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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

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Circuit Court Case No. 2016-CP-07-2541  
Court of Appeals Appellate Case No. 2022-000231  
Supreme Court of South Carolina Appellate Case No. 2025-000436

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**Forum Benefits, LLC,**

**Plaintiff-Respondent,**

**v.**

**Brian Bannon and Assured Partners, NL,**

**Defendants – Petitioners.**

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**REPLY BRIEF OF PETITIONERS**

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September 4, 2025

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<sup>1</sup> The headings in this Reply Brief are intended to track the headings in the Brief of Respondent for ease of reference. Because Petitioners’ initial Brief addressed many of the arguments by Respondents, this Reply does not further address some of these issues, resulting in missing heading numbers and letters.

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## REPLY TO RESPONDENT'S STATEMENT OF THE CASE

Respondent's (hereinafter "Forum") Statement of the Case includes several allegations that are simply not true and are not supported by any record evidence. First, Forum incorrectly states that this case involves a "proprietary design" and "proprietary algorithm." The Record is devoid of any evidence to support these conclusory allegations. *In fact, the word "algorithm" appears nowhere in the testimony of any trial witness.* This is a term created by Forum's lawyers to confuse the issues in this case and distract from the simplicity of the information in question. This is part of the reason Petitioners decided to focus the issues on appeal: to prevent Forum from attempting to confuse the issues and instead require it to respond to the specific legal deficiencies in its claims. The truth is that Forum is an insurance broker, the middleman so to speak between the insurance carrier and the insured. The information it obtains related to insurance coverage comes from either the insurance carriers or the clients. Forum simply houses the information that it obtains from these sources. As Petitioner pointed out in its directed verdict argument, Forum is essentially claiming that "word processing" is a trade secret, that the "act of inputting information into Employee Navigator is a trade secret." (R. p. 659.) The trial court properly rejected this allegation.

There is no proprietary algorithm at issue in this case. Even Forum's own director of account management who it claims is its "expert" (R. p. 602, line 20 to p. 603, line 1) related to the information housed in Employee Navigator testified that all the information in question could be obtained from the client directly, the client's payroll company, or the insurance carrier:

13           Q     So meaning if -- if somebody was gonna rebuild  
14 the exact same thing, they could go to the carrier and the  
15 client and the payroll company and take all the same  
16 information to -- to build the Navigator database?  
17           A     Correct.

(R. p. 423, lines 13-17 and R. p. 355, lines 3-8). Furthermore, the only insurance carrier representative Forum called to testify in this case (Robert Labin from Blue Cross Blue Shield) confirmed that the “client” owned all the insurance information, not the broker like Forum. (R. pp. 349-350.) Labin also confirmed that once Bannon was identified as the client’s agent, he properly had access to all the client’s insurance information. (R. p. 349.)

This Court should view Forum’s allegations of a proprietary design and algorithm for what it is, a red flag. All the information Forum claims as proprietary to its business is available from both the insurance carrier and the client. The client has the right to designate its broker at-will and authorize the broker to immediately have access to all the necessary insurance information (which the insurance carrier then provides), which is exactly what the clients did in this case by designating Petitioners as their broker. This is consistent with South Carolina public policy, which requires clients to have access to their insurance information to not create risk of coverage issues or, more importantly, for employee benefits policies like those at issue in this case, to not have employees experience problems or lapses with their healthcare coverage. *See* S.C. Code §38-43-250.

Forum essentially attempted to hold the clients’ own information hostage for the stated purpose of “disrupting their coverage so that the client would come back to [Forum].” (R. pp. 431 to 441; R. p. 276, lines 12-21). This has the potential to harm the employees on employer insurance plans, potentially impacting employees’ medical coverage. (R. p. 277, line 18 to p. 278, line 12.)

Forum never presented any evidence to support a conclusion that any of the information in question was exclusively its information, no less some proprietary design or proprietary algorithm. The trial court properly rejected Forum's arguments and conclusory allegations.

Second, Forum attempts to convince this Court that it had some special sign-in requirement to access the client information at issue in this case. This is also not true. Forum only had a requirement that employees sign into their work computer/system, something almost every employer in the world requires. This sign-in gained employees access to all of Forum's information, from the most mundane, to all client information. Forum even unnecessarily gave Bannon access to client information for clients who were not his clients, even though it could have segregated this access. (R. p. 273, lines 14-22; R. p. 412, line 21 to p. 413, line 20.) There was no differentiation between what Forum considered confidential, not confidential, or a trade secret. (R. pp. 596 to 598.) Forum never had a conversation with Bannon (or any others who had access) about what information in its system was confidential, what was not, or what was an alleged trade secret. (R. p. 272, lines 13-22; R. p. 598, line 21 to p. 599, line 4.) None of the information was marked confidential or a trade secret. None of the employees who had access to the information signed any form of confidentiality agreement. (R. p. 601, line 19-23.) There was no special access or password to the alleged proprietary information, even though Forum's system allowed for that, and Forum chose not to use that feature. Again, Forum's employee, Ms. Winston, confirmed Forum's negligence on this issue - that Forum's system had an extra level of protection for proprietary information, and that Forum never utilized this protection. (R. p. 412, line 21 to p. 413, line 20.)

Third, Forum alleges as a matter of fact that Bannon signed a written employment agreement. Again, this is not true. This is yet another reason the trial court rejected Forum's

claims – it never grasped the fatal legal issue that a completed and signed contract has never been produced and Bannon denied ever signing any such agreement. Forum has admitted that it never located a completed employment agreement, no less a version signed by Bannon. (R. p. 588, line 17 to p. 589, line 23.) The only document Forum produced was full of blanks, was missing material terms, did not contain Bannon’s name, and was drafted for an employee in Greenville despite Bannon working in Beaufort. (R. p. 968, p. 78, line 10 to p. 79, line 3.)

Fourth, Forum attempts to convince this Court of an alleged secret scheme to steal its information. That is also not true. Bannon was undeniably an independent contractor with no independent contractor agreement with Forum. (R. p. 593, lines 21-25.) There was never any obligation of exclusivity established between Bannon and Forum. Rather, the record testimony proves there was no obligation of exclusivity. (R. p. 257, lines 2-24.) Bannon openly told his clients he was moving to AssuredPartners and that they had the “option” to move with him or stay with Forum. (R. p. 247, lines 12-25.) Many of Bannon’s clients responded that they wanted to follow Bannon, stating “you’re our guy, you know, we’ve known you for years.” (R. p. 247, lines 20-22; R. p. 281, line 6 to p. 282, line 13.) This is consistent with the fact that the insurance brokerage industry is a relationship driven industry. Bannon confirmed that he did not use any of Forum’s information to solicit these clients, and Forum never presented any evidence to counter or even question the truthfulness of his testimony. (R. p. 247, lines 23-25.) After the clients told Bannon that they wanted to follow him to AssuredPartners, some of these clients voluntarily provided Bannon their Employee Navigator (a third party operated website) login information so he would have access to their insurance information as their designated broker. (R. p. 622, lines 14-25; R. p. 623, lines 20-23; R. p. 281, line 6 to p. 282, line 13.) As soon as the clients designated Petitioners as their broker, they had a duty to the clients. (R. 248, lines 14-23.) There was nothing

deceptive about this and Bannon was completely transparent with the clients, because he had a duty to represent their best interests, not Forum's. Had the information not been available from Employee Navigator, Petitioners would have obtained the exact same information from the insurance carrier, the client and the client's payroll company. This is exactly what occurred regarding clients who moved that did not use Employee Navigator. (See R. p. 307, line 13-p. 317, line 15, testimony of Michelle Coffield confirming that she collected the same insurance information from the client and carrier.) Because Bannon had no contract with Forum, he was under no obligation to provide Forum with any advance notice of his decision to work with AssuredPartners (he had no fiduciary duty to Forum as an independent contractor as discussed in Petitioner's Brief, pp. 25-29).

Fifth, Forum falsely states that Mack Ward was an "AssuredPartners principal." There is no evidence in the record to remotely support this allegation. Forum failed to present any valid evidence related to Mr. Ward's role other than its own post-trial speculative and self-serving testimony on this issue. It is important to note that Forum chose not to call Mr. Ward to testify. So, there was no testimony in the record about him or his alleged relevance to the case when Forum moved to recuse the trial judge and the trial judge denied that motion. The only factual testimony about Mr. Ward came in response to Forum's post-trial motions, when Mr. Ward confirmed in an affidavit that he was an employed producer for AssuredPartners in its Greenville office, paid on commission like most of AssuredPartners' producers. (R. 1933.) He has no management responsibility, is not an officer, manager, trustee, or director of AssuredPartners. (Id.) Bannon confirmed that many insurance producers are called Vice Presidents (similar to banks) for marketing purposes but have no actual management responsibility. (R. p. 261, line 5 to p. 262, line 12.) Forum's attempt to mislead this Court regarding Mr. Ward's status and importance in

this case should be rejected. The only relevant fact here is that Forum never called Mr. Ward to testify at trial, despite having every opportunity to do so. This was an admission that Mr. Ward was not a relevant witness to Forum's case and Forum has waived any argument to the contrary.

**I. Reply To Respondent's Trade Secrets Argument.**

Forum argues that there is some problem with the fact that Petitioners have focused their arguments to this Court on the most glaring failures of evidence rather than every issue Forum has argued on appeal. While there was overwhelming evidence to support the trial court's ruling that Forum failed to prove the existence of a trade secret (especially given the admissions of Ms. Winston and Mr. Labin as described above), Petitioners decided to focus their Petition to this Court on Forum's most glaring failure and inability to establish any evidence of causation for damages. However, Petitioners preserved all these issues in their Petition to this Court and all these issues have been thoroughly briefed. (See Petitioners' Petition, p. 21 and Petitioners' Final Brief to the Court of Appeals dated 5/15/23.)

Forum had the burden to establish every element of its trade secrets claim and causation for damages is one of those required elements. This Court need only affirm the trial court on one element of Forum's trade secrets claim to reverse the Court of Appeals and affirm the trial court. The clearest failure of evidence related to these elements is the required element of proving damages caused by the alleged unlawful conduct. Because of Petitioner's decision to narrow the key issues before this Court, it will not further address the many problems with Forum's arguments that it established sufficient evidence of a trade secret to submit that issue to the jury, and instead relies on the information above and in its prior briefs.

## **II. Reply To Respondent's Statute Of Frauds Arguments.**

The Statute of Frauds in South Carolina is a clear legal doctrine that is repeated in multiple statutes. Forum's desperation to avoid the clear application of this doctrine has now gone to nitpicking one of Petitioner's citations where it cited as persuasive authority the exception to the Statute of Frauds found in S.C. Code Ann. § 36-2-201. (Brief of Petitioners p. 14.) The doctrine is the same in both S.C. Code Ann. § 36-2-201 and S.C. Code Ann. § 32-3-10. It requires that any agreement that cannot be fully performed within one year must be in writing and signed by the party against whom enforcement is sought. The primary case that Forum relied upon to assert an exception to the Statute of Frauds, applied to S.C. Code Ann. § 36-2-201. *Yadkin Valley Bank & Tr. v. Oaktree Homes, Inc.*, 2014 WL 3747342 (S.C. Ct. App. July 30, 2014); (see also Appellant's Final Brief dated 3/16/23, p. 8.) Essentially, Forum has cited to this statute on multiple occasions but now attempts to fault Petitioners for doing the same. This is a red herring and should be rejected.

### **A. The Statute Of Frauds Does Not Apply To A Trade Secrets Act Claim.**

Forum argues that the Statute of Frauds issue need not be addressed by the Court, because of the Trade Secrets Act claim. Forum appears to confuse its own claims. Forum separately asserted a breach of contract claim and a Trade Secret Act claim. The Statute of Frauds only applies to the contract claim. The lower court did not dismiss the Trade Secrets Act claim based on the Statute of Frauds. Petitioners have never argued that the Statute of Frauds applies to bar the Trade Secrets Act claim. However, if the contract claim is barred by the Statute of Frauds, which it is, Forum cannot rely on the alleged contract to help support its Trade Secrets claim. Regardless, Forum's Trade Secrets Act claim fails on other grounds, namely the complete lack of evidence of causation for damages.

**B. Reply to Respondent’s New Death Defense To The Statute of Frauds.**

Forum for the first time argues that the Statute of Frauds does not apply because Bannon could have died within the first year. First, this argument should be rejected because it was not made to the trial court or the Court of Appeals. *See Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) (“It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.”); *See also Austin v. Independent Life and Accident Ins. Co.*, 296 S.C. 156, 370 S.E.2d 918 (Ct.App.1988) (issue not raised in directed verdict motion at trial will not be determined for the first time on appeal). This new argument shows Forum’s desperate attempt to distract from the glaring problems with its claim.

Second, this argument should be rejected based on Forum’s own admission to the trial court that the Statute of Frauds applied in this case. During the directed verdict arguments related to the contract claim, Forum’s counsel admitted, “The Plaintiff agrees the statute of frauds applies, no contest there.” (R. p. 636, lines 12-13.) Forum cannot change its position on appeal.

Third, this argument should be rejected because adopting this reasoning would essentially destroy the intent and application of the Statute of Frauds in South Carolina. This argument would defeat the Statute of Frauds in every possible case involving an individual. The party against whom enforcement is sought could always die. A corporate defendant could always close its business. No South Carolina case has ever recognized the potential of someone dying or the business ending as a legitimate basis for ruling that the one-year element of the Statute of Frauds is satisfied. Other courts that have directly addressed this argument have rejected it. One court who addressed this issue related to a restrictive covenant (which is the applicable issue here) ruled that the possibility of death was not relevant to defeat the applicability of the Statute of Frauds and artfully stated:

[O]ur Supreme Court has ruled that the mere possibility of cancellation within a year does not take a contract with a definite term outside the statute of frauds. *Seder v. Grand Lodge of Ancient Order of United Workmen of North Dakota*, 35 Idaho 277, 206 P. 1052 (1922). We see no logical reason to treat differently a mere possibility of termination by death within a year. Indeed, if the unstated but omnipresent possibility of death could take an agreement for a definite term outside the statute of frauds, it would eviscerate the statute in virtually all contracts for definite terms between mortals. Accordingly, we subscribe to the majority view and hold that possible termination by death does not remove the five-year covenant in this case from the statute of frauds.

*Frantz v. Parke*, 111 Idaho 1005, 1008, 729 P.2d 1068, 1071 (Ct. App. 1986). Several other courts have reached similar conclusions. *Gilliam v. Kouchoucos*, 161 Tex. 299, 340 S.W.2d 27, 30 (Tex.1960); *M.R.S. Datascope v. Exchange Data Corp.*, 745 S.W.2d 542, 544 (Tex.App.—Houston [1st Dist.] 1988, no writ); *Collins v. Allied Pharmacy Mgmt., Inc.*, 871 S.W.2d 929, 934 (Tex. App. 1994)(“Moreover, for a contract to fall outside the statute of frauds, performance must be possible within one year; termination for cause is not equivalent to performance of the contract. We conclude the possibility of termination for cause does not take a contract outside the statute of frauds, and we overrule point of error nine.”); *Wior v. Anchor Industries, Inc.*, 669 N.E.2d 172, 174-175 (Ind. 1996)(“Under the Court of Appeals’ analysis [that the purported employment contract was capable of being performed within one year because the plaintiff could have died within one year], any person with a service agreement intended to span a long period of time could avoid the writing requirement of the Statute of Frauds, since death could always occur within one year. Such a holding would undermine the Statute of Frauds efficacy in encouraging the written contracts and preventing fraud and perjury.”).

This Court should not adopt a “potential death” defense and destroy the protections of the Statute of Frauds afforded to individuals. Here, the alleged Employment Agreement that Bannon never signed contains a two-year restrictive covenant. By its own stated terms, the contract could

not be fully performed in one year. Forum attempted to enforce its terms nine years after it was allegedly signed. Forum falsely alleges the Employment Agreement was signed in 2009, and it sued Bannon for allegedly breaching the unsigned Employment Agreement in 2016. The reality is that Bannon did not die, and Forum tried to hold him to obligations in the unsigned agreement for well over one year.

**D. Lost Document Exception.**

In another surprising attempt to confuse matters, Forum now claims that the lost document exception does not apply to the applicable Statute of Frauds in this case. Amazingly, Forum alleges that this issue was “neither raised nor developed in the proceedings below.” (Brief of Respondent, p. 17.) Again, this is a false statement and an unreasonable attempt to distract away from the issues that strongly favor Petitioners. The indisputable truth is that Forum argued this issue to the trial court and as a basis for its appeal. (*See* R. pp. 630-637, and Appellant’s Final Brief dated 3/16/23, pp. 7-9, citing *Yadkin Valley Bank & Tr. v. Oaktree Homes, Inc.*, 2014 WL 3747342 (S.C. Ct. App. July 30, 2014)). This was Forum’s only argument to the trial court related to directed verdict on the contract claim. Forum clearly argued that Forum’s case was different from *Yadkin* because it allegedly had corroborating evidence of the contract, which it did not. (R. pp. 630-637.)

This was a primary argument between the parties at trial and in all prior briefing related to Forum’s contract claim. If this exception does not apply as Forum now seems to admit, then the only logical outcome is that the Statute of Frauds applies and bars Forum’s contract claim. Accordingly, the trial court’s dismissal of the contract claim based on the application of the Statute of Frauds must be affirmed.

**E. Reply to Respondent’s Estoppel Argument.**

Forum for the first time argues that Petitioners should be estopped from asserting the Statute of Frauds defense. Forum argues in a conclusory manner that it suffered a “definite,

substantial, and detrimental change in position” because it relied on the contract with Bannon and gave him access to proprietary designs, algorithms, and/or data.” (Forum’s Brief at 20-21). As explained above, Forum’s failure to raise this issue to the trial court or the Court of Appeals is fatal, in addition to the complete lack of substantive merit to this argument.

Forum attempts to explain its egregious failure to timely raise this argument by asserting that the trial court granted directed verdict at the end of Forum’s case in chief, so the “trial never got [to] the Petitioners’ defense case.” (Brief of Respondent p. 21). This is another desperate argument this Court should summarily reject. First, this does not explain why Forum did not raise this argument to the Court of Appeals. If it could assert this argument now, it could have asserted it to the Court of Appeals. It chose not to do so. Second, it does not explain why Forum did not raise this argument to the trial court. Petitioners clearly established their Statute of Frauds defense through the cross examination of Forum’s witnesses. There was no requirement that Petitioners call any of its own witnesses to further establish this defense. Specifically, Forum’s first witness at trial was its attorney, David Wyatt, who prepared a form Employment Agreement for Forum. (R. p. 62, lines 10-24.) Mr. Wyatt admitted on cross examination that the Employment Agreement at issue in this case could not be performed within one year, that he had never seen a version signed by Bannon (which Forum admits it has never produced), and even admitted that Forum’s contract claim was barred by the Statute of Frauds. (R. pp. 77, 78, 82, and 91.) Forum called Bannon who testified he neither saw nor signed the Employment Agreement. (R. p. 256, lines 11-16.) Forum called its owner, Brian Stritt, who admitted on cross examination that he could not locate a completed, no less signed Employment Agreement. Stritt admitted that there was no evidence that Bannon stole a signed Employment Agreement. (R. p. 583, lines 1-4.) Stritt admitted that it was Forum’s responsibility to keep copies of its own contracts and it failed to do so here. (R. p. 583,

lines 5-8.) Stritt admitted that the only Employment Agreement it could produce does not even have Bannon's name on it and is full of blanks. (R. 587-589.) Essentially, all the relevant facts related to the Statute of Frauds issue were established during Forum's case in chief. There was no obligation for Petitioners to call any witnesses or wait until after it called witnesses to move for directed verdict on Forum's breach of contract claim.

When Petitioner moved for directed verdict, it argued all these facts to support its motion, and specifically argued that the Statute of Frauds barred Forum's contract claim. (R. pp. 630 to 636.) Forum clearly had the burden to raise any estoppel argument at that time. Instead, Forum's first response to this argument on directed verdict was, "The Plaintiff agrees the statute of frauds applies, no contest there." (R. p. 636, lines 12-13.) Contrary to Forum's current argument, at directed verdict it admitted that the Statute of Frauds applied, it did not allege that the contract could be performed within one year, and it did not allege any type of estoppel argument. It must be barred from changing its position now.

Even assuming *arguendo*, that Forum had timely asserted the estoppel argument, it is still completely without merit. First, there is no evidence that the only reason Forum provided Bannon access to information was its "belief" that he signed the Employment Agreement and that Bannon understood such. In fact, the record evidence indisputably proved otherwise. Stritt confirmed on cross examination that none of the other numerous employees who had access to the same information as Bannon had to sign employment agreements restricting the use of alleged confidential information in Forum's systems:

18	BY MR. LEHRER: (Continuing)
19	Q All right, Mr. Stritt, prior to this lawsuit
20	being filed, Forum did not have any agreements with its
21	employees restricting the use of any information in
22	SharePoint, correct?
23	A That's correct.

(R. 601:19-23.) Thus, Forum cannot argue that the only reason he provided employees with access to this information was because they signed employment agreements. All of its employees who had access to this same exact information did not sign such agreements and had no such restrictions during the relevant time.

Additionally, when Bannon's employment with Forum terminated and he became an independent contractor, Forum continued to provide him access to the same information and never asked him to sign an independent contractor agreement. (R. p. 591, line 16 to p. 593, line 25.) None of Forum's other independent contractors had any contracts or restrictions related to alleged confidential information, and Bannon was no different. (R. pp. 585-586.) Forum admitted that not all the information in its systems is confidential and admitted that it never explained to Bannon what it considered to be confidential and what was not confidential information. (R. pp. 596-599.) Even assuming *arguendo* that Bannon signed the Employment Agreement, which he did not, the restriction related to Forum's alleged confidential information ended two years after the employment relationship ended. (R. 593-594.) Stritt admitted that Bannon did not misuse any of Forum's confidential information before this restricted time expired. (R. p. 594, lines 13-16.) Yet after it expired, Forum continued to provide Bannon the same unrestricted access to the information in question. Forum even attached a client list (that it claims is confidential information Bannon had access to) to its Complaint making it a public record. (R. 589-591.) Thus, it is disingenuous for Forum to now claim that the only reason it gave Bannon access to its information (really the client's information) was the alleged signing of the Employment Agreement that no other employee ever signed, and Forum took no reasonable precautions to protect. The indisputable evidence proved the exact opposite to be true.

Finally, the cases Forum cited to support its estoppel argument are not applicable. These cases clearly require “competent proof of the existence of an oral contract.” (Brief of Respondent, p. 21); citing *Beaumont v. Walter Scotty Branch*, No. 2:23-CV-03546-DCN, 2023 WL 7075101 (D.S.C. Oct. 26, 2023). No such “competent proof” exists here. Stritt admits that he never verbally discussed anything about confidential information or trade secrets with Bannon. (R. p. 598, line 21 to p. 599, line 4.) Rather, the only evidence is that Forum had a blank agreement missing material terms and signatures. There is a denial by Bannon that he ever signed the agreement, and there is an allegation by Stritt that Bannon signed the agreement and he could never locate a completed, no less signed version. This is far from “competent proof” that the parties agreed on any restrictive covenants as a condition of Bannon gaining access to the same information as all other employees who did not sign any agreement. There is no course of dealing related to restrictive covenants to support reliance thereon. Additionally, the *Beaumont* case involved a motion to dismiss. The federal court simply ruled that there was sufficient evidence of estoppel based on other similar contracts signed between the parties and a course of dealings that warranted denying the motion to dismiss under Rule 12. *Id.* at \*8. For these reasons, Forum’s attempt to assert a new estoppel argument should be summarily rejected.

### **III. Absence of Proximately Caused Damages.**

Forum tries to create a damages argument by insinuating that because the clients who provided Bannon with their login information moved to AssuredPartners, that it somehow proved that the login caused them to move. Forum completely misses the mark here. First, Forum forgets that during the relevant time, the restrictions in the alleged Employment Agreement related to confidential information had expired. So even under Forum’s own argument regarding its alleged confidential information, there were no restrictions limiting Bannon’s use of any Forum

information. Instead, Forum must rely exclusively on the information being a trade secret, but it never explained the difference between confidential information and a trade secret to Bannon or any of its employees.

Second, Forum's damages argument does not explain why some clients who did not have Employee Navigator accounts also moved to Petitioners. The unchallenged testimony of AssuredPartners' former employee Michelle Coffield confirmed that Bannon never provided her any information about his clients and that, instead, she had to build their files manually by gathering information from the clients and the insurance carriers directly. (R. p. 307, line 13-p. 317, line 15). Obviously, the fact that Petitioners had to obtain the insurance information from the clients and the carriers did not change the client's initial decision to move to Petitioners. This indisputable fact exposes the fallacy of Forum's damages argument.

Third, the only reason for a client with an Employee Navigator account to provide Bannon with its login information was because the client already decided to move with Bannon to AssuredPartners. The information transfer is only discussed after the decision to move, not the reverse. That is why the clients who decided not to move to Petitioners did not provide Bannon with their login information. There would be no reason to do so. The providing of information does not show that the information was the reason clients moved. Instead, the sequence of events proves the information was not relevant to the decision to move. Again, it is important to note that the clients owned their insurance information and had the right to do what they wanted with their information. (See testimony of Mr. Labin, R. pp. 349-350.) The clients' ability to provide their designated broker with the information they already owned and had unrestricted access to would never be a reason to move or not move.

Forum also argues that the Employee Navigator account information was “critical to convincing the clients” to transition to AssuredPartners, again without any support. There is no evidence in the record to support this allegation. No client ever testified that it was critical to their decision. Instead, the only client testimony in the record (who was called by Petitioners) confirmed that the move was based on the relationship with Bannon, not any specific information that it already owned, and that after this decision was made the client approved giving Bannon access to their Employee Navigator account:

14           Q     At some point did Mr. Bannon talk to you about him  
15 moving over to AssuredPartners?  
16           A     Yes.  
17           Q     Tell the Jury what you recall about that.  
18           A     That he was looking to move to AssuredPartners  
19 and wanted to know if we would like to switch. And our  
20 conversation was the same reason why I went with him the  
21 first time, as long as they were able to provide our needs,  
22 which they were. We -- so I -- I solicited my Legal  
23 Counsel to make sure, just because I don't know, I always  
24 go to legal, and they assured me that there was nothing  
25 wrong with that, and so we stayed with Brian.

(R. 622, lines 14-25); and

20           Q     Do you have any knowledge about whether Mr.  
21 Bannon was given consent to use login -- the District's  
22 login and password to obtain the District's information?  
23           A     I authorized HR to provide that to him.

(R. 623, lines. 20-23).<sup>2</sup> Thus, the only client testimony in the record confirmed that the decision to move was based on the client's relationship with Bannon, not the information housed by Forum.

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<sup>2</sup> Forum materially misrepresented this testimony in its Brief. (See Brief of Respondent p. 27.)

Bannon also contradicted Forum's argument that the information was critical to getting the clients to move. Bannon confirmed that he simply asked his clients if they wanted to move with him to AssuredPartners and many said yes, referencing their long-term relationship. (R. p. 247, lines 12-25.) Forum's failure to call any client to testify and failure to submit any evidence to rebut the testimony elicited by Petitioners was and is fatal to the causation for damages element of its claims.

Forum also continues to misrepresent the record testimony related to Stritt's fatal admissions. Forum falsely claims that Petitioner is the one misrepresenting the record about Stritt's admission that he had "no idea" why the clients left. (Brief of Respondent pp. 25-26.) Forum falsely argues that Stritt only meant he did not know what Bannon told the clients. But this is only half of Stritt's admissions on this point. Another significant admission from Stritt was the admission that Forum had not "gone after or talked to" the clients who left with Bannon. (R. p. 610, lines 6-12.) Next, Stritt admitted that it was possible that the clients left because of their relationship with Bannon:

9	Q	And isn't it true that Mr. Bannon had some good
10		relationships with his clients?
11	A	He's got some.
12	Q	Isn't it true that some of his clients could
13		simply say -- he could say to some of his clients, "I'm
14		moving," and they would simply say that they were gonna go
15		with him?
16	A	If -- under certain circumstances, I would say
17		yes.

(R. 608:9-17.) Thus, if Stritt does not know what Bannon said to the clients, did not attempt to talk to the clients about why they left, never received any information that the clients left because of some alleged theft of information, and never called any of the clients to testify at trial, there is

only one possible conclusion – that Stritt and Forum have and had “no idea” why the clients left. The trial court correctly ruled that this was fatal to Forum’s damages claim.

Forum attempts to avoid this truth but fails to point to any evidence in the record to the contrary. Forum focuses solely on the alleged rush and “value” of the information. But that is why the Trade Secrets Act has a reasonable royalty and unjust enrichment alternative to proving damages. Forum could have alleged that Petitioners saved time by obtaining the clients’ Employee Navigator login rather than obtaining the same information from the carrier and client directly. Again, Ms. Winston (Forum’s alleged expert employee on Employee Navigator) confirmed that all the information in Employee Navigator could have been recreated with information from the carrier and the client or its payroll company. (R. p. 423, lines 13-17 and R. p. 355, lines 3-8). Forum chose not to pursue this reasonable royalty/unjust enrichment damages options because the alleged time savings would have been a minimal recovery. Instead, Forum solely alleged damages related to the loss of the clients. It is indisputable that Bannon had no restrictions related to his ability to solicit his clients, which is exactly what he did. Therefore, Forum was required to prove a causal connection related to the alleged theft of its information and the “reason” the clients moved. It woefully failed to do so and could not do so without obtaining this alleged information from the client. Accordingly, the trial court was correct to grant Petitioner’s motion for directed verdict and this ruling should be affirmed.

**VII. No Basis For Recusal.**

Contrary to Forum’s argument, Petitioner did raise the recusal issue on appeal to this Court. (See Petition p. 21.) However, because the Court of Appeals did not rule on this issue, it is in this Court’s discretion to address this issue or remand this issue to the Court of Appeals. If this Court

decided to address this issue, it should affirm the trial court's decision not to recuse himself in the middle of the trial.

After two days of trial testimony, Forum sought to recuse the trial judge simply because he knew and greeted a "potential" witness during a break. Significantly, Forum subpoenaed this witness – the only reason he was in the courthouse to begin with - yet never actually called him to testify. The trial judge's relationship with this witness is extremely faint. They went to college at Wofford together many years ago and had not seen or communicated with each other in over 17 years. Forum can challenge the manner the trial judge greeted the witness, but that makes its argument even worse. If it truly was as significant as Forum now claims, which it was not, it occurred in the morning and Forum had all afternoon to move for recusal or to question this issue further with the trial judge. (R. p. 478, lines 1-25.) Rather, it proceeded with calling its witnesses, and the testimony only continued to favor Petitioners. Realizing the trial was not going well, Forum decided to pivot and move to recuse the judge the *next day*, hoping to "start over."

There was no reasonable basis for Forum's motion to recuse the trial judge. Simply greeting a potential witness who was never called to testify based on a very old college acquaintance is not remotely sufficient to warrant recusal, and not remotely sufficient to reverse the trial court's decision. Trial courts must be given broad discretion to make decisions regarding recusal and the standard for reversing the trial court's discretion is very high. "Under South Carolina law, if there is no evidence of judicial prejudice, a judge's failure to disqualify himself will not be reversed on appeal." *Patel v. Patel*, 359 S.C. 515, 599 S.E.2d 114, 118 (2004) (citation omitted); *Simpson v. Simpson*, 377 S.C. 519, 524, 660 S.E.2d 274, 276 (Ct. App. 2008). Appellate courts are to "accord great weight" to the trial court's "assurance of his own impartiality." *Davis v. Parkview Apartments*, 409 S.C. 266, 762 S.E.2d 535, 545 (2014).

Here, the trial court gave numerous assurances of his own impartiality. (R. pp. 464-478.)

These assurances included the following:

- “If I don’t think I can be fair and impartial, I certainly wouldn’t move forward.” (R. p. 468, lines 17-18);
- “To be honest with you, I had no idea what Mack Ward does. I had no idea he would be here . . . We haven’t spoken in 17 years.” (R. p. 469, lines 20-24);
- “we weren’t in the same fraternity. He’s somebody I knew from college. Wofford has a thousand people, you know all thousand people, I wouldn’t say we had a close relationship, seeing how we haven’t spoken in 17 years . . . I’m telling you, for the record, I did not have a close personal relationship with Mack Ward.” (R. p. 471, lines 6-17);
- “Y’all have actually released him of his subpoena, and they’re not here, so I certainly don’t see any prejudice, because he’s not even gonna testify.” (R. p. 473, lines 1-3); and
- “I’ve got no concern about . . . my partiality and my fairness.” (R. p. 475, lines 13-15).

This Court should give deference to the trial court’s assurances under these circumstances.

Forum also falsely alleges that there is no evidence in the record that the Judge asked for permission from the parties to greet Mr. Ward and that the parties said yes. (See Brief of Respondent p. 42.) Forum’s false statements to this Court continue to mount. The trial judge specifically confirmed this fact on the record:

1	the record’s clear, Mr. Ward came to Court, I think it was
2	yesterday, I can’t recall, and I -- again, I went to
3	Wofford with Mr. Ward. We just agreed we haven’t seen each
4	other in 17 years. I came to y’all and I said, “Is it okay
5	if I say hello to Mr. Ward, he’s a -- I understand he’s a
6	witness in this case?” And y’all said, “Yes.” I said,

(R. p. 469, lines 1-6.) It is also important to note the completely improper comments by Forum's counsel during its motion to recuse, likening the fact that the trial judge knew an uncalled witness from college to the "Murdaugh Case":

14	THE COURT: What is his concern about the judiciary in
15	the Lowcountry?
16	MR. LEBLANC: Well, the Murdaugh and all the -- the
17	judicial issues going on there.
18	THE COURT: You're going to liken the fact that I knew
19	a witness that wasn't called in a trial, that I went to
20	college with, that I haven't spoken to in 17 years, that I
21	said hello to, liken to the judiciary concerns and issues
22	in the Murdaugh trial in the Lowcountry? That's what
23	you're juxtaposing?

(R. p. 473, lines 14-23.)

If this Court adopts Forum's argument and reverses the trial court's decision against recusal, it will set dangerous precedent. Judges will err on the side of recusal to avoid being questioned on appeal, which will dramatically increase recusals and cause extreme delays to trials. Allowing parties to make these types of motions untimely, like the one made by Forum here, will only allow for unreasonable trial tactics when the trial testimony does not go as they hope. Judges routinely know witnesses and lawyers, especially in small towns in South Carolina. The simple truth is that the Judicial Cannons and the case law require much more than having a college acquaintance with a potential witness who never testified at trial to mandate recusal.

Here, Forum alleges that it made a calculated decision not to call Mr. Ward because he went to college with the trial judge. (Forum's Brief p. 42.) It must live with the consequences of that decision. Those consequences are that there is no record evidence prior to its motion for recusal related to who Mr. Ward was in relation to the case and the nature of any potentially relevant testimony. Make no mistake, Forum could have called Mr. Ward, established his alleged

relevance, established his position within AssuredPartners, and then made or renewed its motion to recuse the trial court. It did not do so, released Mr. Ward from his subpoena prior to moving to recuse the trial judge, and has waived its ability to now claim Mr. Ward was so important that his alleged involvement with the case mandated recusal.

### **CONCLUSION**

Forum's claims were properly dismissed by the trial court at directed verdict. Forum failed to present evidence on almost every element of its claims sufficient to warrant submitting these claims to the jury. The trial court's ruling on directed verdict is supported by substantial evidence in the record. The Court of Appeals erred in reversing the trial court and in failing to address other important issues in this case. Accordingly, Petitioners respectfully request that this Court reverse the Court of Appeals and affirm the trial court.

Respectfully Submitted,

*s/Jeffrey A. Lehrer* \_\_\_\_\_

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