support the finding that [employee] incurred attorney's fees." *Id.*

As in *Williamson*, Defendants have provided no evidence that Defendant Bannon ever incurred any attorneys' fees or costs. Therefore, Defendant Bannon has no attorneys' fees and costs to recover, and the controlling authority of *Williamson* requires denial of Defendants' request for attorneys' fees pursuant to the employment contract.

Respectfully submitted,

s/Steven R. LeBlanc  
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P.O. Box 9198  
Greenville, S.C. 29604  
Tel: (864) 902-4411  
Steve@LeBlancLLC.com

*Attorneys for Plaintiff Forum Benefits, Inc.*

**CERTIFICATE OF SERVICE**

I certify that on December 29, 2021, I electronically filed a PLAINTIFF'S  
SUPPLEMENTAL RESPONSE TO DEFENDANTS' MOTIONS FOR ATTORNEYS' FEES to  
be served on all counsel of record by means of the Court's Notice of Electronic Filing.

Respectfully submitted,

s/Steven R. LeBlanc  
Steven R. LeBlanc (SC Bar 14221)  
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*Attorneys for Plaintiff Forum Benefits, Inc.*

STATE OF SOUTH CAROLINA  
BEAUFORT COUNTY

IN THE COURT OF COMMON PLEAS  
CIVIL ACTION NO. 2016-CP-07-2541

Forum Benefits, LLC

Plaintiff,

v.

Brian Bannon and Assured Partners, NL

Defendants.

**DECLARATION OF BRIAN STRITT**

I, Brian Stritt, make the following declaration based on my personal knowledge of the facts described herein:

1. I am over the age of 18 years, and I am competent to make this declaration.
2. I previously owned and am currently the managing partner of Plaintiff Forum Benefits, LLC.
3. I have personally known Mack Ward for more than ten years and understand that he has been employed as a Vice President of Defendant Assured Partners since 2016.
4. I understand that all parties identified Mack Ward as an anticipated witness who would testify at trial.
5. I was present in the courtroom during the entire trial of the above-captioned matter, including the qualification and selection of the jury.
6. During a recess on the second day of the trial, I was seated on the right side of the courtroom on the bench immediately behind counsel for Forum Benefits, LLC and observed Judge Price walk to the front of the courtroom and enthusiastically announced to everyone present in the courtroom that he and Mack Ward knew each other from their days attending

college at Wofford together and, if cell phones had existed then, neither would be in the position they are in now.

7. I was shocked by Judge Price's blatant display of close friendship with Mack Ward – a Vice President of the company being sued and someone who Judge Price had previously identified to the jury as a witness who may testify during the trial.

8. Based on Judge Price's actions and statements, it was apparent to me that Judge Price had a long-term, personal friendship with Mack Ward.

9. After observing the interaction between Judge Price and Mack Ward, it was decided to not call Mack Ward as a witness to testify at trial because I was concerned about Judge Price's partiality toward Mack Ward and the company he worked for.

10. After observing the interaction between Judge Price and Mack Ward, I was so concerned about the predicament I found myself in – the middle of a trial with a judge consistently ruling against my company and openly gregarious with an officer of the Defendant – I was stunned that the judge did not immediately recuse himself and asked counsel representing Forum Benefits to take whatever actions were needed to have the judge recuse himself.

11. To this day, I remain convinced that my company, Forum Benefits, LLC did not receive a fair trial because of the conduct of Judge Price. I understand, and have known all along during this case, that not all rulings would be in favor of my company. But for the presiding judge to reveal his sentiments by coming to the floor of the courtroom to embrace – both physically and verbally – a primary employee of the Defendant company, and instigator of the actions that caused the lawsuit, defies any notion of fairness and impartiality. This blatantly biased display by a judge might be a scene in a fictional TV drama, but it was not anything I would have thought I would ever see and hear in real life.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt.

Executed on December 29, 2021, in Salem, S.C.

  
Brian Stritt

**STATE OF SOUTH CAROLINA  
BEAUFORT COUNTY**

**IN THE COURT OF COMMON PLEAS  
CIVIL ACTION NO. 2016-CP-07-2541**

Forum Benefits, LLC

Plaintiff,

v.

Brian Bannon and Assured Partners, NL

Defendants.

**DECLARATION OF LISA HOLLINGSWORTH-STRITT**

I, Lisa Hollingsworth-Stritt, make the following declaration based on my personal knowledge of the facts described herein:

1. I am over the age of 18 years and am competent to make this declaration.
2. I am married to Brian Stritt, the former owner and current managing partner of Plaintiff Forum Benefits, LLC.
3. I was employed by Plaintiff Forum Benefits, LLC from September 18, 2018 until November 1, 2021.
4. I have personally known Mack Ward for more than ten years and understand that he is a Vice President of Defendant Assured Partners.
5. I was present in the courtroom during the entire trial of the above-captioned matter.
6. During a recess on the second day of the trial, I was seated on the right side of the courtroom on the bench immediately behind counsel for Forum Benefits, LLC when a boisterous conversation erupted from the other side of the courtroom near where the witnesses for the Defendants had been seated.



7. I observed Judge Price and Mack Ward engaged in several minutes of very boisterous conversation that involved hugs, back slapping, and loud laughter.

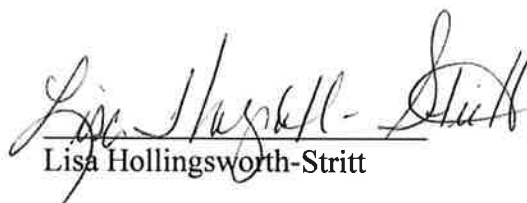
8. After the loud and public display with Mack Ward, Judge Price immediately walked to the front of the courtroom and announced that what everyone had just witnessed was a reunion of old college friends and, if cell phones had existed then, neither he nor Mack Ward would be in the position they are in now.

9. I was very surprised by Judge Price's blatant display of close friendship with Mack Ward – a Vice President of the company being sued and someone who was expected to testify during the trial.

10. Based on Judge Price's actions and statements, it was apparent to me that Judge Price had a long-term, personal friendship with Mack Ward that influenced his behavior and rulings during the trial.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt.

Executed on December 29, 2021, in Salem, S.C.



Lisa Hollingsworth-Stritt

STATE OF SOUTH CAROLINA  
BEAUFORT COUNTY

IN THE COURT OF COMMON PLEAS  
CIVIL ACTION NO. 2016-CP-07-2541

Forum Benefits, LLC

Plaintiff,

v.

Brian Bannon and Assured Partners, NL

Defendants.

**DECLARATION OF MICHELLE FILLER**

I, Michelle Filler, make the following declaration based on my personal knowledge of the facts described herein:

1. I am over the age of 18 years and am competent to make this declaration.
2. I have been employed by Plaintiff Forum Benefits, LLC for approximately eight years, as an Account Manager and the Director of Client Services.
3. I have personally known Mack Ward for approximately eight years and understand that he is a Vice President of Defendant Assured Partners.
4. I was present in the courtroom during most of the trial of the above-captioned matter.
5. During a recess on the second day of the trial, I was present on the right side of the courtroom in the area immediately behind counsel for Forum Benefits, LLC.
6. I observed Judge Price approach the attorneys present and briefly speak with them.
7. Judge Price then walked directly to the left side of the courtroom where witnesses for the Defendants had generally been seated during the trial and directly approached Mack Ward.



8. Judge Price greeted Mack Ward, smiling, laughing, slapping each other on the back and partially hugging, and then the two proceeded to happily talk back and forth for a few minutes.

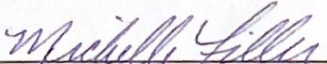
9. Judge Price then walked to the front of the courtroom and announced to everyone present in the courtroom that he and Mack Ward were old college buddies from Wofford and said that if cell phones had existed back then, neither of them would hold the positions they do.

10. I was very surprised the trial judge could have such an obviously close personal relationship with a vice president of one of the parties who was also expected to testify as a witness during the trial.

11. Based on Judge Price's actions and statements described above, it seemed to me that Judge Price was biased in favor of the other parties.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt.

Executed on December 29, 2021, in Greenville, S.C.

  
Michelle Filler

**STATE OF SOUTH CAROLINA  
BEAUFORT COUNTY**

**IN THE COURT OF COMMON PLEAS  
CIVIL ACTION NO. 2016-CP-07-2541**

Forum Benefits, LLC,

Plaintiff,

v.

Brian Bannon and Assured Partners, NL

Defendants.

**PLAINTIFF'S MOTION TO ALTER OR  
AMEND A JUDGMENT AND  
SUPPLEMENT TO ITS MOTION FOR A  
NEW TRIAL**

Plaintiff Forum Benefits, LLC previously filed a Motion for a New Trial pursuant to Rule 59(a) of the South Carolina Rules of Civil Procedure, based on the trial judge's refusal to recuse, erroneous directed verdict rulings, and multiple erroneous evidentiary rulings. On January 4, 2022, the Court conducted a hearing on Plaintiff's Motion for a New Trial. On February 1, 2022, the Court issued an Order directing a verdict against Plaintiff on all causes of action, awarding Defendants' attorneys' fees and costs, entering judgment against Plaintiff, and ending the case. The new Order does not mention Plaintiff's Motion for a New Trial.

Pursuant to Rules 59(a) and (e) of the South Carolina Rules of Civil Procedure, and such other authorities made and provided, Plaintiff files the present Motion to Alter or Amend the Court's February 1, 2022, Order so as to grant a new trial to Plaintiff. Plaintiff respectfully requests that the Court address the issues raised in Plaintiff's Motion for a New Trial and the present Supplement to Its Motion for a New Trial, and address the issues raised in Plaintiff's Responses to Defendants' Motions for Attorneys' Fees.

**I. Procedural History**

Trial commenced on October 11, 2021. Each party identified an individual named Mack Ward – a Vice President of Defendant Assured Partners, NL – as a likely trial witness in pre-trial

briefs, and the trial judge, the Honorable Bentley Price, identified Mack Ward as a potential witness to the jury venire.

During a break on the second day of trial, the trial judge entered the courtroom and engaged in mutual hugging, back slapping, and generally rowdy laughter with Mack Ward. Mack Ward had not been in the courtroom before that time. The trial judge then announced to all present in the courtroom that he and Mack Ward knew each other from their days attending college at Wofford together and, if cell phones had existed then, neither would be in the position he is in now. The trial judge then invited Mack Ward back into chambers alone and continued their reunion in private.

Before trial resumed on October 13, 2021, Plaintiff presented an oral motion for the trial judge to recuse himself from further participation in the trial based on the trial judge's public displays of bias the previous day. The trial judge did not dispute or refute the description of any of his actions identified during the oral motion, and even confirmed the comment about cell phones as being "my comment . . . intended to be a self-deprecating joke about myself." The trial judge also provided the unsolicited statements, "I don't do Facebook" and "there's nothing on Facebook that says I'm a judge." The trial judge then characterized Plaintiff's recusal request as "another tactic on behalf of the Plaintiff" and "about as far grasping at a straw that you could find" before denying Plaintiff's motion to recuse.

Before the jury returned on October 14, 2021, the trial judge granted an oral motion for directed verdict for Defendants on all causes of action. Defendants then made two oral motions for attorneys' fees and costs, which the trial judge immediately granted before allowing any response from Plaintiff and before receiving any evidence of the amount or reasonableness of any fees and costs actually incurred. The trial judge then granted Plaintiff's request for ten days

to respond to Defendants' motions for attorneys' fees (which had already been granted) and to file post-trial motions, and the trial judge then dismissed the jury.

On October 25, 2021, Plaintiff filed a Response to Defendants' oral motions for attorneys' fees. Plaintiff questioned how the trial judge could award attorneys' fees based on a provision in a contract that the trial judge had already ruled as a matter of law did not exist. Plaintiff also questioned how the trial judge could award attorneys' fees for the bad faith pursuit of trade secret claims when two different judges had denied two separate, earlier motions seeking summary judgment against Plaintiff's trade secret claim after full briefings and hearings. Lastly, Plaintiff questioned how the trial judge could award attorneys' fees before hearing any argument or receiving any evidence of the amount or reasonableness of the fees actually incurred, especially considering that Defendants' counsel had previously revealed that Defendant Assured Partners was providing a complete defense to Defendant Bannon, and Defendants had provided no evidence that Defendant Bannon had ever incurred any attorneys' fees whatsoever.

On October 25, 2021, Plaintiff also separately filed a Motion for a New Trial pursuant to Rule 59(a) of the South Carolina Rules of Civil Procedure. Plaintiff asserted that the trial judge's reasonable appearance of bias, combined with multiple inconsistent rulings that consistently favored Defendants, demonstrated actual bias by the trial judge that prevented Plaintiff from receiving a fair trial. Plaintiff separately challenged each directed verdict ruling by the trial judge as being legally and/or factually erroneous. Lastly, Plaintiff separately asserted that multiple erroneous evidentiary rulings deprived Plaintiff of a fair trial.

On November 1, 2021, Defendants filed a Reply in Support of Their Motion for Attorneys' Fees. Defendants argued for the first time that Plaintiff was judicially estopped from arguing that attorneys' fees could not be awarded pursuant to a contract that the trial judge had

ruled as a matter of law did not exist. Defendants also accused Plaintiff of “clearly speculating” that Defendant Bannon had never incurred any attorneys’ fees, but provided no evidence to the contrary, and instead argued that Defendant Bannon should be able recover the fees and costs incurred solely by Defendant Assured Partners. Defendants still provided no evidence of the amount or reasonableness of any fees actually incurred.

On November 1, 2021, Defendants also filed a Response in Opposition to Plaintiff’s Motion for a New Trial. Defendants argued that Plaintiff’s recusal request was a personal attack against the trial judge based on false allegations and that recusal based on the reasonable appearance of bias is only necessary if one of the examples provided in Canon 3(E)(1) exists. Defendants also defended the trial judge’s inconsistent rulings as either discretionary or correct, but Defendants did not address any of the trial judge’s directed verdict rulings.

On November 4, 2021, Defendants’ counsel filed an affidavit that, for the first time, identified the requested fees and costs and argued that the requested fees were reasonable.

On November 9, 2021, Defendants prepared, filed, and emailed to chambers a proposed Order, which had not been requested by the trial judge, to “confirm” the trial judge’s directed verdict and attorneys’ fee rulings. Ex. 1, 11/9/21 Emails with Court. Plaintiff objected to the unsolicited proposed Order as improper pursuant to Rule 8(c) of the Electronic Filing Policies and Guidelines and a blatant attempt to re-write wholesale the trial judge’s oral rulings. *Id.*

On November 16, 2021, Plaintiff filed a Reply in Support of Its Motion for a New Trial. Plaintiff provided unrefuted evidence to support the allegations against the trial judge that Defendants had claimed were false. Specifically, Plaintiff provided authenticated screenshots of the trial judge’s active Facebook® account, multiple recent postings wishing the trial judge happy birthday and providing photos of the trial judge officiating a wedding in his judge’s robe,



and the trial judge's Facebook® response to the postings. Plaintiff also corrected Defendants' misunderstanding of Canon 3(E)(1) which unambiguously requires recusal if the "judge's impartiality might reasonably be questioned, regardless of whether any of the specific rules in Section 3E(1) apply."

On December 29, 2021, Plaintiff filed a Supplemental Response to Defendants' Motions for Attorneys' Fees. Plaintiff responded to Defendants' new judicial estoppel argument and pointed out that if judicial estoppel applies, then it applies to prevent Defendants from enforcing an attorneys' fee provision in Defendant Bannon's employment agreement that Defendants had successfully convinced the Court never existed. Plaintiff also responded to Defendants' argument that Defendant Bannon could recover attorneys' fees and cost that were incurred solely by Defendant Assured Partners by citing controlling South Carolina Supreme Court precedent that specifically rejected Defendants' argument.

On December 29, 2021, Plaintiff also filed declarations from three witnesses – Michelle Filler, Lisa Hollingsworth Stritt, and Brian Stritt – each of whom had personally observed the trial judge's extrajudicial conduct with Mack Ward during trial as described in Plaintiff's oral recusal motion and again in Plaintiff's New Trial Motion.

On January 4, 2022, the trial judge conducted a hearing on Plaintiff's Motion for a New Trial. After acknowledging that the hearing was for Plaintiff's Motion for a New Trial, the trial judge inexplicably declared that the trial had **not** finished and that he considered Plaintiff's Motion for a New Trial to be a motion to reconsider his granting of summary judgment, a ruling that he had not in fact made. After questioning the trial judge's apparent confusion, Plaintiff presented testimony from Michelle Filler, Lisa Hollingsworth Stritt, and Brian Stritt describing



the trial judge's extrajudicial conduct with Mack Ward in the courtroom that created a reasonable appearance of bias.

After receiving arguments from all parties on Plaintiff's Motion for a New Trial, the trial judge *sua sponte* described his relationship with Mack Ward for the record. The trial judge confirmed that he was college friends with Mack Ward and again did not dispute or refute the witnesses' testimony describing his lively interaction with Mack Ward in the courtroom. However, the trial judge pointedly denied making the statement (which is in the trial transcript) about cell phones and instead asserted that, rather than he having made a self-deprecating joke about himself, he had merely repeated what Mack Ward had said to him. The trial judge initially did not acknowledge that he had also privately met with Mack Ward in chambers without anyone from the Plaintiff being present, but then did so when asked by Plaintiff's counsel to confirm the meeting.

On February 1, 2022, the trial judge filed an Order granting a directed verdict against Plaintiff on all causes of action, confirming an award of Defendants' attorneys' fees and costs, entering judgment against Plaintiff, and ending the case. This February 1, 2022, Order is a *verbatim* copy of the unsolicited proposed Order that Defendants had filed and sent to chambers on November 9, 2021. The February 1, 2022, Order invents a new, wholly different account of the trial judge's directed verdict rulings provided orally four months earlier that ended the trial and upon which Plaintiff's Motion for New Trial was based, deleting several directed verdict rulings while adding several new directed verdict rulings. The February 1, 2022, Order does not mention Plaintiff's Motion for a New Trial.

The February 1, 2022, Order, within the context of the case at the Circuit Court level, is so inconsistent and ambiguous that Defendants' counsel – who actually authored the Order – sent

an email to the trial judge's law clerk and secretary asking *them* to confirm whether the new Order "has the intent and effect of denying Plaintiff's motion for a new trial." Ex. 2, 2/8/22 Email to Court. The trial judge's law clerk responded the next day, not by written Order and not by form Order, but by email only, "I spoke with Judge Price and in his original order he granted attorneys fees. He is denying any reconsideration of fees and the fees are due." Ex. 3, 2/9/22 Email from Court. No word has been provided by the trial court, even by email, that addresses Plaintiff's motion for new trial.

## **II. The February 1, 2022, Order is Inconsistent with the Court's Directed Verdict Rulings Made Orally on October 14, 2021**

On October 14, 2021, the Court orally granted a directed verdict against Plaintiff for all causes of action, and Plaintiff filed a Motion for a New Trial based on the Court's oral rulings. The February 1, 2022, Order re-writes anew the Court's oral directed verdict rulings provided four months earlier that ended the trial and upon which Plaintiff's Motion for New Trial was based, deleting several directed verdict rulings while adding several new directed verdict rulings.

For example, the Court orally directed a verdict on Plaintiff's breach of fiduciary duty claim by declaring as a matter of law that an independent contractor cannot owe a fiduciary duty; therefore, Defendant Bannon could not breach a fiduciary duty to Plaintiff because he was an independent contractor at the time of the alleged breach. Plaintiff challenged the directed verdict ruling that an independent contractor cannot owe a fiduciary duty in its Motion for a New Trial and provided at least eight South Carolina published opinions in which the courts held an independent contractor did owe a fiduciary duty. Defendants thereafter provided the Court with the unsolicited proposed Order that the Court adopted *verbatim*. In its new Order, the Court completely abandons its previous ruling that an independent contractor can never owe a fiduciary duty. Instead, the Court now rules as a matter of law that "Plaintiff failed to establish

any evidence that Defendant Bannon's relationship to Plaintiff as an independent contractor created any type of fiduciary duty to Plaintiff."

As another example, the Court summarily adopted Defendants' legal and factual arguments in their entirety when orally granting Defendants a directed verdict on Plaintiff's trade secret claim. Defendants had separately argued that a directed verdict was proper because (1) the S.C. Trade Secret Act applies only to employees and (2) it is black letter law that the substance of a trade secret has to be introduced into evidence to support a trade secret claim. Plaintiff challenged each of these unsupported and legally erroneous arguments in its Motion for a New Trial. Defendants have apparently abandoned both arguments because although the February 1, 2022, Order, copied *verbatim* from Defendants' proposed Order, again "adopts all of Defendants' directed verdict arguments in connection with this claim," the new directed verdict ruling does not mention either argument or grant a directed verdict based on either argument.

As another example related to the directed verdict of Plaintiff's trade secret claim, the February 1, 2022, Order now rules that "Plaintiff brought its misappropriation of trade secrets claim in bad faith." However, Defendants' directed verdict motions did not include a request for a directed verdict that Plaintiff pursued its trade secret claim in bad faith. The words "bad" or "faith" appear nowhere in any of Defendants' directed verdict arguments, nor in any of the Court's oral directed verdict rulings. The verbiage about "bad faith" in the February 1, 2022, Order has been pulled only from thin air.

Plaintiff's Motion for a New Trial addressed the Court's directed verdict rulings made orally on October 14, 2021. To the extent the February 1, 2022, Order includes or confirms any of The directed verdict rulings made orally on October 14, 2021, Plaintiff repeats and incorporates by reference into the present Motion the entirety of Plaintiff's Motion for a New

Trial and Reply. Plaintiff immediately objected when Defendants emailed the unsolicited proposed Order to chambers as a blatant attempt to re-write and sanitize the Court's reasoning and rulings.

### **III. The February 1, 2022, Order Does Not Address Any Issues Raised in Plaintiff's Motion for a New Trial**

Pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, and such other authorities made and provided, Plaintiff files the present Motion to Alter or Amend the Court's February 1, 2022, Order and respectfully requests that the Court address the issues raised in Plaintiff's Motion for a New Trial. Plaintiff previously filed a Motion for a New Trial pursuant to Rule 59(a) of the South Carolina Rules of Civil Procedure based on the trial judge's refusal to recuse, erroneous directed verdict rulings, and multiple erroneous evidentiary rulings that deprived Plaintiff of a fair trial.

On January 4, 2022, the Court conducted a hearing on Plaintiff's Motion for a New Trial. The February 1, 2022, Order grants a directed verdict against Plaintiff on all causes of action, confirms an award of Defendants' attorneys' fees and costs, enters judgment against Plaintiff, and ends the case.

The Order filed February 1, 2022, is so inconsistent and ambiguous that Defendants' counsel – who actually authored the Order – sent an email to the trial judge's law clerk and secretary asking *them* to confirm if the new Order “has the intent and effect of denying Plaintiff's motion for a new trial.” Ex. 2, 2/8/22 Email to Court. Defendants' suggestion that an Order that does not even mention a motion, such as Plaintiff's Motion for a New Trial, can possibly have “the intent and effect of denying” that motion is baseless. The trial judge's law clerk by email, only, the next day, “I spoke with Judge Price and in his original Order he granted attorneys fees. He is denying any reconsideration of fees and the fees are due.” Ex. 3, 2/9/22

Email from Court. This response only creates more questions because Plaintiff had not filed a motion for reconsideration of fees, and the trial judge's answer did not address Defendants' question regarding the disposition of Plaintiff's Motion for a New Trial.

"It is well-settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved for appellate review." *Staubes v. City of Folly Beach*, 339 S.C. 406, 412, 529 S.E.2d 543, 546 (2000). "Error preservation requirements are intended 'to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments.'" *Id.*; see also *State v. Nelson*, 331 S.C. 1, 5 n.6, 501 S.E.2d 716, 718 n.6 (1998) ("the ultimate goal behind preservation of error rules is to insure that an issue raised on appeal has first been addressed to and ruled on by the trial court."). Plaintiff's Motion for a New Trial raises multiple appealable issues that have not been addressed by the trial judge, and Plaintiff respectfully asserts that it is manifestly unjust and legal error for the trial judge to ignore Plaintiff's Motion for a New Trial without any comment or ruling on any of the issues raised. Therefore, Plaintiff respectfully requests that the Court address the issues raised in Plaintiff's Motion for a New Trial, as well as the present Motion.

#### **IV. Additional Evidence Exists to Support Plaintiff's Motion for a New Trial Based on the Trial Judge's Refusal to Recuse**

Pursuant to Rule 59(a) of the South Carolina Rules of Civil Procedure, Plaintiff files the present Supplement to Its Motion for a New Trial to identify additional actions by the trial judge since trial that demonstrate the trial judge's actual bias in favor of Defendants.

Plaintiff's Motion for a New Trial was based in part on the trial judge's bias in favor of Defendants that prevented Plaintiff from receiving a fair trial. Specifically, the trial judge's extrajudicial conduct with Mack Ward, a Vice President of Defendant Assured Partners, during a recess in the trial, as well as the trial judge's response to Plaintiff's subsequent oral recusal

motion, demonstrated a reasonable appearance of bias in favor of Defendants and against Plaintiff. In addition, the trial judge's inconsistent rulings that consistently favored Defendants provided probative and corroborating evidence of the trial judge's actual bias in favor of Defendants.

The trial judge's treatment and disposition of Plaintiff's Motion for a New Trial provides additional, probative, and corroborating evidence of the trial judge's actual bias in favor of Defendants. At the outset of the January 4, 2022, hearing on Plaintiff's Motion for a New Trial, the trial judge declared that he would treat the motion as a motion to reconsider his previous oral directed verdict rulings. Plaintiff disagreed with the trial judge's attempt to mischaracterize Plaintiff's Motion for a New Trial, and the majority of the hearing involved witness testimony describing first-hand observations of the trial judge's interactions with Mack Ward that led to Plaintiff's oral recusal motion at trial. The remainder of the hearing involved arguments regarding Defendants' Motions for Attorneys' Fees.

After receiving arguments from all parties, the trial judge *sua sponte* described his relationship with Mack Ward for the record. However, the trial judge's recollection of events differed from the record and omitted significant details. Specifically, the trial judge confirmed that he was college friends with Mack Ward and again did not dispute or refute the witnesses' testimony describing his lively interaction with Mack Ward in the courtroom. However, the trial judge pointedly denied making the statement about cell phones and instead recalled that he had merely repeated what Mack Ward had said to him. The trial judge also did not mention that he had also met alone privately with Mack Ward in chambers without anyone from the Plaintiff being present until asked to confirm that this *ex parte* meeting actually took place.

Despite conducting a hearing that was specifically identified as a hearing on Plaintiff's Motion for a New Trial, the trial judge has nonetheless ignored Plaintiff's Motion for a New Trial without any comment or ruling. Instead, the trial judge issued the February 1, 2022, Order – written entirely by Defendants and submitted to chambers two months earlier – purportedly confirming the trial judge's oral directed verdict rulings. The February 1, 2022, Order – the only Order issued by the trial judge since the January 4, 2022, hearing – does not mention Plaintiff's Motion for a New Trial. As previously discussed, even Defendants' counsel questioned what impact the February 1, 2022, Order had on Plaintiff's Motion for a New Trial, and the trial judge's response did not answer the question posed.

Plaintiff respectfully asserts that either the trial judge's attempts to mischaracterize Plaintiff's Motion for a New Trial or his so complete lack of regard for the Plaintiff as to even look at the title of Plaintiff's motion in its caption, his wholesale adoption of an unsolicited proposed Order from Defendants, his statements during the hearing on January 4, 2022, and his pocket-veto of Plaintiff's Motion for a New Trial – without any ruling or explanation – all provide additional evidence of the trial judge's bias in favor of Defendants that should be considered in Plaintiff's Motion for a New Trial.

#### **V. The February 1, 2022, Order Raises New Bases for a New Trial**

Pursuant to Rule 59(a) of the South Carolina Rules of Civil Procedure, Plaintiff files the present Supplement to Its Motion for a New Trial to address the directed verdict rulings included in the February 1, 2022, Order.

A court may grant a motion for a directed verdict when the case presents only issues of law. S.C. R. Civ. P., Rule 50(a). “When ruling on a motion for a directed verdict, the trial court must view all evidence and all reasonable inferences in the light most favorable to the

nonmoving party, and if the evidence is susceptible of more than one reasonable inference, the trial court should submit the case to the jury.” *Roddey v. Wal-Mart Stores East, LP*, 415 S.C. 580, 588, 784 S.E.2d 670, 675 (2016) (citing *Unlimited Servs., Inc., v. Macklen Enters., Inc.*, 303 S.C. 384, 386, 401 S.E.2d 153, 154 (1991)). “The trial court must deny a motion for a directed verdict or JNOV if the evidence yields more than one reasonable inference or its inference is in doubt.” *RFT Mgmt. Co., LLC v. Tinsley & Adams LLP*, 399 S.C. 322, 333, 732 S.E.2d 166, 171 (2012). “In deciding such motions, neither the trial court nor the appellate court has the authority to decide credibility issues or to resolve conflicts in the testimony or the evidence.” *Id.* (citing *Welch v. Epstein*, 342 S.C. 279, 300, 536 S.E.2d 408, 419 (Ct. App. 2000)); *Erickson v. Jones Street Publishers, L.L.C.*, 368 S.C. 444, 464, 629 S.E.2d 653, 663 (2006).

Plaintiff respectfully asserts that the directed verdict rulings in the February 1, 2022, Order were again not faithful to such standards. In particular, the new Order repeatedly includes the statements that “Plaintiff failed to prove” or “Plaintiff failed to establish” or “Plaintiff could not prove” various disputed questions of fact. These statements do not comport with the standard for granting a directed verdict. Whether Plaintiff proved or established disputed questions of fact are questions for the Jury to decide, not something that can be determined as a matter of law through a directed verdict. Plaintiff’s case presented genuine issues of fact that ought to have decided by the Jury.

**A. The Directed Verdict on Plaintiff’s Contract Claim Relies on a Combination of Legal Errors and Disputed Facts for the Jury to Decide**

The February 1, 2022, Order again directs a verdict in favor of Defendant Bannon on Plaintiff’s breach of contract claim. In the oral directed verdict ruling, the Court noted that no signed contract was produced at trial, that there was no meeting of the minds to establish a contract, that any non-compete covenant would have expired before any breach occurred, and



that any non-compete covenant would be null and void. In the February 1, 2022, Order, the Court now rules as a matter of law that (1) Plaintiff *failed to prove* the existence of a signed contract to satisfy the Statute of Frauds, (2) Plaintiff *failed to prove* that there was a meeting of the minds on the essential terms of the alleged contract, (3) the restrictions relating to the disclosure of confidential information and solicitation of customers expired two years after the employment relationship, and (4) Plaintiff *failed to establish* the required elements of a restrictive covenant agreement which must be strictly construed against the employer under South Carolina law.

Plaintiff did not allege or introduce evidence to suggest that Defendant Bannon breached non-solicitation or non-compete covenants in the employment agreement. Plaintiff respectfully asserts that the remaining reasons identified by the Court are legally unsupported or improperly invade the province of the Jury, to the prejudice of Plaintiff. As a result, Plaintiff requests a new trial on the breach of contract claim against Defendant Bannon.

**1. The Court Erred in Concluding as a Matter of Law that Plaintiff Failed to Prove the Existence of a Signed Employment Agreement to Satisfy the Statute of Frauds**

Defendants argued, and the Court agreed, that Plaintiff's failure to produce a signed employment agreement prevented Plaintiff from satisfying the Statute of Frauds as a matter of law. This ruling incorrectly applies the Statute of Frauds by ignoring substantial, corroborating evidence that Defendant Bannon did sign the employment agreement with Plaintiff.

Evidence sufficient to satisfy the Statute of Frauds is not exclusively limited to production of a signed agreement. Courts in other states regularly allow parol evidence to prove the existence of a signed agreement that complies with the Statute of Frauds. *See, e.g., Alph C. Kaufman, Inc. v. Cornerstone Indus. Corp.*, 540 S.W.3d 803 (Ky. Ct. App. 2017); *Gipson v.*

*Mattox*, 2006 U.S. Dist. LEXIS 86207\* (S.D. Ala. 2006). In *Kaufman*, the court explained that the “clear and convincing” standard “does not mean that it must be established beyond a reasonable doubt, but that the evidence must not be vague, ambiguous, or contradictory, and must come from a credible source. It does not have to be undisputed or uncontradicted.”

*Kaufman*, 540 S.W.3d at 813. In *Gipson*, the court recognized, “That no written agreement has been produced today does not require a conclusion that no such document ever existed. If a written agreement previously existed, but was lost, destroyed or purloined, then defendant can introduce evidence to that effect in order to satisfy the Statute of Frauds.” *Gipson*, at \*37; *see, also, McInnis v. Lind*, 198 Ore. App. 139, 108 P.3d 578, 582 n.2 (Or. App. 2005) (observing many common-law exceptions to the statute of frauds' prohibition on parol evidence to support an agreement, including where a writing is lost or is in the possession of an adverse party); *Latino Food Marketers, LLC v. Ole Mexican Foods, Inc.*, 2003 U.S. Dist. LEXIS 26970, 2003 WL 23220142, \*5 (W.D. Wis. Aug. 20, 2003) (“if the parties did indeed form a contract that met the requirements of the statutes of frauds, the contract is enforceable even if the writing is lost or destroyed”); *Connecticut Bank & Trust Co. v. Wilcox*, 201 Conn. 570, 518 A.2d 928, 931 (Conn. 1986) (“the loss or destruction of a memorandum does not deprive it of effect under the Statute of Frauds,” where the writing can be proven by secondary evidence).

Comment (a) of section 137 of the *Restatement (Second) of Contracts* echoes this line of authority, stating “In cases of loss or destruction, the contents of a memorandum may be shown by an unsigned copy or by oral evidence.” *See also, Corbin on Contracts* § 23.10 (2006) (“If the requirements of the statute of frauds are satisfied by a signed contract or memorandum, the contract remains enforceable even though the writing is lost or destroyed. The contents of the writing can then be proved by parol testimony and the contract enforced.”).

The same rule applies in South Carolina. As acknowledged by Defendants in their directed verdict motion, South Carolina courts also allow parol evidence to establish the existence of a written contract when the contract cannot be located. *See Yadkin Valley Bank & Tr. v. Oaktree Homes, Inc.*, No. 2014-UP-306, 2014 S.C. App. Unpub. LEXIS 395, \* 1-4 (Ct. App. July 30, 2014) (cited in Defendants' motion). In *Yadkin*, the court noted that to avoid a statute of fraud defense, a plaintiff would need to satisfy a heightened standard of "clear and convincing" proof that the signed document existed. Unlike the plaintiff in *Yadkin*, Plaintiff in the case at bar did not rely solely on self-serving, uncorroborated testimony and instead introduced substantial corroborating evidence to establish the existence of the missing employment contract with Defendant Bannon.

Defendant Bannon failed to assert Statute of Frauds as an affirmative defense in his Answer, and it was only after Plaintiff was unable to produce a signed employment agreement that Defendant Bannon amended his Answer to add this defense. Defendant Bannon's failure to assert the statute of frauds defense until after Plaintiff was unable to produce a signed copy of the employment agreement is evidence that Defendant Bannon expected Plaintiff to produce a copy of the signed employment agreement because Defendant Bannon himself knew a signed employment agreement actually existed.

At trial, Defendant Bannon acknowledged that he was required to sign an employment agreement with both his previous employer and his current employer, Defendant Assured Partners; however, he nonetheless denied ever signing an employment agreement with Plaintiff. Plaintiff presented substantial corroborating evidence that refutes Defendant Bannon's testimony.

Defendant Bannon testified that he began working for Plaintiff in Charleston in 2009, and David Wyatt testified that Brian Stritt engaged him in 2009 to prepare an employment agreement for a new employee that would be hired in Charleston. Stritt testified that Ex. 137 (Ex. A to the Complaint) is a blank employment agreement prepared by Wyatt; that Ex. 163 is a completed employment agreement signed by Chris Whatley on May 18, 2009; and that Ex. 163 is substantially identical to the completed employment agreement signed by Defendant Bannon. Stritt further testified that Defendant Bannon signed the employment agreement when Stritt delivered the first paycheck to Defendant Bannon on June 1, 2009; that Stritt placed the signed employment agreement in Defendant Bannon's employment file; and that Stritt only discovered that the signed employment agreement was missing – along with Defendant Bannon's entire employment file – shortly after Stritt learned that Defendant Bannon had been hired by Defendant Assured Partners. The suspicious nature of Defendant Bannon's "lost" employment agreement – along with the entirety of his employment file – supports a reasonable inference that it was actually taken by, or at the direction of, Defendant Bannon. These are not matters of law for the Court to decide, but instead are disputed questions of fact for the Jury.

The trial testimony and exhibits regarding the existence of a signed employment agreement created a number of factual disputes for the jury to resolve. *Kumpf v. United Tel. Co. of the Carolinas*, 311 S.C. 533, 429 S.E.2d 869 (Ct. App. 1993) (holding that "a trial court should submit to the jury the issue of the existence of a contract when its existence is questioned and the evidence is either conflicting or admits of more than one inference."). Therefore, the factual dispute regarding whether Defendant Bannon actually signed an employment agreement with Plaintiff should have been submitted to the jury and not decided through a directed verdict; the Court's decision to do otherwise was based on errors of law and was prejudicial to Plaintiff.

**2. The Court Erred in Concluding as a Matter of Law that Plaintiff Failed to Prove a Meeting of the Minds on the Essential Terms of Defendant Bannon's Employment Agreement**

The February 1, 2022, Order asserts that as a matter of law “Plaintiff *failed to prove* that there was a meeting of the minds on the essential terms of the alleged contract.” This ruling ignores the witness testimony and exhibits introduced at trial that created disputed facts for the Jury to resolve regarding the essential terms in Defendant Bannon's employment agreement and his agreement to those terms.

Defendant Bannon testified that he began working for Plaintiff in Charleston in 2009, and David Wyatt testified that Brian Stritt engaged him in 2009 to prepare an employment agreement for a new employee that would be hired in Charleston. Stritt testified that Ex. 137 (Ex. A to the Complaint) is a blank employment agreement prepared by Wyatt for Defendant Bannon as the new employee in Charleston. Stritt also testified that Ex. 163 is a completed employment agreement signed by another employee, Chris Whatley, on May 18, 2009, and that Ex. 163 is substantially identical to the completed employment agreement signed by Defendant Bannon.

Stritt further testified that Defendant Bannon signed the employment agreement when Stritt delivered the first paycheck to Defendant Bannon on June 1, 2009. Stritt testified that he placed the signed employment agreement in Defendant Bannon's employment file and that he only discovered that the signed employment agreement was missing – along with Defendant Bannon's entire employment file – shortly after Stritt learned that Defendant Bannon had been hired by Defendant Assured Partners. The suspicious nature of Defendant Bannon's “lost” employment agreement – along with the entirety of his employment file – supports a reasonable inference that it was actually taken by, or at the direction of, Defendant Bannon.

David Wyatt's testimony, Brian Stritt's testimony, and Ex. 163 all provide corroborating evidence of all of the essential terms in the employment agreement between Defendant Bannon

and Plaintiff. Stritt's testimony that Defendant Bannon signed the employment agreement when Stritt delivered the first paycheck to Defendant Bannon on June 1, 2009, provides evidence that Defendant Bannon agreed to all of the terms in the employment agreement as a condition of his new employment.

This evidence created disputed questions of fact for the Jury to decide, and the Court's determination that Plaintiff "failed to prove" these disputed questions of fact improperly invaded the province of the Jury and constitutes legal error.

**3. The Court Erred in Concluding as a Matter of Law that the Alleged Breaches of Contract Occurred After the Restrictive Covenants had Expired**

The directed verdict ruling that the alleged breaches of contract occurred after the restrictive covenants had expired refers to "restrictions relating to the disclosure of confidential information and solicitation of customers." This ruling ignores that Plaintiff alleged and introduced evidence that Defendant Bannon breached the restrictive covenant in the employment agreement that prohibited Bannon from disclosing Plaintiff's trade secrets and confidential information, and that restrictive covenant is unlimited in duration.

David Wyatt and Brian Stritt provided testimony, corroborated by Exhibits 137 and 163, that paragraph 12 of the employment agreement signed by Defendant Bannon included covenants not to disclose Plaintiff's trade secrets and confidential information and that these covenants were unlimited in duration. Paragraph 12(a) of the employment agreement specifically acknowledges that Plaintiff "has information that is confidential and constitutes trade secrets which [Plaintiff] uses in its business, and which is essential to its continued ability to compete and be successful in the industry." Paragraphs 12(b)-(c) incorporate the definition of "trade secrets" provided in the S.C. Trade Secret Act, section 39-8-10, *et seq.* Paragraphs 12(d)-

(e) provide specific examples of Plaintiff's trade secrets, including many of the items Defendant Bannon downloaded and shared with Defendant Assured Partners. Paragraph 12(f) specifically provides that

Employee [Bannon] covenants and agrees that during Employee's [Bannon's] employment **and at all times thereafter**, Employee [Bannon] **shall not use any Trade Secrets** of the Company [Plaintiff], except as an employee of the Company [Plaintiff] with the consent of the Company [Plaintiff]. Employee [Bannon] further covenants and agrees that during Employee's [Bannon's] employment **and at all times thereafter**, Employee [Bannon] **shall not use or disclose any Trade Secrets** of the Company [Plaintiff] to any firm, company, corporation, association or other entity, for any reason or purpose whatsoever, except as an employee of the Company [Plaintiff] with the consent of the Company [Plaintiff].

Ex. 137 (emphasis added).

The clear and unambiguous language of the employment agreement prohibits Bannon from *ever* copying and sharing Plaintiff's trade secrets and confidential information without permission. The S.C. Trade Secret Act provides that this obligation not to use or disclose trade secrets "***must not*** be considered void or unenforceable or against public policy for lack of a durational or geographical limitation." S.C. Code § 39-8-30(D) (emphasis added).

Therefore, Bannon's contractual obligations not to disclose or use Plaintiff's trade secrets and confidential information without Plaintiff's consent is not limited in duration and is enforceable in accordance with ordinary principles of contract law.

The Court erred in concluding as a matter of law that the alleged breaches of contract occurred after the restrictive covenants had expired.

**4. The Court Erred in Concluding as a Matter of Law that Plaintiff Failed to Establish the Required Elements of a Restrictive Covenant Agreement**

The directed verdict ruling that “Plaintiff *failed to establish* the required elements of a restrictive covenant agreement which must be strictly construed against the employer under South Carolina law” misstates the law and impermissibly decides disputed questions of fact.

The proposition that “a restrictive covenant agreement . . . must be strictly construed against the employer under South Carolina law” is a jumbled misstatement of the law. Every agreement includes “restrictive covenants” of one sort or another, but there is no jurisprudence in South Carolina, or elsewhere, holding that *every* provision of *every* agreement with an employer must be strictly construed against the employer.

Instead, as stated in *Rental Uniform Service of Florence, Inc. v. Dudley*, the only pertinent case cited or argued by Defendants, “Restrictive covenants **not to compete** are generally disfavored and will be strictly construed against the employer.” 278 S.C. 674, 675, 301 S.E.2d 142, 143 (1983) (emphasis added). As this quote makes clear, this principal of construction does not apply to *any* restrictive covenant or *any* agreement with a restrictive covenant; it only applies to “restrictive covenants not to compete.” Immediately following this quote, the Supreme Court enumerated the required elements for a restrictive covenant not to compete, but again, these required elements only apply to restricted covenants not to compete. *Id.*

Plaintiff alleged and introduced evidence that Defendant Bannon breached the restrictive covenant in the employment agreement that prohibited Bannon from disclosing Plaintiff’s trade secrets. The required elements of a contract are offer, acceptance, and valuable consideration. *Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397, 406, 581 S.E.2d 161, 166 (2003). Valuable consideration may consist of “some right, interest, profit or benefit accruing to one party or some



forbearance, detriment, loss or responsibility given, suffered or undertaken by the other.”

*Prestwick Golf Club, Inc. v. Prestwick Ltd. P’ship*, 331 S.C. 385, 389, 503 S.E.2d 184, 186 (Ct. App. 1998). David Wyatt’s testimony, Brian Stritt’s testimony, and Ex. 163, noted above, all provide corroborating evidence of the essential terms in the “offer” of employment by Plaintiff to Defendant Bannon. One of the essential terms in the offer is the covenant not to disclose Plaintiff’s trade secrets, as described in paragraph 12 of the employment agreement, and this covenant is unlimited in duration, as permitted by the S.C. Trade Secrets Act. S.C. Code § 39-8-30(D). Stritt’s testimony that Defendant Bannon signed the employment agreement when Stritt delivered the first paycheck to Defendant Bannon on June 1, 2009, provides evidence that Defendant Bannon “accepted” the employment agreement and received “valuable consideration” for the employment agreement.

Therefore, Plaintiff provided substantial, corroborated evidence of the required elements of an enforceable contract. To the extent Defendants dispute this evidence, disputed questions of fact are for the Jury to decide, and the Court’s determination that Plaintiff “failed to establish” these disputed questions of fact improperly invaded the province of the Jury and constitutes legal error. Moreover, the Court’s suggestion that additional elements are required or that the contract is to be strictly construed against Plaintiff is error as a matter of law.

**B. The directed verdict ruling that Defendant Bannon Did Not Owe a Fiduciary Duty to Plaintiff is Legal Error**

The February 1, 2022, Order again directs a verdict in favor of Defendant Bannon on Plaintiff’s breach of fiduciary duty claim. In the oral directed verdict ruling, the Court declared as a matter of law that an independent contractor cannot owe a fiduciary duty. In the February 1, 2022, Order, the Court completely abandons this ruling. Instead, the Court now rules as a matter of law that “Plaintiff failed to establish any evidence that Defendant Bannon’s relationship to

Plaintiff as an independent contractor created any type of fiduciary duty to Plaintiff.” This new ruling completely ignores substantial evidence presented at trial of the confidential and fiduciary relationship that existed between Defendant Bannon and Plaintiff from June 2009, when Plaintiff first hired Defendant Bannon, until November 2016, when Defendant Bannon stopped representing Plaintiff as a sales representative.

It is well-settled and often-quoted that a “confidential or fiduciary relationship exists when one imposes a special confidence in another, so that the latter, in equity and good conscience is bound to act in good faith and with due regard to the interests of the one imposing the confidence.” *Davis v. Greenwood Sch. Dist.* 50, 365 S.C. 629, 620 S.E.2d 65, 68 (2005) (citing *Hendricks v. Clemson Univ.*, 353 S.C. 449, 578 S.E.2d 711, 716 (2003)); *Island Car Wash, Inc. v. Norris*, 292 S.C. 595, 599, 358 S.E.2d 150, 152 (Ct. App. 1987). Defendant Bannon’s seven-year relationship with Plaintiff demonstrates that he not only owed a fiduciary duty to Plaintiff, but that he knew he owed a fiduciary duty to Plaintiff.

Unless otherwise agreed, an agent is subject to a duty not to compete with the principal concerning the subject matter of his agency. *See Berry v. Goodyear Tire and Rubber Co.*, 270 S.C. 489, 242 S.E.2d 551 (1978); Restatement (Second) of Agency § 393 (1958); Restatement (Second) of Agency § 393 cmt. e (1958); Restatement (Second) of Agency § 396 (1958); Restatement (Second) of Agency § 396 cmts. c and d (1958); Restatement (Second) of Agency § 401 (1958). Bannon and Stritt both testified that Plaintiff hired Bannon in 2009 as a full-time employee to represent Plaintiff as a sales representative to prospective clients. When Bannon decided to pursue a career as a fireman in 2013, Bannon transitioned to an independent contractor and continued to represent Plaintiff as a sale representative to existing and prospective client. As shown in Ex. 1 and acknowledged by Bannon, Bannon profusely thanked Stritt for

allowing Bannon to continue to represent Plaintiff as an independent contractor, and Bannon assured Stritt that he would continue to grow the business for Plaintiff. The preceding evidence establishes that Bannon continuously served as Plaintiff's sales agent from 2009 until 2016 and therefore owed Plaintiff a fiduciary duty not to compete with Plaintiff concerning the subject matter of his agency.

Bannon's actions after being hired by Assured Partners further demonstrate that he understood that he owed a fiduciary duty to Plaintiff. Bannon testified that he became a full-time employee and Senior Vice President of Assured Partners on October 15, 2016, yet he continued thereafter to hold himself out as Plaintiff's sales representative for an additional four weeks. During the 4-week overlap when Bannon was simultaneously employed by Assured Partners and represented Plaintiff as a sales representative, Bannon admitted that he secretly obtained and forwarded the Employee Navigator login credentials for Plaintiff's clients to Assured Partners. At the same time, Bannon testified that he downloaded approximately 2,000 files containing Plaintiff's trade secrets from Plaintiff's SharePoint server using the login credentials he had received years earlier when he was Plaintiff's employee. As shown in Exhibits 8, 10-12, and 45 and testified by multiple witnesses, Bannon, Mack Ward, Jim Brady and every employee of Assured Partners repeatedly exhorted everyone involved to expedite copying Plaintiff's trade secrets before Plaintiff discovered what they were doing. Bannon's surreptitious actions to download, copy, and share Plaintiff's trade secrets with a direct competitor demonstrate that Bannon knew what he was doing was wrong and violated his fiduciary duty to Plaintiff.

Plaintiff respectfully asserts that the uncontroverted evidence establishes that Bannon owed a fiduciary duty to Plaintiff and knew that he breached this fiduciary duty. The Court's

ruling otherwise constitutes an error of law, and Plaintiff requests a new trial on the breach of fiduciary claims against Defendant Bannon.

**C. The Directed Verdict on Plaintiff's Misappropriation of Trade Secrets Claim Relies on a Combination of Legal Errors and Disputed Facts for the Jury to Decide**

In the oral directed verdict ruling during trial, in a single sentence, the Court summarily adopted Defendants' legal and factual arguments in their entirety to grant Defendants a directed verdict on Plaintiff's misappropriation of trade secrets claim. By contrast, the Court's February 1, 2022, Order births multiple rulings pertinent to Plaintiff's trade secret claim, some of which substantially overlap. Plaintiff respectfully asserts that the Court's legal rulings are erroneous and its factual conclusions improperly invade the province of the Jury, to the prejudice of Plaintiff. As a result, Plaintiff requests a new trial on the trade secret claim against Defendants.

**1. The Court Erred in Determining as a Matter of Law that Plaintiff Failed to Prove the Existence of Any Trade Secrets**

The directed verdict ruling that "Plaintiff wholly and completely *failed to prove* the existence of any trade secret information" ignores substantial evidence presented at trial of the form, value, and availability of Plaintiff's trade secrets and impermissibly decides disputed questions of fact.

The S.C. Trade Secret Act defines a "trade secret" as any information, that has value, and is not readily publicly available. S.C. Code § 39-8-20(5). The information may exist in any form, including as a formula, a compilation, a method of doing business, a technique, a product, a system, a process, a procedure, or a programming code. *Id.* The information does not have to be complicated, technical, or difficult to understand, and may merely be "a simple fact, item, or procedure, or a series or sequence of items or procedures which, although individually could be

perceived as relatively minor or simple, collectively can make a substantial difference in the efficiency of a process or the production of a product, or may be the basis of a marketing or commercial strategy.” *Id.* Moreover, the information may simply be a compilation of publicly available data because “[t]he collective effect of the items and procedures must be considered in any analysis of whether a trade secret exists and not the general knowledge of each individual item or procedure.” *Id.*

Multiple witnesses testified to the form and content of Plaintiff’s trade secrets. For example, Laurie Winston and Brian Stritt described in detail the information contained each Employee Navigator account and Plaintiff’s Sharepoint server. Specifically, each witness described Plaintiff’s proprietary design and build out of Employee Navigator accounts for each client, as well as Plaintiff’s collection, organization, and compilation of employee census information and insurance plan information included in this proprietary database. Both witnesses also described in detail Plaintiff’s proprietary formulas included in the renewal spreadsheets for each client stored on Plaintiff’s SharePoint server. Plaintiff’s design and compilation of data in the Employee Navigator accounts and proprietary formulas in renewal spreadsheets stored on Plaintiff’s SharePoint server exactly match several of the forms of “information” included in the definition for a “trade secret” provided by the S.C. Trade Secrets Act. *See* S.C. Code § 39-8-20(5)(a).

Winston and Stritt also testified to the economic value of Plaintiff’s trade secrets to both Plaintiff and Defendant Assured Partners. Both witnesses testified that the previously described trade secrets took substantial time and effort to collect, organize, and compile and provided Plaintiff with a competitive advantage in administering benefits for clients and negotiating rates with insurance providers. Both witnesses also testified to the substantial time Defendant Assured

Partners saved by being able to download, copy, and take screenshots of Plaintiff's trade secrets instead of having to design, build out, collect, organize, and compile the same database of information. Competitive advantage and improved efficiency are precisely the types of economic value described in the S.C. Trade Secret Act. *See* S.C. Code § 39-8-20(5)(b).

Testimony from Defendant Bannon and Jim Brady and contemporaneous emails (*e.g.*, Plaintiff's Exhibits 8, 10-12, and 45) provide additional, uncontroverted evidence of the value of Plaintiff's trade secrets to Defendant Assured Partners. Specifically, Bannon and Brady both testified to the urgent efforts Defendants exercised to surreptitiously take Plaintiff's trade secrets before Plaintiff learned that Defendant Bannon was working for Defendant Assured Partners and terminated further access. Brady even testified, consistent with his November 8, 2016, email included in Plaintiff's Exhibit 11, that he could not build an Employee Navigator account for a client without login credentials that would allow him to download, copy, and take screenshots of Plaintiff's Employee Navigator account for that client. All of this uncontroverted evidence demonstrates the substantial economic value of Plaintiff's trade secrets to Defendants.

Plaintiff's compilation of data in the Employee Navigator accounts is not excluded from protection by the S.C. Trade Secrets Act merely because the compiled data comprises seemingly simple facts collected from clients or insurance providers. S.C. Code § 39-8-20(5). Defendant Bannon, Jim Brady, Laurie Winston, and Brian Stritt all consistently testified that Plaintiff designed the build out of each Employee Navigator account, and that Plaintiff collected, organized, and compiled the employee census data and insurance plan information that populated each account. As defined by the S.C. Trade Secrets Act, a trade secret may be a "compilation" of information – "a simple fact, item, or procedure, or a series or sequence of items or procedures which, although individually could be perceived as relatively minor or simple, collectively can

make a substantial difference in the efficiency of a process or the production of a product, or may be the basis of a marketing or commercial strategy.” *Id.* While clients and insurance providers certainly had knowledge of *individual items* in Plaintiff’s compilation, “[t]he collective effect of the items and procedures must be considered in any analysis of whether a trade secret exists and not the general knowledge of each individual item or procedure.” *Id.*

The February 1, 2022, Order fails to address, distinguish, or even acknowledge any of the preceding evidence that demonstrates Plaintiff’s proprietary data compilations and formulas constitute protectible trade secrets as defined by the S.C. Trade Secrets Act. By ignoring all of this evidence, the Court both ignored the clear language of the S.C. Trade Secrets Act and imposed its own view of the evidence, each of which constitutes error to the Plaintiff’s prejudice.

## **2. The Court Erred in Determining as a Matter of Law that Plaintiff Failed to Prove Reasonable Efforts to Protect Plaintiff’s Trade Secrets**

The directed verdict ruling that Plaintiff *failed to prove* reasonable efforts to protect Plaintiff’s trade secrets ignores substantial evidence of the proven effectiveness of Plaintiff’s protective efforts and impermissibly decides disputed questions of fact.

The S.C. Trade Secrets Act limits a “trade secret” to information that “is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.” S.C. Code § 39-8-20(5)(a)(ii). Plaintiff not only introduced evidence of reasonable efforts to protect Plaintiff’s trade secrets, but the evidence also established that those protective efforts by Plaintiff had proven so effective as to prevent Mack Ward and Defendant Assured Partners from misappropriating Plaintiff’s trade secrets several months earlier.

Winston and Stritt both testified that Plaintiff limited access to Plaintiff’s trade secrets to only authorized personnel with valid login credentials. Specifically, Winston testified that Plaintiff only provided login credentials to Plaintiff’s proprietary database of information in the

Employee Navigator accounts to account managers assigned to those accounts and, on a case-by-case basis, a single client representative if a client requested the ability to generate reports from the Employee Navigator account associated with that client. Plaintiff did not provide sales people, like Mack Ward and Defendant Bannon, with any login credentials to any of Plaintiff's Employee Navigator accounts. Winston and Stritt similarly testified that Plaintiff only provided login credentials to Plaintiff's SharePoint server to Plaintiff's full-time employees. Sales people who were independent contractors and not employees did not receive login credentials to Plaintiff's SharePoint server.

As Winston and Stritt testified, Plaintiff's protective efforts had proven effective at safeguarding Plaintiff's trade secrets earlier in 2016. For several years prior, Plaintiff had been providing benefits administration services to clients of AssureSouth, owned by Ben Taylor and Mack Ward. In February 2016, Ben Taylor and Mack Ward notified Plaintiff that they were selling their AssureSouth business to Defendant Assured Partners. Plaintiff agreed to continue providing services to clients of AssureSouth during a two-month transition period. However, as shown in Plaintiff's Exhibit 550 and testified by Stritt, Plaintiff also notified Ben Taylor and Mack Ward that Plaintiff would not allow third-party access to Plaintiff's proprietary systems. Plaintiff then terminated all client access to any Employee Navigator accounts. As a result, only Plaintiff's employees and account managers continued to have active login credentials to any of Plaintiff's proprietary systems, and Plaintiff's protective efforts proved effective in preventing Mack Ward and/or Defendant Assured Partners from misappropriating Plaintiff's trade secrets.

Although Defendant Assured Partners and Mack Ward had first-hand experience with the effectiveness of Plaintiff's protective efforts, they also realized a backdoor path existed that would avoid Plaintiff's protective efforts and allow access to Plaintiff's proprietary systems



without Plaintiff's knowledge. Specifically, Defendant Assured Partners and Mack Ward realized they could use a client's login credentials to access Plaintiff's proprietary systems to download, copy, and take screenshots of the Employee Navigator accounts for those clients. Defendant Assured Partners hired Defendant Bannon on October 15, 2016, and as shown in Plaintiff's Exhibits 8, 10-12, and 45, Defendant Bannon immediately exploited this backdoor path in Plaintiff's protective efforts by obtaining and forwarding client login credentials to Defendant Assured Partners. Defendant Bannon hid his new employment status from Plaintiff, allowing Defendant Assured Partners to surreptitiously download, copy, and take screenshots of the Employee Navigator accounts for those clients without Plaintiff's knowledge. At the same time, Defendant Bannon testified that he downloaded approximately 2,000 files containing Plaintiff's trade secrets from Plaintiff's SharePoint server using the login credentials he had received years earlier when he was Plaintiff's employee.

Defendants claim that their ability to circumvent Plaintiff's protective efforts and access Plaintiff's trade secrets demonstrates the inadequacy of Plaintiff's protective efforts. However, Plaintiff's protective efforts had previously proven effective at preventing Defendant Assured Partners and Mack Ward from accessing Plaintiff's trade secrets, and their subsequent discovery of a loophole, for the unscrupulous, around those protections does not change that. Defendants did exploit a loophole in Plaintiff's protections, but the law requires "efforts that are *reasonable under the circumstances*," not foolproof.

Plaintiff provided substantial evidence of protective efforts and the demonstrated effectiveness of those protective efforts at preventing unauthorized access to Plaintiff's trade secrets. The Court erred by ignoring Plaintiff's evidence and adopting Defendants view of the evidence, to the Plaintiff's prejudice.

**3. The Court Erred in Determining as a Matter of Law that Plaintiff Failed to Prove that Defendants Obtained Plaintiff's Trade Secrets by Improper Means**

The directed verdict ruling that Plaintiff *failed to prove* that Defendants obtained Plaintiff's trade secrets by improper means ignores the law and uncontroverted evidence presented at trial and impermissibly decides disputed questions of fact.

The S.C. Trade Secrets Act defines "improper means" to include, *inter alia*, theft, breach or inducement of a breach of a duty imposed by contract, and espionage through electronic or other means. S.C. Code § 39-8-20(1). The evidence admitted at trial demonstrates that Defendants committed several of the enumerated actions that fall within the definition of "improper means" to obtain Plaintiff's trade secrets.

First and foremost, the evidence demonstrates that Defendants obtained Plaintiff's trade secrets through acts of theft and espionage by electronic or other means. Specifically, Bannon testified that he became a full-time employee and Senior Vice President of Assured Partners on October 15, 2016, yet he continued to hold himself out as Plaintiff's sales representative for over four weeks. During the 4-week overlap when Bannon was simultaneously employed by Assured Partners and represented Plaintiff as a sales representative, Bannon admitted that he secretly obtained and forwarded the Employee Navigator client login credentials for Plaintiff's clients to Assured Partners. At the same time, Bannon testified that he downloaded approximately 2,000 files containing Plaintiff's trade secrets from Plaintiff's SharePoint server using the login credentials he had received years earlier when he was Plaintiff's employee. As shown in Exhibits 8, 10-12, and 45 and testified by multiple witnesses, Bannon, Mack Ward, Jim Brady and every employee of Assured Partners repeatedly exhorted all involved to expedite copying Plaintiff's trade secrets before Plaintiff discovered what they were doing. This uncontroverted evidence that Defendants surreptitiously accessed, downloaded, and copied Plaintiff's trade

secrets demonstrates acts of theft and espionage through electronic or other means, each of which constitutes “improper means” as defined by the S.C. Trade Secrets Act. S.C. Code § 39-8-20(1).

Bannon was subject to a restrictive covenant in his employment agreement with Plaintiff that prohibited Bannon from disclosing Plaintiff’s trade secrets and confidential information, and that restrictive covenant is unlimited in duration. The evidence discussed above demonstrates that Defendant Assured Partners induced Bannon to breach and Bannon breached the duty imposed by his employment agreement not to disclose Plaintiff’s trade secrets.

The February 1, 2022, Order fails to address, distinguish, or even acknowledge any of the preceding evidence that demonstrates that Defendants committed several of the enumerated actions that fall within the definition of “improper means” to obtain Plaintiff’s trade secrets. By ignoring all of this evidence, the Court ignored the clear language of the S.C. Trade Secrets Act and imposed its own view of the evidence, each of which constitutes error to the Plaintiff’s prejudice.

**4. The Court Erred in Determining as a Matter of Law that Plaintiff Failed to Prove that Defendants Misappropriated, Wrongfully Disclosed, or Wrongfully Used Plaintiff’s Trade Secrets**

The directed verdict ruling that Plaintiff *failed to prove* that Defendants misappropriated, wrongfully disclosed, or wrongfully used Plaintiff’s trade secrets ignores the law and uncontroverted evidence presented at trial and impermissibly decides disputed questions of fact.

The S.C. Trade Secrets Act defines “misappropriation” of a trade secret as:

- (a) acquisition of a trade secret of another by a person by improper means;
- (b) acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or

(c) disclosure or use of a trade secret of another without express or implied consent by a person who:

(i) used improper means to acquire knowledge of the trade secret.

S.C. Code § 39-8-20(2).

As discussed in the immediately preceding section, the evidence admitted at trial demonstrates that Defendants committed several of the enumerated actions that fall within the definition of “improper means” – *e.g.*, theft, breach or inducement of a breach of a duty imposed by contract, and espionage through electronic or other means – to obtain Plaintiff’s trade secrets. S.C. Code § 39-8-20(1). As a result, Defendants’ actions constitute a “misappropriation” of Plaintiff’s trade secrets under section 39-8-20(2)(a) – *i.e.*, Defendants acquired Plaintiff’s trade secrets by improper means.

No evidence exists that Plaintiff ever expressly or impliedly consented to Defendants’ disclosure or use of Plaintiff’s trade secrets. Therefore, Defendants’ disclosure and use of Plaintiff’s trade secrets was “wrongful,” and Defendants’ actions also constitute a misappropriation of Plaintiff’s trade secrets under section 39-8-20(2)(c)(i) – *i.e.*, Defendants used improper means to acquire knowledge of Plaintiff’s trade secrets and then disclosed and used Plaintiff’s trade secrets without Plaintiff’s express or implied consent.

By concluding that Plaintiff failed to prove that Defendants misappropriated, wrongfully disclosed, or wrongfully used Plaintiff’s trade secrets, the Court ignored the clear language of the S.C. Trade Secrets Act and imposed its own view of the evidence, each of which constitutes error to the Plaintiff’s prejudice.

**5. The Court Erred in Determining as a Matter of Law that Plaintiff Failed to Prove that Damages were Proximately Caused by Defendants' Misappropriation of Plaintiff's Trade Secrets**

The directed verdict ruling that Plaintiff *failed to prove* that damages were proximately caused by Defendants' misappropriation of Plaintiff's trade secrets ignores substantial evidence and impermissibly decides disputed questions of fact.

Multiple witnesses provided testimony that supports the reasonable inference that Defendants' misappropriation of Plaintiff's trade secrets proximately caused damages to Plaintiff. For example, Defendant Bannon and Jim Brady both testified that acquiring Plaintiff's trade secrets from the Employee Navigator accounts was critical to convincing clients of a seamless transition from Plaintiff to Defendant Assured Partners. Multiple contemporaneously generated emails (*e.g.*, Plaintiff's Exhibits 8, 10-12, and 45) corroborate this testimony.

Christie Holderness, the District Manager for St. Andrews Public Service District, corroborated the testimony from Defendant Bannon and Jim Brady. Specifically, Holderness testified that continuous access to Plaintiff's trade secrets compiled in the Employee Navigator account was an important factor in her decision to transfer St. Andrews Public Service District's business from Plaintiff to Defendant Assured Partners.

Laurie Winston and Brian Stritt provided additional, corroborating testimony. Specifically, each witness identified the nine clients associated with Defendant Bannon that actively used Plaintiff's compilation of data stored in the respective Employee Navigator accounts. Defendant Bannon provided Employee Navigator client login credentials for three of those clients – Carolina Youth Development, Premier Logistics, and St. Andrews Public Service District. All three of those clients transferred their business from Plaintiff to Defendant Assured Partners. None of the other six clients that actively used Plaintiff's compilation of data stored in the respective Employee Navigator accounts transferred their business to Defendant Assured

Partners. This 100% statistical correlation between Defendants' misappropriation of Plaintiff's trade secrets and transfer of business to Defendant Assured Partners provides probative evidence of damages proximately caused by Defendants' actions.<sup>1</sup>

Plaintiff respectfully submits that the evidence discussed above supports the reasonable inference that damages were proximately caused by Defendants' misappropriation of Plaintiff's trade secrets. As a result, the Court's ruling as a matter of law that Plaintiff failed to prove that damages were proximately caused by Defendants' actions impermissibly decided disputed questions of fact for the Jury to resolve and constitutes legal error that prejudiced Plaintiff.

**6. The Court Erred in Determining as a Matter of Law that Plaintiff's Damages were Speculative<sup>2</sup>**

The directed verdict ruling that Plaintiff's damages were speculative directly contradicts the Court's evidentiary rulings, ignores competent evidence of Plaintiff's damages, and impermissibly decides disputed questions of fact.

Brian Stritt testified regarding Plaintiff's damages. Defendants repeatedly objected to Stritt's testimony as being opinion testimony and speculative. The Court initially sustained Defendants' objections. However, after consultation with an unidentified Business Court judge, the Court overruled Defendants' objections and allowed Stritt to testify regarding Plaintiff's damages.

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<sup>1</sup> Plaintiff proffered additional testimony from Stritt regarding damages, and Plaintiff identified the exclusion of this evidence as legal error in Plaintiff's Motion for a New Trial.

<sup>2</sup> The Court also erred in determining as a matter of law that Plaintiff offered no evidence that clients moved their business because of Defendants' use and/or disclosure of Plaintiff's trade secrets. Plaintiff respectfully asserts that this ruling also constitutes legal error, and Plaintiff identified the evidence in the preceding section that demonstrates disputed questions of fact that the Court impermissibly decided.

Stritt provided factual testimony of the precise dollar amount of annual commissions associated with each client that switched from Plaintiff to Defendant Assured Partners. This testimony was based on Stritt's personal knowledge as Plaintiff's former owner and current managing director.<sup>3</sup>

The Court only allowed Stritt to testify regarding damages after determining that the admitted testimony was neither opinion testimony nor speculative. Therefore, the Court's current ruling that Plaintiff's damages were speculative contradicts the Court's own rulings and ignores competent evidence of Plaintiff's damages. As a result, the Court's ruling as a matter of law that Plaintiff's damages were speculative impermissibly decided disputed questions of fact for the Jury to resolve and constitutes legal error that prejudiced Plaintiff.

**7. The Court Erred in Determining as Matter of Law that Plaintiff Introduced No Evidence Showing Defendant Assured Partners Ever Had Access to or Used Any of Plaintiff's Trade Secrets**

The directed verdict ruling that Plaintiff introduced no evidence showing Defendant Assured Partners ever had access to or used any of Plaintiff's trade secrets completely ignores substantial evidence presented at trial by Defendants' own employees and constitutes error.

Defendant Bannon testified that he became a full-time employee and Senior Vice President of Defendant Assured Partners on October 15, 2016. During the 4-week overlap when Bannon was simultaneously employed by Assured Partners and represented Plaintiff as a sales representative, Bannon admitted that he secretly obtained and forwarded the Employee Navigator client login credentials for Plaintiff's clients to Assured Partners. At the same time, Bannon testified that he downloaded approximately 2,000 files containing Plaintiff's trade

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<sup>3</sup> Plaintiff proffered additional testimony from Stritt regarding damages, and Plaintiff identified the exclusion of this evidence as legal error in Plaintiff's Motion for a New Trial.

secrets from Plaintiff's SharePoint server using the login credentials he had received years earlier when he was Plaintiff's employee. As shown in Exhibits 8, 10-12, and 45 and testified by multiple witnesses, Bannon, Mack Ward, Jim Brady and every employee of Assured Partners repeatedly exhorted all involved to expedite copying Plaintiff's trade secrets before Plaintiff discovered what they were doing. Each witness further testified that they obtained the information from the Employee Navigator accounts and Plaintiff's SharePoint server to provide benefits administration services to Defendants' clients. This uncontroverted evidence – provided by Defendants' own employees – conclusively demonstrates that Defendant Assured Partners obtained and used Plaintiff's trade secrets.

The conclusion that Plaintiff introduced no evidence that Defendant Assured Partners obtained and used Plaintiff's trade secrets directly contradicts and cannot be reconciled with undisputed testimony and documents provided by Defendants' own employees. This erroneous factual conclusion, clothed as a legal ruling, invaded the province of the Jury and constitutes prejudicial error to Plaintiff.

**8. The Court Erred in Determining as a Matter of Law that Plaintiff Pursued a Trade Secret Claim in Bad Faith**

The words “bad” or “faith” appear nowhere in any of Defendants' directed verdict arguments or cited authorities, nor in any of the Court's oral directed verdict rulings. Nonetheless, the February 1, 2022, Order – authored entirely by Defendants – concludes as a matter of law that Plaintiff pursued a trade secret claim in bad faith. This ruling contradicts controlling precedent and constitutes legal error.

Defendants filed three separate motions seeking summary judgment on Plaintiff's trade secret claims. Defendants withdrew one of the motions, but Plaintiff filed full responses to the



other two motions. Two different judges each conducted a full hearing that was fully briefed, and each judge denied Defendants' motion for summary judgment.

The trial commenced October 11, and Plaintiff rested its case after two full days of testimony. After the Court granted Defendants a directed verdict on Plaintiff's trade secret claims, Defendants moved for an award of attorneys' fees based on alleged bad faith litigation.

"[W]here a party survives a summary judgment motion, it is not subject to sanctions after a trial on the merits of the surviving claims." *Southeastern Site Prep, LLC v. Atl. Coast Builders & Contrs., LLC*, 394 S.C. 97, 713 S.E.2d 650 (Ct. App. 2011) (quoting *Hanahan v. Simpson*, 326 S.C. 140, 158, 485 S.E.2d 903, 913 (1997)). In *Southeastern*, as in the present case, two different judges denied the defendants' motion for summary judgment. As in the present case, the trial judge granted a directed verdict in favor of the defendants after the plaintiffs presented their case and rested. As in the present case, the defendants sought an award of attorneys' fees for frivolous litigation. Following the Supreme Court's controlling authority in *Hanahan*, the Court of Appeals affirmed the denial of attorneys' fees because the plaintiffs' claims had survived summary judgment.

The facts, reasoning, and conclusion reached in *Southeastern* are indistinguishable from the present case. Two different judges heard summary judgment motions against Plaintiff, and both judges denied the motions. Consistent with the controlling authority of *Southeastern* and *Hanahan*, Plaintiff's trade secret claims were not frivolous as a matter of law. Accordingly, the Court's ruling that Plaintiff pursued a trade secret claim in bad faith ignores controlling South Carolina authority is wrong as a matter of law.

**D. The Directed Verdict on Plaintiff's Conversion Claim Relies on a Combination of Legal Errors and Disputed Facts for the Jury to Decide**

In the oral directed verdict ruling, in a single sentence, the Court summarily adopted Defendants' legal and factual arguments in their entirety to grant Defendant Bannon directed verdict on Plaintiff's conversion claim. The Court's February 1, 2022, Order includes multiple rulings pertinent to Plaintiff's conversion claim, some of which substantially overlap. Plaintiff respectfully asserts that the Court's legal rulings are erroneous and its factual conclusions improperly invade the province of the Jury, to the prejudice of Plaintiff. As a result, Plaintiff requests a new trial on the conversion claim against Defendant Bannon.

**1. The Court Erred in Determining as a Matter of Law that Plaintiff could not prove the elements of a conversion against Defendant Bannon**

The directed verdict ruling that Plaintiff *could not prove* the elements of a conversion against Defendant Bannon incorrectly applies the law to uncontroverted evidence presented at trial to decide disputed questions of fact.

The South Carolina Supreme Court has defined conversion as "the unauthorized assumption in the exercise of the right of ownership over goods or personal chattels belonging to another to the exclusion of the owner's rights." *Gignilliat v. Gignilliat, Savitz & Bettis, L.*, 385 S.C. 452, 465, 684 S.E.2d 756, 763 (2009). The S.C. Trade Secret Act provides the owner of a trade secret with the exclusive right to determine who can know, disclose, or use the trade secret. S.C. Code § 39-8-20. Plaintiff did not authorize Bannon to obtain Plaintiff's trade secrets from the Employee Navigator accounts or Plaintiff's SharePoint server. Nonetheless, Defendant Bannon testified that he secretly obtained and forwarded the Employee Navigator client login credentials for Plaintiff's clients to Assured Partners, and Jim Brady testified that he used those login credentials to access, download, and copy Plaintiff's trade secrets from the Employee

Navigator accounts. Bannon also testified that he downloaded approximately 2,000 files containing Plaintiff's trade secrets from Plaintiff's SharePoint server using the login credentials he had received years earlier when he was Plaintiff's employee.

The testimony from Bannon and Brady provides evidence for all of the elements of a conversion claim. Neither had Plaintiff's authority to copy Plaintiff's trade secrets from the Employee Navigator accounts or Plaintiff's SharePoint server, and Bannon destroyed Plaintiff's exclusive right to control knowledge, disclosure, or use of Plaintiff's trade secrets by copying Plaintiff's trade secrets from the Employee Navigator accounts and Plaintiff's SharePoint server. Accordingly, the Court's directed verdict ruling is legally wrong and impermissibly decides disputed questions of fact.

**2. The Court Erred in Determining as a Matter of Law that Plaintiff Failed to Prove that Defendant Bannon Converted Any Property of Plaintiff to the Exclusion of Plaintiff's Rights as Plaintiff Always Retained Access and Rights to the Information at Issue**

The directed verdict ruling that Plaintiff *failed to prove* that Defendant Bannon converted any property of Plaintiff to the exclusion of Plaintiff's rights as Plaintiff always retained access and rights to the information at issue incorrectly applies the law to uncontroverted evidence presented at trial to decide disputed questions of fact.

The S.C. Trade Secret Act provides the owner of a trade secret with the exclusive right to determine who can know, disclose, or use the trade secret. S.C. Code § 39-8-20. Defendant Bannon destroyed Plaintiff's exclusive right to control knowledge, disclosure, or use of Plaintiff's trade secrets by copying Plaintiff's trade secrets from the Employee Navigator accounts and Plaintiff's SharePoint server. Accordingly, the Court's directed verdict ruling is legally wrong and impermissibly decides disputed questions of fact.

### 3. The Court Erred in Determining as a Matter of Law that Intangible Property Cannot Form the Basis for a Conversion Claim

The directed verdict ruling that intangible property cannot form the basis for a conversion claim is wrong as a matter of law.

The South Carolina Supreme Court has defined conversion as “the unauthorized assumption in the exercise of the right of ownership over goods or personal chattels belonging to another to the exclusion of the owner's rights.” *Gignilliat v. Gignilliat, Savitz & Bettis, L.*, 385 S.C. 452, 465, 684 S.E.2d 756, 763 (2009). South Carolina courts have held that intangible rights are normally not the proper subject for a conversion claim. *Id.* The *Gignilliat* court explained, “An action for conversion ordinarily lies only for personal property that is tangible, **or to intangible property that is merged in, or identified with, some document.**” *Id.* citing 18 Am. Jur. 2d Conversion § 7 (2004) (emphasis added) (footnote omitted); *see also*, H.D. Warren, Annotation, Nature of Property or Rights Other Than Tangible Chattels Which May Be Subject of Conversion, 44 A.L.R.2d 927, 929 (1955) (“[I]t is ordinarily held that an action for conversion lies only for personal property which is tangible, or at least represented by or connected with something tangible, and not for indefinite, intangible, and incorporeal species of property.”). Ultimately, the South Carolina Supreme Court concluded that the tort of conversion as it relates to intangible property “should be limited to intangible property rights that are identified with some document.” *Id.*

In *Integrated Direct Marketing, LLC v. Drew May & Merkle, Inc.*, 2016 Ark. 281, 495 S.W.3d 73 (2016), the Arkansas Supreme Court was asked to answer a certified question from the District Court for the Eastern District of Virginia: “Under Arkansas’s tort of conversion, can intangible property such as electronic data, standing alone and not deemed a trade secret, be converted?” *Id.* The Arkansas Supreme Court answered in the affirmative. The court noted that

the records in the case were electronically stored documents (consisting of over 300 files an employee copied from his employer's computer to his personal hard drive) allegedly containing confidential and proprietary information. *Id.* at 74, 76. The court concluded, "There is simply no reasonable basis for allowing a claim for conversion of paper documents but not for their electronically stored counterparts. Thus, we conclude that, under Arkansas law, intangible property, such as electronic data, standing alone and not deemed a trade secret, can be converted if the actions of the defendant are in denial of or inconsistent with the rights of the owner or person entitle to possession." *Id.* at 76.

The decision in *Integrated Direct Marketing* is persuasive authority, consistent with the South Carolina Supreme Court's rationale in *Gignilliat*, to limit a conversion claim to actions involving intangible property "merged in or identified with some document."

Plaintiff's conversion claim includes a combination of both tangible and intangible property. Specifically, Defendant Bannon retained Plaintiff's desktop computer until ordered by the Court to return it to Plaintiff. As with every computer, the desktop computer stored information in electronic form, such as formulas, compilations, processes, designs, and spreadsheets. In addition, Defendant Bannon copied Plaintiff's trade secrets from the Employee Navigator accounts and Plaintiff's SharePoint server. The type of intangible property maintained on the desktop computer and copied from the Employee Navigator accounts and Plaintiff's SharePoint server is indistinguishable from the files allegedly stolen in *Integrated Direct Marketing*. All of the information stored on the desktop computer and copied from the Employee Navigator accounts and Plaintiff's SharePoint server is the very type of intangible property contemplated by the *Gignilliat* court that is "merged in or identified with some document." *Id.* at 763.

Accordingly, Plaintiff's conversion claim includes the intangible property stored in the desktop computer and copied from the Employee Navigator accounts and Plaintiff's SharePoint server. The Court's conclusion that intangible property cannot form the basis for a conversion claim is wrong as a matter of law.

**4. The Court Erred in Determining as a Matter of Law that Plaintiff Failed to Prove Damages were Proximately Caused by Defendant Bannon's Conversion of Plaintiff's Trade Secrets**

The directed verdict ruling that Plaintiff failed to prove that damages were proximately caused by Defendant Bannon's conversion of Plaintiff's trade secrets ignores substantial evidence and impermissibly decides disputed questions of fact.

Multiple witnesses provided testimony that supports the reasonable inference that Defendant Bannon's conversion of Plaintiff's trade secrets proximately caused damages to Plaintiff. For example, Defendant Bannon and Jim Brady both testified that acquiring Plaintiff's trade secrets from the Employee Navigator accounts was critical to convincing clients of a seamless transition from Plaintiff to Defendant Assured Partners. Multiple contemporaneously-generated emails (*e.g.*, Plaintiff's Exhibits 8, 10-12, and 45) corroborate this testimony.

Christie Holderness, the District Manager for St. Andrews Public Service District, corroborated the testimony from Defendant Bannon and Jim Brady. Specifically, Holderness testified that continuous access to Plaintiff's trade secrets compiled in the Employee Navigator account was an important factor in her decision to transfer St. Andrews Public Service District's business from Plaintiff to Defendant Assured Partners.

Laurie Winston and Brian Stritt provided additional, corroborating testimony. Specifically, each witness identified the nine clients associated with Defendant Bannon that actively used Plaintiff's compilation of data stored in the respective Employee Navigator

accounts. Defendant Bannon provided Employee Navigator client login credentials for three of those clients – Carolina Youth Development, Premier Logistics, and St. Andrews Public Service District. All three of those clients transferred their business from Plaintiff to Defendant Assured Partners. None of the other six clients that actively used Plaintiff's compilation of data stored in the respective Employee Navigator accounts transferred their business to Defendant Assured Partners. This 100% statistical correlation between Defendant Bannon's conversion of Plaintiff's trade secrets and transfer of business to Defendant Assured Partners provides probative evidence of damages proximately caused by Defendant Bannon's actions.<sup>4</sup>

Plaintiff respectfully submits that the evidence discussed above supports the reasonable inference that damages were proximately caused by Defendant Bannon's misappropriation of Plaintiff's trade secrets. As a result, the Court's ruling as a matter of law that Plaintiff failed to prove that damages were proximately caused by Defendant Bannon's actions impermissibly decided disputed questions of fact for the Jury to resolve and constitutes legal error that prejudiced Plaintiff.

#### **VI. The February 1, 2022, Order Does Not Address Any Issues Raised in Plaintiff's Responses to Defendants' Motions for Attorneys' Fees**

Pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, Plaintiff files the present Motion to Alter or Amend the Court's February 1, 2022, Order and respectfully requests that the Court address the issues raised in Plaintiff's Responses to Defendants' Motions for Attorneys' Fees.

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<sup>4</sup> Plaintiff proffered additional testimony from Stritt regarding damages, and Plaintiff identified the exclusion of this evidence as legal error in Plaintiff's Motion for a New Trial.

Plaintiff specifically questioned how the trial judge could award attorneys' fees based on a provision in a contract that the trial judge had ruled as a matter of law did not exist. Plaintiff also challenged Bannon's recovery of attorneys' fees that he had never incurred. *Williamson v. Middleton*, 383 S.C. 490 (S.C. 2009) (holding that a party cannot recover attorneys' fees that were never incurred by the party). Plaintiff also specifically questioned any award of attorneys' fees when two different judges had denied two separate motions seeking summary judgment for Plaintiff's trade secret claim after full briefings and hearings. *Southeastern Site Prep, LLC v. Atl. Coast Builders & Contrs., LLC*, 394 S.C. 97, 713 S.E.2d 650 (Ct. App. 2011) ("[W]here a party survives a summary judgment motion, it is not subject to sanctions after a trial on the merits of the surviving claims."). Lastly, Plaintiff specifically questioned how the trial judge could award attorneys' fees before hearing any argument or receiving any evidence of the amount or reasonableness of the fees actually incurred.

Plaintiff's Responses to Defendants' Motions for Attorneys' Fees raise multiple appealable issues that have not been addressed by the trial judge. Plaintiff respectfully asserts that it is manifestly unjust and legal error to award attorneys' fees without any comment or ruling on any of the issues raised. Therefore, Plaintiff respectfully requests that the Court address the issues raised in Plaintiff's Responses to Defendants' Motions for Attorneys' Fees.

## **VII. Conclusion**

Based on the foregoing, Plaintiff respectfully requests that the Court supplement or amend the February 1, 2022, Order to correct manifest errors of law, grant Plaintiff a new trial on all issues, recuse itself from this matter, and address the issues raised by Plaintiff in the present Motion.



Respectfully submitted,

s/Steven R. LeBlanc

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***Attorneys for Plaintiff Forum Benefits, Inc.***

**CERTIFICATE OF SERVICE**

I certify that on February 11, 2022, I electronically filed a PLAINTIFF'S MOTION TO ALTER OR AMEND A JUDGMENT AND SUPPLEMENT TO ITS MOTION FOR A NEW TRIAL to be served on all counsel of record by means of the Court's Notice of Electronic Filing.

Respectfully submitted,

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